IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN SATELL	:	**CIVIL ACTION**
	:	
	:	**NO. 17-2774**
v.	:	
	:	
TEMPLE UNIVERSITY	:	
	:	

KEARNEY, J. **July 25, 2017**

MEMORANDUM

A university reducing a grade for a doctoral student based on plagiarism moves to dismiss the student's *pro se* complaint alleging breach of contract and possible due process violations. The student cannot cite a contract other than the student handbook which Pennsylvania has not recognized as a contract. The student also has not plead a due process claim. Liberally construing his claim as also raising race-based discrimination, we deny the university's request to dismiss a claim under Title VI of the Civil Rights Act of 1964.

I. Alleged Facts

Student Stephen Satell *pro se* sues Temple University alleging it subjected him to disparate treatment causing him to receive a reduced grade and harm his reputation as a doctoral student in the University's Department of Afrocology and African American Studies.[1] Mr. Satell alleges the University agreed to provide education services for $500 a credit.[2] Mr. Satell also alleges the University promised to be "fair and accord [him] due process" for charges of academic misconduct and to keep his grades and academic status confidential.[3]

In May 2016, Professor Aaron Smith gave Mr. Satell an 'A' in his Independent Study course.[4] On May 16, 2016, Dr. Asante, Chair of the University's Department of Afrocology and African American Studies emailed Mr. Satell informing him the University reduced his

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Independent Study grade to a 'C' because Mr. Satell used other authors' words without proper attribution.[5]

The University never informed him of the plagiarism allegation, never showed him the plagiarized documents and did not afford him an opportunity to respond to the plagiarism allegations.[6] Mr. Satell alleges the University's conduct breached its contractual obligation to be "fair and accord due process."[7] Mr. Satell also alleges the University breached the contract by disclosing his grades to Larry Robin.[8] Mr. Satell never describes Mr. Robin's role or dissemination of this information.

Mr. Satell alleges the University hindered his academic process, undermined his work, and deliberately misrepresented his actions "due to [his] race (Caucasian) and all being disparate treatment toward [him] – the only Caucasian student [in] the Department."[9]

Mr. Satell alleges the lowered grade harmed his reputation and financially damaged him due to lost tuition payments and the expense to correct his reputation.[10] He alleges he paid "approximately $50,000 and expended a considerable amount over and above that for expenses" to the University and "demands judgment against [the University] in an amount in excess of $50,000."[11]

On June 1, 2017, Mr. Satell *pro se* sued the University in the Court of Common Pleas for Philadelphia County for breach of contract.[12] The University construed Mr. Satell's claims under 42 U.S.C. § 1983 for deprivation of due process and removed to this Court.[13]

II. Analysis

The University now moves to dismiss Mr. Satell's complaint for failing to state a claim. We review Mr. Satell's *pro se* complaint originally filed in state court. "[W]e tend to be flexible when applying procedural rules to *pro se* litigants, especially when interpreting their

pleadings . . . . [t]his means that we are willing to apply the relevant legal principle even when the complaint has failed to name it."[14] We construe Mr. Satell's *pro se* complaint to be a suit under 42 U.S.C. § 1983 for depriving him of due process. We also construe Mr. Satell's assertions of discrimination under Title VI of the Civil Rights Act of 1964. While we hold *pro se* pleadings "to less stringent standards than formal pleadings drafted by lawyers," they still must, however, "allege sufficient facts in their complaints to support a claim."[15] As presently before us, Mr. Satell does not plead claims for breach of contract, deprivation of due process but, with liberal deference, states a claim under Title VI.

A. Mr. Satell fails to state a claim for breach of contract.

Mr. Satell alleges he contracted with the University according to terms in the University's Department of Psychology Graduate Handbook, and it breached those terms.[16] Mr. Satell also alleges he "was not given any other document that was part of the Contract nor was any such document made accessible to [him] in any form."[17] We construe Mr. Satell's allegations of breach as referring to terms in the Handbook.

Mr. Satell fails to plead the University breached a contract because he does not allege facts to support the existence of a contract. "To sustain a claim for breach of contract, a plaintiff must prove: 1) the existence of a contract and its terms; 2) a breach of the duty imposed by the contract; and 3) damages that resulted."[18] In *Johnson v. Temple U.--of Cmmw. System of Higher Educ.*, the Honorable Richard B. Surrick held "the Supreme Court of Pennsylvania has declined to construe the student handbook of a public university as a contract between the public university and the student," and held the University's student handbook is not a contract.[19]

Mr. Satell alleges he contracted with the University under the terms of the Department of Psychology Graduate Handbook, and the allegations of breach refer to terms in the Handbook.

