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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BARBARA STUART ROBINSON,)	
)	CASE NO. C10-0112-MAT
Plaintiff/Counter Defendant,)	
)	
v.)	ORDER GRANTING DEFENDANT’S
)	MOTION FOR SUMMARY
GREEN RIVER COMMUNITY COLLEGE,)	JUDGMENT AND ADDRESSING
)	OTHER PENDING MOTIONS
Defendant/Counter Claimant.)	
_____)	

INTRODUCTION

Plaintiff proceeds *pro se* and *in forma pauperis* (IFP) in this civil suit against defendant Green River Community College. Plaintiff raises a variety of claims against defendant, including discrimination, retaliation, harassment, and breach of quasi contract. (Dkt. 5.) Defendant denies plaintiff’s allegations, raises a number of affirmative defenses, and raises a counterclaim asserting that this action is without reasonable cause, frivolous, and without factual or legal foundation. (Dkt. 26.)

There are currently several motions pending in this matter, including plaintiff’s motion

ORDER GRANTING DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT AND ADDRESSING OTHER
PENDING MOTIONS

01 for summary judgment (Dkt. 37), defendant’s cross motion for summary judgment (Dkt. 56),
02 defendant’s motion for relief under Rule 11 of the Federal Rules of Civil Procedure (Dkt. 38),
03 and defendant’s motion for continuance of pretrial deadlines (Dkt. 75). Having considered the
04 pending motions, along with the remainder of the record, the Court finds that plaintiff’s claims
05 should be dismissed on summary judgment.¹ The Court further finds that defendant’s motion
06 for a continuance should be stricken as moot and its motion for Rule 11 sanctions should be
07 denied.

08 BACKGROUND

09 Plaintiff is, by her description, mentally ill, suffering from bipolar/manic depressive
10 disorder and “[i]rate behavior.” (Dkt. 5 at 2-3; Dkt. 65 at 2.) Plaintiff, then a student at Green
11 River Community College (hereinafter “College”), was involved in a disruptive incident on
12 campus on January 6, 2010. (Dkt. 54-2 at 4; Dkt. 56 at 29-30, ¶¶3-4 and at 38, ¶4(a).)
13 Campus security responded to the scene and observed plaintiff to be in an emotionally escalated
14 state. (Dkt. 56 at 30, ¶4; *see also* Dkt. 65, ¶¶6, 9.) The Auburn Police Department ultimately
15 removed plaintiff from campus. (Dkt. 56 at 30-31, ¶4; Dkt. 54-2 at 4.)

16 The College held a “Conduct Hearing” with plaintiff on the day following the incident
17 to consider the allegation that she had violated its Student Conduct Code standard WAC
18 132J-125-125, Interference/Intimidation. (Dkt. 56 at 33-34, ¶¶3-4 and at 37.) As a result of
19 that hearing, the College placed plaintiff on disciplinary suspension, for one academic quarter,

20 ¹ Plaintiff voluntarily dismissed claims brought against the United States Equal Employment
21 Opportunity Commission (EEOC) (*see* Dkt.52), the only other defendant named in her complaint.
22 Plaintiff also discusses, in her motion for summary judgment, incidents and issues relating to Tacoma
Community College (TCC). (Dkt. 37.) However, TCC is not a party to this action and any incidents
or issues relating to TCC are not relevant to the current case. This Order, therefore, does not address
any issues or claims relating to either the EEOC or TCC.

01 due to violation of its Student Conduct Code. (Dkt. 56 at 25, ¶3 and at 37.)

