

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL ACTION NO: 1:23-CV-00041

JACOB DOE,

Plaintiff,

v.

THE UNIVERSITY OF NORTH
CAROLINA SYSTEM, et al.

Defendants.

**UNC DEFENDANTS'
MOTION TO DISMISS**

Defendants the University of North Carolina System (“UNC System”), the Board of Governors of the University of North Carolina (“BOG”), the University of North Carolina at Chapel Hill (“UNC-CH”), and the UNC-CH Board of Trustees (“BOT”) (collectively, the “UNC Defendants”), pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6) of the Federal Rules of Civil Procedure, hereby move to dismiss Plaintiff Jacob Doe’s claims against the UNC Defendants. In support of this Motion, the UNC Defendants show the Court as follows:

1. Plaintiff has alleged a claim against UNC-CH for violation of 20 U.S.C. §1681 *et seq.* (“Title IX”).
2. Plaintiff has alleged claims against the UNC Defendants and the Individual Defendants, who were employed by UNC-CH, for violation for 42 U.S.C. §1983.
3. Plaintiff has alleged state law claims against UNC-CH for breach of contract, negligent hiring, tortious interference with contract, and violation of North Carolina’s Constitution. Plaintiff has alleged many of these state law claims against the

Individual Defendants, and he has also alleged negligent infliction of emotional distress (“NIED”) and intentional infliction of emotional distress (“IIED”) claims against the Individual Defendants.

4. As further explained in the UNC Defendants’ accompanying Brief, Plaintiff’s claims should be dismissed:

First, under Rule 12(b)(3), venue is improper. No Defendant resides in this District and the substantial events of this case did not occur in this District. They occurred in the Middle District, where UNC-CH is located. *See* 28 U.S.C. §1391.

Second, under Rule 12(b)(6), Plaintiff has failed to state a Title IX claim against UNC-CH. Plaintiff has not plausibly alleged that gender discrimination was the *but-for* cause of his claimed injury, and Plaintiff seeks monetary damages that are unavailable under Title IX.

Third, under Rules 12(b)(1), (2), and (6), Plaintiff cannot maintain §1983 claims against the UNC Defendants. The UNC Defendants are agents of the State of North Carolina, and Plaintiff’s §1983 claims are barred by the Eleventh Amendment. Further, the UNC Defendants are not a “person” under §1983.

For the same reasons, Plaintiff’s §1983 claims against the Individual Defendants in their official capacities are subject to dismissal to the extent they seek monetary damages.

Fourth, under Rules 12(b)(1), (2), and (6), Plaintiff’s state law claims against UNC-CH are likewise barred by the Eleventh Amendment. In addition to this jurisdictional bar, Plaintiff’s tort claims are also precluded by UNC-CH’s sovereign immunity.

The same immunities preclude Plaintiff's state law claims against the Individual Defendants in their official capacities.

WHEREFORE, the UNC Defendants respectfully request:

1. That the Court dismiss Plaintiff's claims against the UNC Defendants with prejudice;
2. That Plaintiff have and recover nothing from the UNC Defendants;
3. That the costs of this action, including reasonable attorney's fees, be taxed against Plaintiff, as allowed by law; and
4. That the Court award the UNC Defendants such other and further relief as it deems just and proper.

This 8th day of May, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **UNC DEFENDANTS' MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all registered CM/ECF users.

This 8th day of May, 2023.

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