Because Pennsylvania does not recognize the University's student handbook as a contract, Mr. Satell does not allege the existence of a contract and we must dismiss this claim.

B. Mr. Satell fails to plead the University deprived him of due process.

Mr. Satell alleges the University deprived him of fairness and due process when it reduced his 'A' grade to a 'C' without notice and a chance to respond to the allegations. "In order to state a claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are available to him or her, unless those processes are unavailable or patently inadequate."[20] Our court of appeals instructs, "[a] state cannot be held to have violated due process requirements when it has made procedural protection available and the plaintiff has simply refused to avail himself of them."[21] Mr. Satell fails to meet these initial requirements. He does not allege using a procedure remedy or a procedure remedy is unavailable or inadequate. Because he does not meet the initial procedural requirements, Mr. Satell fails to plead the University deprived him of due process.

C. Even if Mr. Satell meets the procedural requirement, he does not plead the University deprived him of due process.

"To state a claim under § 1983 for deprivation of procedural due process rights, [Mr. Satell] must allege that (1) he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of 'life, liberty, or property,' and (2) the procedures available to him did not provide 'due process of law.'"[22] We construe Mr. Satell's complaint to allege the University deprived him of a liberty interest in reputation based on harming his reputation and depriving him of a property interest based on allegedly depriving him of paid services.

1. Mr. Satell fails to plead the University violated his liberty interest in reputation.

Mr. Satell does not state a due process claim for depravation of a liberty interest in his reputation because he does not allege stigmatizing statements in public. Under the "stigma-plus" test, "[i]n order to support a due process claim for deprivation of a liberty interest in reputation, the plaintiff must show (1) a stigma to his or her reputation plus (2) a deprivation of an additional right or interest."[23] To satisfy the 'stigma' prong of the test, "it must be alleged that the purportedly stigmatizing statement(s) (1) were made publicly, and (2) were false."[24] Mr. Satell "must plead that the allegedly stigmatizing information was "published" or otherwise disseminated by [Temple] to the public."[25] A plaintiff's single factual allegation his co-worker made an allegedly stigmatizing comment about the plaintiff is "not alleged to have been made publically."[26]

Mr. Satell alleges his professor "deliberately misrepresented [his] actions to the department chair" and the department chair disclosed Mr. Satell's grades, plagiarism charges, and disciplinary actions to Larry Robin.[27] While Mr. Satell alleges his professor gave false statements, he does not allege either his professor or the department chair made the statements publicly.[28] Mr. Satell does not plead the identity of Larry Robin or his relationship to parties and a single disclosure to another person, without additional facts, is not publishing or disseminating the allegedly stigmatizing comment to the public. Because Mr. Satell does not provide facts to show the University publicly made the allegedly false statements, he fails to state a claim for stigma to his reputation violating his due process liberty interest.

2. Mr. Satell fails to plead the University violated his property interest.

Mr. Satell does not state a due process claim for deprivation of a property interest because he does not allege the University removed him from the doctoral program. "For

purposes of procedural due process, we look to state law to determine whether a property interest exists," and "[u]nder Pennsylvania law, it has been held that a graduate student has a property interest protected by procedural due process in the continuation of her course of study."[29] Mr. Satell does not allege the University removed him from the doctoral program.[30] Instead, he alleges the University deprived him of a property interest in tuition payments to repair his harmed reputation.[31] Mr. Satell fails to plead a denial of a due process property interest because he does not allege the University stopped him from continuing his education. As he fails to allege a property interest, we must dismiss his due process claim.

3. Even if Mr. Satell successfully pleads a deprivation of a liberty or property interest, he does not plead the University's process did not provide "due process."