02 By letter dated January 7, 2010, the College provided written documentation of the
03 suspension and advised plaintiff of her right to appeal. (*Id.* at 37.) (*See also* Dkt. 54-2
04 (January 15, 2010 letter again advising plaintiff as to appeals process).) The letter reflects that
05 plaintiff informed the College during the Conduct Hearing that she had a disability. (Dkt. 56 at
06 38.) The letter advised plaintiff that she could, at any time, provide the College with written
07 medical documentation or information about her disability so that it could “coordinate
08 academic accommodations[.]” (*Id.*)²

09 DISCUSSION

10 A. Motions for Summary Judgment

11 Summary judgment is appropriate when “the pleadings, depositions, answers to
12 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
13 genuine issue as to any material fact and that the moving party is entitled to a judgment as a
14 matter of law.” Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).
15 Genuine issues of material fact that preclude summary judgment are “disputes over facts that
16 might affect the outcome of the suit under the governing law[.]” *Anderson v. Liberty Lobby,*
17 *Inc.*, 477 U.S. 242, 248 (1986). The moving party is entitled to judgment as a matter of law
18 when the nonmoving party fails to make a sufficient showing on an essential element of his case
19 with respect to which he has the burden of proof. *Celotex*, 477 U.S. at 322-23.

20 In deciding a summary judgment motion, the court must view all facts and inferences

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22 ² The parties submitted other facts in support of their arguments. The Court includes herein only those facts pertinent to the resolution of the claims as discussed in this Order.

01 therefrom in the light most favorable to the nonmoving party. *See Warren v. City of Carlsbad*,
02 58 F.3d 439, 441 (9th Cir. 1995). “[A] party opposing a properly supported motion for
03 summary judgment may not rest upon mere allegation or denials of his pleading, but must set
04 forth specific facts showing that there is a genuine issue for trial[,]” *Anderson*, 477 U.S. at 256
05 (citing Fed. R. Civ. P. 56(e)), and must present significant and probative evidence to support its
06 claim or defense, *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir.
07 1991). The non-moving party fails to meet its burden if “the record taken as a whole could
08 not lead a rational trier of fact to find for the non-moving party.” *Id.* (quoting *Matsushita Elec.*
09 *Industrial Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986)).

10 Plaintiff alleges defendant discriminated against her in violation of Title II of the
11 Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, and § 504 of the Rehabilitation Act
12 (RA), 29 U.S.C. § 794(a). (Dkt. 5.) She alleges retaliation in violation of various state laws,
13 Federal Sector Equal Employment Opportunity processing regulations, 29 C.F.R. Part 1614,
14 and the Federal Privacy Act, 5 U.S.C. § 552a. (*Id.*) Plaintiff also alleges unlawful harassment
15 under state law and breach of quasi contract. (*Id.*) Additionally, although she does not assert
16 such a claim in her complaint, plaintiff alleges, in her motion for summary judgment, a
17 violation of her due process rights. (*See* Dkt. 37.) For the reasons described below, the Court
18 finds defendant entitled to dismissal of plaintiff’s claims on summary judgment and, therefore,
19 no basis for granting plaintiff the relief requested in her motion for summary judgment.

20 1. Disability Discrimination:

21 Title II of the ADA prohibits discrimination on the basis of disability by public entities,
22 while § 504 of the RA prohibits disability discrimination in federally-funded programs. *Lovell*

01 *v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002). Title II of the ADA specifically provides
02 that “no qualified individual with a disability shall, by reason of such disability, be excluded
03 from participation in or be denied the benefits of the services, programs, or activities of a public
04 entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Similarly,
05 the RA provides that “[n]o otherwise qualified individual with a disability . . . shall, solely by
06 reason of her or his disability, be excluded from the participation in, be denied the benefits of,
07 or be subjected to discrimination under any program or activity receiving Federal financial
08 assistance[.]” 29 U.S.C. § 794(a).

09 To establish a prima facie case of a Title II ADA violation, plaintiff must show that (1)
10 she is a qualified individual with a disability; (2) she was excluded from participation in or
11 otherwise discriminated against with regard to the College’s services, programs, or activities;
12 and (3) the exclusion or discrimination was by reason of her disability. *Lovell*, 303 F.3d at
13 1052 (citing *Weinreich v. Los Angeles County Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir.
14 1997)). An RA violation requires a showing that plaintiff (1) is handicapped within the
15 meaning of the RA; (2) is otherwise qualified for the benefits or services sought; (3) was denied
16 the benefits or services solely by reason of her handicap; and that (4) the College receives
17 federal financial assistance. *Id.*

18 While defendant does not stipulate that plaintiff has a qualifying disability under either
19 the ADA or the RA, or that it knew of the alleged disability at the time of plaintiff’s suspension,
20 it takes the assertion as to plaintiff’s disability as true for purposes of summary judgment.
21 Defendant argues that, in any event, plaintiff fails to show a causal link between her suspension
22 from the College and her alleged disability. The Court agrees with defendant.

