

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

BRYAN HARRIS,

Plaintiff,

v.

SOUTHERN ILLINOIS UNIVERSITY
EDWARDSVILLE

Defendant.

Case No. 2019 L 000811

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS
PLAINTIFF'S COMPLAINT FOR A CIVIL CASE**

Defendant Board of Trustees of Southern Illinois University, governing Southern Illinois University Edwardsville¹ ("University"), by and through its attorney of record, and in support of its Motion to Dismiss Plaintiff's Complaint for a Civil Case states as follows:

INTRODUCTION

On June 13, 2019, Plaintiff filed his Complaint against the Defendant, and such complaint was served on June 24, 2019. Plaintiff alleges that the University violated the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; 34 CFR Part 99 (hereinafter "FERPA"), by allegedly releasing his private information from within two University departments, "to students who carelessly circulated that information to other students, faculty, and neighboring communities."

The United States Supreme Court has ruled that FERPA does not provide for a personal or private right of action. *See, Gonzaga University v. Doe*, 536 U.S. 273 (S.Ct. 2002). Therefore, Plaintiff has no right to pursue a personal or private right of action under FERPA against the

¹ Plaintiff lists "Southern Illinois University Edwardsville" as the Defendant in this case, however the correct legal name is "Board of Trustees of Southern Illinois University."

University, and thus Plaintiff's Complaint fails to state a claim for which relief can be granted, and therefore must be dismissed.

LEGAL STANDARD

Section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619) allows for the involuntary dismissal of an action when the court does not have jurisdiction over the subject matter of the action. 735 ILCS 5/2-619(a)(1) (2012). This provision "affords a defendant an expeditious means to obtain a summary disposition of an action based upon an affirmative bar to the plaintiff's right to recovery." *Mayfield v. ACME Barrel Co.*, 258 Ill. App. 3d 32, 34 (1st Dist 1994).

Sovereign or governmental immunity is a defense that may be raised under Section 2-619. *Williams v. Board of Educ.*, 222 Ill. App. 3d 559, 562 (1st Dist 1991). In all cases, a Section 2-619 motion to dismiss should be granted where there are no material facts in dispute and the defendant is entitled to be dismissed as a matter of law. *Mayfield*, 258 Ill. App. 3d at 34.

ARGUMENT

A. This Action Must Be Dismissed, as FERPA Does Not Provide a Private Right of Action

FERPA protects the privacy of student education records by requiring recipients of Federal education funding to obtain the consent of a parent or the student – if the student is over eighteen – before any records can be released. *See* 20 U.S.C. § 1232g(b); *cited by Christy D. Brown v. William Rainey Harper College*, 2017 WL 3278822 (ND IL 2017) at *4. FERPA is enforced by the U.S. Department of Education, which has the power to strip an offending program of Federal funds. *See* 20 U.S.C. § 1231b-2(d); *cited by Christy D. Brown v. William Rainey Harper College*, 2017 WL 3278822 (ND IL 2017) at *4.

As stated above, and in Defendant's Motion to Dismiss Plaintiff's Complaint for a Civil Case, the United States Supreme Court has ruled that FERPA does not provide for a personal or private right of action. *See, Gonzaga University v. Doe*, 536 U.S. 273 (S.Ct. 2002). FERPA directs the U.S. Secretary of Education to enforce its nondisclosure provisions, and other spending conditions (§1232g(f)), by establishing an office and review board to investigate, process, review, and adjudicate FERPA violations (§1232g(g)), and to terminate funds only upon determining that a recipient school is failing to comply substantially with any FERPA requirement and that such compliance cannot be secured voluntarily, (§§ 1234c(a), 1232g(f)). *Id.*

Federal Courts in Illinois have followed the Supreme Court's precedent, and have also held that individual plaintiffs cannot maintain a private right of action for violation of FERPA, granting motions to dismiss such claims. *See Joseph Slovynec v. DePaul University*, 222 F.Supp.2d 1058 (ND IL 2002); *Barbara A. Robbins v. DePaul University*, 2014 WL 7403381 (ND IL 2014); and *Christy D. Brown v. William Rainey Harper College*, 2017 WL 3278822 (ND IL 2017). Therefore, Plaintiff has no right to pursue a personal or private right of action against the University pursuant to FERPA, and thus this case must be dismissed.