If Mr. Satell could show the University deprived him of a liberty or property interest, he must then allege Temple's "procedures available to him did not provide 'due process of law.'"[32] Courts note due process requires different standards for procedures whether an institution dismisses a student for academic or disciplinary reasons.[33] Our court of appeals discussed the Supreme Court's decisions regarding "the due process rights of students in state operated universities," and explained, "[we] are generally ill-equipped to review subjective academic appraisals of educational institutions, and [the Supreme Court] admonished [us] to permit university faculties a wide range of discretion in making judgments as to the academic performance of students."[34] Our court of appeals held, in *Hankins*, "when a student is discharged for academic reasons, an informal faculty evaluation is all that is required."[35]

Mr. Satell does not allege the University dismissed him from his doctoral program or failed to hold an informal faculty evaluation. Mr. Satell also fails to allege the University's procedures were inadequate and, in fact, does not allege facts about the University's procedures

for resolving allegations of academic misconduct. Even if Mr. Satell discussed the availability or adequacy of the University's procedures, Mr. Satell does not allege the University deprived him of the "informal faculty evaluation" required to satisfy due process. Mr. Satell fails to plead the University deprived him of due process.

D. Mr. Satell states a claim the University violated Title VI.

Mr. Satell alleges the University hindered his academic process, undermined his work, and deliberately misrepresented his actions "due to [his] race (Caucasian) and all being disparate treatment toward [him] – the only Caucasian student [in] the Department."[36] "To make out a *prima facie* case under Title VI," Mr. Satell must show (1) he is a member of a protected class; (2) he was qualified to continue in pursuit of his education; (3) he suffered an adverse action; and "(4) such action occurred under circumstances giving rise to an inference of discrimination."[37]

"A determination whether a *prima facie* case has been made, however, is an evidentiary inquiry—it defines the quantum of proof plaintiff must present to create a rebuttable presumption of discrimination."[38] For the purposes of a motion to dismiss, our court of appeals explains, "[e]ven post-*Twombly*, it has been noted that a plaintiff is not required to establish the elements of a *prima facie* case but instead, need only put forth allegations that raise a reasonable expectation that discovery will reveal evidence of the necessary element[s]."[39]

Based on Mr. Satell's allegations the University undermined his work, deliberately misrepresented his actions, hindered his academic progress, and he is the only Caucasian in the Department, taken as true, Mr. Satell raises "a reasonable expectation that discovery will reveal evidence of the necessary element[s]."[40]

III. Conclusion

Mr. Satell states a claim the University violated Title VI. We deny the University's motion to dismiss in part as to the Title VI claim but dismiss the due process and breach of contract claims without prejudice should he adduce facts to be able to timely allege these claims in good faith.

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[1] *See* Notice of Removal, ECF Doc. No. 1, Exhibit A.

[2] *Id.* ¶ 4.

[3] *Id.* ¶ 13-14.

[4] *Id.* ¶ 19.

[5] *Id.* ¶ 18–19.

[6] *Id.* ¶ 21–24.

[7] *Id.* ¶ 21–24.

[8] *Id.* ¶ 25.

[9] *Id.* ¶ 26.

[10] *Id.* ¶ 27.

[11] *Id.* ¶ 28.

[12] Notice of Removal, ECF Doc. No. 1.

[13] *Id.*

[14] *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244 (3d Cir. 2013).

[15] *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013)). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Although the plausibility standard 'does not impose a probability requirement,' it does require a pleading to show 'more than a sheer possibility that a defendant has acted unlawfully.' A complaint that pleads facts 'merely consistent with a defendant's liability . . . stops short of the

line between possibility and plausibility of entitlement to relief.'" *Connelly v. Lane Const. Corp.*, 809 F.3d 780, 786 (3d Cir. 2016) (quoting *Twombly*, 550 U.S. at 556 and *Iqbal*, 556 U.S. at 678).

[16] In his Complaint, Mr. Satell alleges he attached a copy of "the Contract" but he did not submit the attachment when filing his complaint electronically. Mr. Satell later provided the attachment to the University, and the University attached the Complaint to the motion to dismiss. *See* ECF Doc. No. 3, Exhibit A; *see also* ECF Doc. No. 3, at n. 2. Mr. Satell alleges some term "implied in fact." Pennsylvania courts have held students and *private* universities may contract terms, but to the extent a contract exists "the contract between the university and its students is comprised solely of the written materials provided to the students." *Swartley v. Hoffner*, 734 A.2d 915, 919 (Pa. Super. Ct. 1999).

[17] ECF Doc. No. 1, ¶ 7.

[18] *Furey v. Temple U.*, 730 F. Supp. 2d 380, 400 (E.D. Pa. 2010) (citing *CoreStates Bank v. Cutillo*, 723 A.2d 1053, 1058 (Pa.Super.Ct.1999)).