01 Plaintiff repeatedly asserts that her suspension resulted from discrimination based on
02 her mental illness. However, nowhere in the many different documents filed by plaintiff in
03 this matter does she point to or provide any evidence to support this contention.

04 In contrast, defendant provides declarations and documentation supporting its
05 contention that plaintiff was suspended due to her conduct on January 6, 2010, not due to any
06 disability. (*See, e.g.*, Dkt. 56 at 35 (declaration of Lesley Hogan, VP, Human Resources of the
07 College, stating that plaintiff was placed on disciplinary suspension for violating the College's
08 student conduct code); *id.* at 29-31 (declaration of Fred Creek, Director of Campus Safety at the
09 College, describing the January 6, 2010 incident in detail, including his personal observations
10 of plaintiff's escalated emotional state and interactions with another student and staff,
11 plaintiff's failure to cooperate with requests that she leave campus, and his call to the police
12 department to escort plaintiff off campus); and *id.* at 33-34, 37-38 (declaration of Timothy
13 Malroy, Assistant Director of Student Services at the College, describing the conduct hearing
14 he held on January 7, 2010 and asserting that the decision to suspend plaintiff resulted from her
15 behaviors on January 6, 2010, not her alleged disability; attaching letter describing hearing and
16 one quarter suspension).) Documentation provided by defendant also demonstrates the
17 College's willingness to coordinate academic accommodations based on disability if plaintiff
18 chose to re-enroll in the college following the one quarter suspension. (*Id.* at 38; Dkt. 59, ¶ 6.)

19 While plaintiff denies that she ever intimidated any student or person at the College, or
20 that she posed any danger to such individuals or the College as a whole, she does not refute the
21 basic facts that she was involved in an incident in which campus security was called, in which
22 she was observed to be in an emotionally escalated state, and that ultimately required the

01 assistance of the police department in order to effectuate her removal from campus. Nor does
02 she provide any evidence, let alone significant and probative evidence, to support her assertion
03 of discrimination. *See generally Intel Corp.*, 952 F.2d at 1558. Instead, plaintiff’s allegation
04 of a discriminatory animus is wholly conclusory and, therefore, insufficient to survive dismissal
05 of her ADA and RA claims on summary judgment.

06 2. Due Process and State Law Claims:

07 Plaintiff asserts, in her motion for summary judgment, that the College violated her
08 right to due process. (Dkt. 37 at 1.) She also alleges, in her complaint, violations of various
09 state laws and a breach of contract claim. However, none of these claims may proceed against
10 defendant.

11 Defendant argues that plaintiff’s claims should be dismissed because the State is not a
12 person for purposes of a claim under 42 U.S.C. § 1983. *Will v. Michigan Dep’t of State Police*,
13 491 U.S. 58, 71 (1989). The Court construes this argument as asserting defendant’s immunity
14 pursuant to the Eleventh Amendment. *See Doe v. Lawrence Livermore Nat’l Lab.*, 131 F.3d
15 836, 839 (9th Cir. 1997) (“Claims under § 1983 are limited by the scope of the Eleventh
16 Amendment.”; citing *Will*, 491 U.S. at 70, as holding “that ‘States or governmental entities that
17 are considered “arms of the State” for Eleventh Amendment purposes’ are not ‘persons’ under §
18 1983.”) *See also generally California Franchise Tax Bd. v. Jackson*, 184 F.3d 1046, 1048 (9th
19 Cir. 1999) (Eleventh Amendment immunity “can be raised by a party at any time during
20 judicial proceedings or by the court sua sponte.”) (cited cases omitted).