B. This Action Must Also Be Dismissed for Lack of Subject Matter Jurisdiction

Article XIII, Section 4, of the Illinois Constitution abolished sovereign immunity except as specifically enacted by the General Assembly. Ill. Const. 1970, art. XIII, § 4. The legislature has reestablished sovereign immunity generally mandating that the State or its subdivisions cannot be sued in any Illinois Court without consent. Specifically, the State Lawsuit Immunity Act provides as follows:

Sec. 1. Except as provided in the Illinois Public Labor Relations Act, the Court of Claims Act, the State Officials and Employees Ethics Act, Section 1.5 of this Act [excepting certain acts of state employees], and, except as provided in and to the extent provided in the Clean Coal FutureGen for

Illinois Act, the State of Illinois shall not be made a defendant or party in any court.

745 ILCS 5/1 (2012).

Among the list of exceptions to sovereign immunity in the State Lawsuit Immunity Act, the only applicable exception in this case is the limited exception provided by the Court of Claims Act. By the language of the Court of Claims Act, 705 ILCS 505/1, *et seq.*, the Illinois Court of Claims has *exclusive jurisdiction* to hear and determine all claims against the State sounding in contract and in tort. 705 ILCS 505/8(b) & (d) (2012). In other words, the State of Illinois has waived its sovereign immunity for contract and tort claims against it, but only to the extent those claims are brought in the Court of Claims. When such a claim is brought against the State of Illinois in a Circuit Court, the Court must dismiss the case for lack of subject matter jurisdiction. *See Association of Mid-Continent Universities v. Bd. of Trustees of Northeastern Ill. Univ.*, 308 Ill. App. 3d 950 (2d Dist. 1999).

In particular, it has long been clear that state universities, including Southern Illinois University, are “arms of the state” for purposes of sovereign immunity, and thereby subject to suit in contract or tort only in the Court of Claims. *See Ellis v. Board of Governors of the State Colleges and Universities*, 102 Ill. 2d 387 (Ill. 1984); *Assoc. of Mid-Continent Universities v. Bd. of Trustees of Northeastern Illinois University*, 308 Ill. App. 3d 950; *Hoffman v. Yack*, 57 Ill. App. 3d 744 (5th Dist. 1978) (Where complaint formally denominated the Board of Trustees of Southern Illinois University as the party against whom money damages were sought, the circuit court had no jurisdiction to hear or determine the cause).

While, as discussed above, FERPA does not provide a private right of action for alleged violations, and thus this case must be dismissed with prejudice on that basis alone; to the extent that the Court otherwise interprets Plaintiff’s allegations as tort claims, such claims must be

dismissed pursuant to 735 ILCS 5/2-619(a)(1) for lack of subject matter jurisdiction as the Illinois Court of Claims has exclusive jurisdiction over claims sounding in tort against the State.

CONCLUSION

For the reasons set forth herein, and in Defendant's Motion to Dismiss Plaintiff's Complaint for a Civil Case, the instant action must be dismissed, on the bases of a lack of subject matter jurisdiction, and that there is no personal or private right of action for the alleged statutory violation. Pursuant to 705 ILCS 505/8, exclusive jurisdiction of the alleged claims lies, if anywhere, with the Illinois Court of Claims. Therefore, Defendant Board of Trustees of Southern Illinois University respectfully requests that this Court dismiss Plaintiff's Complaint for a Civil Case in its entirety, with prejudice, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

BOARD OF TRUSTEES OF
SOUTHERN ILLINOIS UNIVERSITY

By: 

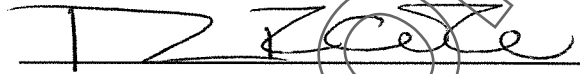
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed via First Class U.S. Mail, postage pre-paid, on the 24th day of July, 2019 to the following:

Mr. Bryan Harris
2932 Trendley Ave.
East St. Louis, IL 62207

A handwritten signature in black ink, appearing to read "D. Z. Zee", is written over a horizontal line.

NOT AN OFFICIAL

COPY