[19] *Johnson v. Temple U.--of Cmmw. System of Higher Educ.*, No. 12-515, 2013 WL 5298484 at *13 (E.D. Pa. Sept. 19, 2013).

[20] *Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000).

[21] "This requirement is to be distinguished from exhaustion requirements that exist in other contexts . . . . exhaustion *simpliciter* is analytically distinct from the requirement that the harm alleged has occurred." *Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000). "Temple's actions have been held to constitute state action for purposes of 42 U.S.C. § 1983." *Moire v. Temple U. Sch. of Med.*, 613 F. Supp. 1360, 1366 (E.D. Pa. 1985), *aff'd*, 800 F.2d 1136 (3d Cir. 1986).

[22] *Hill v. Borough of Kutztown*, 455 F.3d 225, 233–34 (3d Cir. 2006). "Temple's actions have been held to constitute state action for purposes of 42 U.S.C. § 1983." *Moire v. Temple U. Sch. of Med.*, 613 F. Supp. 1360, 1366 (E.D. Pa. 1985), *aff'd*, 800 F.2d 1136 (3d Cir. 1986).

[23] *Paterno v. Pennsylvania State U.*, ___ Fed. App'x ___. 2017 WL 1906744 at *2 (3d Cir. 2017) (citing *Hill*, 455 F.3d at 236).

[24] *Hill*, 455 F.3d at 236 (internal citations omitted).

[25] *Chabal v. Reagan*, 841 F.2d 1216, 1223 (3d Cir. 1988).

[26] *Cortazzo v. City of Reading*, No. 14-2513, 2015 WL 1380061 at *3 (E.D. Pa. Mar. 26, 2015) ("The single factual allegation as to negative comments made about plaintiff—a remark by defendant Winchester (a co-worker) to another co-worker stating 'Plaintiff was going to get him in trouble and that Plaintiff could be a detriment to his advancement at the police department,'...is not alleged to have been made publicly.").

[27] ECF Doc. No. 1 ¶ 25.

[28] *Id.* ¶ 26.

[29] *Manning v. Temple U.*, 03-4012, 2004 WL 3019230, at *8 (E.D. Pa. Dec. 30, 2004), *aff'd*, 157 Fed. Appx. 509 (3d Cir. 2005).

[30] ECF Doc. No. 1 ¶27. Mr. Satell's Response notes "[t]he Motion never points to a document notifying Plaintiff of the charges and his right to respond and not even a document notifying Plaintiff he has been dismissed from the program a fact that Plaintiff learned about only after reading the Motion." ECF Doc. No. 4-1.

[31] ECF Doc. No. 1, ¶ 27.

[32] *Hill v. Borough of Kutztown*, 455 F.3d 225, 233–34 (3d Cir. 2006).

[33] *See Borrell v. Bloomsburg U.*, 63 F. Supp. 3d 418, 447 (M.D. Pa. 2014) (relying on *Hankins v. Temple Univ.*, 829 F.2d 437, 444 (3d Cir.1987)).

[34] *Hankins v. Temple U. (Health Scis. Ctr.)*, 829 F.2d 437, 444 (3d Cir. 1987) (discussing *Board of Curators of the University of Mo. v. Horowitz*, 435 U.S. 78 (1978) and *Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985).

[35] *Id.* at 445.

[36] ECF Doc. No. 1, ¶ 26.

[37] *Blunt v. Lower Merion Sch. Dist.*, 826 F. Supp. 2d 749, 758 (E.D. Pa. 2011), *aff'd*, 767 F.3d 247 (3d Cir. 2014) (citing, *e.g.*, *Sarullo v. U.S. Postal Serv.*, 352 F.3d 789, 797 (3d Cir.2003)). "Private individuals who bring suits under Title VI may not recover compensatory relief unless they show that the defendant engaged in intentional discrimination," and to move forward with a Title VI claim, Mr. Satell "must raise at least an inference of discrimination." *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 272 (3d Cir. 2014); *Bridges ex rel. D.B. v. Scranton Sch. Dist.*, 644 F. App'x. 172, 179 (3d Cir. 2016).

[38] *Fowler v. UPMC Shadyside*, 578 F.3d 203, 213 (3d Cir. 2009) (citing *Powell v. Ridge*, 189 F.3d 387, 394 (3d Cir.1999)).

[39] *Id.* (internal quotation marks omitted).

[40] *Id.* (internal quotation marks omitted).