21 “The Eleventh Amendment prohibits federal courts from hearing suits brought against
22 an unconsenting state.” *Brooks v. Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053

01 (9th Cir. 1991) (cited sources omitted). This jurisdictional bar extends to state agencies and
02 departments, and applies whether legal or equitable relief is sought. *Id.* (citing *Pennhurst State*
03 *Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984)). *See also Cerrato v. San Francisco*
04 *Comty. Coll. Dist.*, 26 F.3d 968, 972 (9th Cir. 1994) (the Eleventh Amendment bars a federal
05 court from hearing claims against “dependent instrumentalities of the state.”) (citing *Pennhurst*
06 *State Sch. & Hosp.*, 465 U.S. 89).

07 The College is a community college district created by state statute. RCW 28B.50.040.
08 As a state college, the College is an arm of the state and entitled to Eleventh Amendment
09 immunity. *See Lawrence Livermore Nat’l Lab*, 131 F.3d at 839 (concluding University of
10 California is a “state agency” for purposes of sovereign immunity analysis); *Cerrato*, 26 F.3d at
11 972 (holding that community college districts are “dependent instrumentalities” of California);
12 *Goodisman v. Lytle*, 724 F.2d 818, 820 (9th Cir. 1984) (implying that the University of
13 Washington was immune as an “arm of the state”); and *Centralia College Educ. Assn. v. Bd. of*
14 *Trs. of Cmty. Coll. Dist. No. 12*, 82 Wn.2d 128, 130-35, 508 P.2d 1357 (1973) (holding that
15 Washington State community college districts are state agencies). *See also Green v. Shoreline*
16 *Comty. Coll.*, No. C06-465P, 2006 U.S. Dist. LEXIS 92490 at *37-38 (W.D. Wash. Dec. 21,
17 2006) (finding Shoreline Community College an arm of the state and entitled to Eleventh
18 Amendment immunity and dismissing breach of contract and constructive discharge claims);
19 *Arshad v. Columbia Basin Coll.*, No. CV-05-5019-LRS, 2006 U.S. Dist. LEXIS 33922 at *3-5
20 (E.D. Wash. May 25, 2006) (finding Columbia Basin College, a community college, immune

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01 under the Eleventh Amendment as a state agency from §§ 1981 and 1983 damage claims).³

02 The Eleventh Amendment, therefore, bars any due process claim brought here by
03 plaintiff. *See Will*, 491 U.S. at 66 and *Quern v. Jordan*, 440 U.S. 332, 339-45 (1979). It
04 likewise bars plaintiff's claims asserting violations of state law, *Pennhurst State Sch. & Hosp.*,
05 465 U.S. at 124-25; *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973-74 (9th Cir. 2004),
06 including those sounding in contract, *see, e.g., Lawrence Livermore Nat'l Lab*, 131 F.3d at 839
07 (finding breach of contract claim would be barred by sovereign immunity); *Green*, 2006 U.S.
08 Dist. LEXIS 924490 at *38. *But see Phiffer v. Columbia River Corr. Inst.*, 384 F.3d 791,
09 792-93 (9th Cir. 2004) (State not entitled to Eleventh Amendment immunity under either Title
10 II of the ADA or the RA). Accordingly, defendant is entitled to dismissal of those claims.⁴

11 3. Retaliation:

12 Plaintiff also alleges retaliation against her in violation of regulations governing Federal
13 Sector Equal Employment Opportunity, 29 C.F.R. Part 1614, and the Federal Privacy Act, 5
14 U.S.C. § 552a. (Dkt. 5 at 4.) It is not clear whether plaintiff intended these claims to lie
15 against defendant. *See supra* n. 1. However, even assuming this intention, these claims fail at

16 3 The Ninth Circuit applies a five-factor test to the determination of whether a governmental agency is
17 properly considered an arm of the state. *See Mitchell*, 861 F.2d at 201 (the factors include "whether a
18 money judgment would be satisfied out of state funds, whether the entity performs central governmental
19 functions, whether the entity may sue or be sued, whether the entity has the power to take property in its
20 own name or only the name of the state, and the corporate status of the entity.") *See also Holz v. Nenana City Pub. Sch. Dist.*, 347 F.3d 1176, 1182 (9th Cir. 2003) (noting that the first factor, whether a money judgment would be satisfied out of state funds, is the most important of the five factors). Given the above-described case law, the Court finds the applicability of Eleventh Amendment immunity clear in this case.

21 4 Defendant raises other arguments in relation to these claims, including plaintiff's failure to complete
22 the appeals process and the fact that various state statutes identified by plaintiff are either inapplicable
given the facts of this case or do not actually exist. However, because the Court finds the applicability of Eleventh Amendment immunity, it does not address the merits, or lack thereof, of these claims.

01 a fundamental level.

02 29 C.F.R. Part 1614 contains regulations governing employment discrimination claims
03 in the federal sector. Given that plaintiff was not an employee of the College and that the
04 College is not a federal entity, these regulations are clearly inapplicable in this case. *See* 29
05 C.F.R. § 1614.101. Likewise, “[t]he Federal Privacy Act does not apply to state agencies.”
06 *United States v. Streich*, 560 F.3d 926, 935 (9th Cir. 2009) (citing 5 U.S.C. § 552a(a)(1)), *cert.*
07 *denied* 130 S.Ct. 320. Moreover, that statute does not relate to discrimination or retaliation; it
08 relates to a federal agency’s disclosure of information to the public. *Id.* at 1372-73.
09 Accordingly, defendant is also entitled to dismissal of these claims on summary judgment.

10 B. Other Pending Motions

11 As indicated above, defendant also filed a motion for Rule 11 sanctions and a motion for
12 continuance of the pretrial deadlines in this case. The motion for a continuance of the pretrial
13 deadlines (Dkt. 75) is moot given the conclusion that defendant is entitled to summary
14 judgment dismissing all of plaintiff’s claims. The Court further, for the reasons described
15 below, finds no basis for Rule 11 sanctions.

16 Defendant seeks Rule 11 sanctions in relation to a motion for default judgment filed by
17 plaintiff in March 2010. Plaintiff sought default judgment based on her perception that
18 defendant had not timely submitted an answer to her complaint. (*See* Dkt. 19.) She
19 requested a judgment in the amount of \$3,638,764.00. (*Id.*)

20 By Order dated April 14, 2010, the Court directed defendant to respond to plaintiff’s
21 motion for default judgment on or before May 3, 2010. (Dkt. 35.) Shortly thereafter, on April
22 20, 2010, plaintiff withdrew her motion, stating: “State of Washington chose to appear for the

01 defendant when they did not have to, so a motion for default would be [frivolous]⁵ to be
02 consider[ed] by this court, so I wish to strike it.” (Dkt. 36.)

03 In arguing for sanctions, defendant points to plaintiff’s failure to properly effectuate
04 service in this matter and notes that it advised plaintiff as to the method of proper service prior
05 to the filing of her motion for default. Defendant also avers that plaintiff filed her motion on
06 March 8, 2010, despite the fact that defendant had already filed its notice of appearance on
07 March 5, 2010 (Dkt. 18). Defendant asserts that it began working on a response to plaintiff’s
08 motion for default well in advance of May 3, 2010 given the large penalty sought by plaintiff
09 and the fact that the motion itself was quite unclear. It contends that sanctions are warranted
10 given plaintiff’s admission that the motion was frivolous, and given that it spent a considerable
11 amount of time and state resources in responding to this frivolous motion.

12 Defendant notes that Rule 11 may be applied to both represented and *pro se* litigants,
13 *see, e.g., Maduakolam v. Columbia University*, 866 F.2d 53, 56 (2d Cir. 1989), and asserts that
14 the violation was not expunged by the withdrawal of the motion, *see Cooter & Gell v. Hartmarx*
15 *Corp.*, 496 U.S. 384, 395 (1990) (holding that a court has the authority to impose Rule 11
16 sanctions “regardless of the [voluntary] dismissal of the underlying action.”) It seeks
17 reimbursement for four hours of work at a rate of \$175.00 per hour.

18 The Court may impose Rule 11 sanctions if, *inter alia*, a paper filed with the Court is
19 frivolous. Fed. R. Civ. P. 11(b)(2), (c); *G.C. and K.B. Investments, Inc. v. Wilson*, 326 F.3d
20 1096, 1109 (9th Cir. 2003). A frivolous filing is one that is “both baseless and made without a
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22 ⁵ As stated by defendant, it is apparent that plaintiff intended to use the term “frivolous” in stating that her motion was “frizzless” (Dkt. 36).

01 reasonable and competent inquiry.” *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358,
02 1362 (9th Cir. 1991). The Court applies an objective standard in assessing allegedly frivolous
03 filings. *G.C. and K.B. Investments, Inc.*, 326 F.3d at 1109 (citing *Townsend*, 929 F.2d at
04 1362). “[T]he subjective intent of the . . . movant to file a meritorious document is of no
05 moment. The standard is reasonableness.” *Id.* (quoting *Zaldivar v. City of Los Angeles*, 780
06 F.2d 823, 830 (9th Cir. 1986)). Also, “[a]lthough Rule 11 applies to *pro se* plaintiffs, the court
07 must take into account a plaintiff’s *pro se* status when it determines whether the filing was
08 reasonable.” *Warren v. Guelker*, 29 F.3d 1386, 1390 (9th Cir. 1994) (also noting that a
09 plaintiff proceeding IFP “is not protected from the taxation of costs to which a prevailing
10 defendant is entitled.”) *See also Maduakolam* 866 F.2d at 56 (“While it is true that Rule 11
11 applies both to represented and *pro se* litigants, the court may consider the special
12 circumstances of litigants who are untutored in the law.”) (citing advisory committee’s notes to
13 Rule 11).

14 As previously found by the Court, plaintiff did not properly serve defendant in this
15 matter. (Dkt. 64.)⁶ Defendant correctly notes that it advised plaintiff as to proper service
16 prior to the filing of the motion for default judgment. (*See id.* at 3.) This fact supports the
17 contention that plaintiff filed the motion for default without making a reasonable inquiry.
18 However, other facts argue against the imposition of sanctions.

19 Contrary to defendant’s contention, both plaintiff’s motion for default and defendant’s
20 notice of appearance were docketed in this matter on March 5, 2010. (Dkts. 18-19.) Upon

21 _____
22 ⁶ The Court issued an order directing service by a United States Marshall, but later struck the order after
defendant indicated its willingness to proceed as though service of process had occurred. (Dkts. 67, 70
& 72.)

01 realizing that defendant had filed a notice of appearance, plaintiff – proceeding *pro se*, IFP, and
02 with asserted serious mental impairments – promptly withdrew her motion. (Dkt. 36.) She
03 withdrew the motion despite the fact that, months later, she continued to misunderstand the
04 rules of service and believed that defendant had been properly served. (See Dkt. 64 at 5; Dkt.
05 65.) Taking all of these factors into consideration, the Court does not find an award of
06 sanctions under Rule 11 appropriate in this case.

07 CONCLUSION

08 For the reasons described above, plaintiff’s motion for summary judgment (Dkt. 37) is
09 DENIED, defendant’s motion for summary judgment (Dkt 56) is GRANTED, and this matter is
10 DISMISSED with prejudice. Defendant’s motion for continuance of pretrial deadlines (Dkt.
11 75) is STRICKEN as moot and defendant’s motion for Rule 11 sanctions (Dkt. 38) is DENIED.
12 The Clerk is directed to send a copy of this Order to the parties.

13 DATED this 7th day of October, 2010.

14 

15 Mary Alice Theiler
16 United States Magistrate Judge