

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MOSES T. BILITY, PhD,)	Case No. 2:23-cv-00770-MJH
)	
Plaintiff,)	
)	
v.)	
)	
UNIVERSITY OF PITTSBURGH, DEAN)	
DONALD BURKE, and DEAN MAUREEN)	
LICHTVELD,)	
)	
Defendants.)	

MOTION TO DISMISS AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants move the Court to dismiss the Amended Complaint for failure to state a claim. As detailed in the accompanying Brief in Support, Plaintiff has failed to state a claim against any of the Defendants for the following reasons:

- Count I against the University (hostile work environment under Title VII) fails because the Amended Complaint alleges neither intentional discrimination nor pervasive or severe discrimination.
- Count II against the University (retaliation under Title VII) fails because the Amended Complaint does not allege an adverse employment action causally connected to protected activity.
- Count III against Defendant Donald Burke (Section 1983 violation of the Equal Protection Clause) fails because the Amended Complaint does not allege an adverse employment action or intentional discrimination by Dr. Burke or that Dr. Burke was acting under the color of state law with respect to the alleged plagiarism, and some of Dr. Burke's alleged actions are time-barred.
- Count III against Defendant Maureen Lichtveld (Section 1983 violation of the Equal Protection Clause) fails because the Amended Complaint does not allege an adverse employment action or intentional discrimination by Dr. Lichtveld.
- Count IV against Defendant Burke (Section 1981 through Section 1983 Equal Protection Clause violation) fails because the Amended Complaint does not allege an adverse employment action or intentional discrimination by Dr.

Burke, or that race discrimination was the but-for cause of any lost enumerated right under Section 1981.

- Count IV against Defendant Lichtveld (Section 1981 through Section 1983 Equal Protection Clause violation) fails because the Amended Complaint does not allege an adverse employment action or intentional discrimination by Dr. Lichtveld, or that race discrimination was the but-for cause of any lost enumerated right under Section 1981.
- Count IV against the University (Section 1981 through Section 1983 Equal Protection Clause violation) fails because the Amended Complaint does not allege intentional discrimination or an adverse employment action by the University.

Dated: August 9, 2023

Respectfully submitted,

/s/ Jeremy D. Engle

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CERTIFICATE OF CONFERRAL

Pursuant to Section 1(g) of this Court's Standing Order and Procedures on Civil Motion Practice requiring the parties to confer regarding Rule 12(b)(6) motions to dismiss, Defendants certify that the parties met and conferred by telephone on July 31, 2023 concerning the basis for dismissal set forth in the foregoing Motion to Dismiss. Plaintiff's counsel stated that Plaintiff does not agree with Defendants' bases for seeking dismissal of the Amended Complaint and did not intend to amend prior to Defendants filing their motion. Defendants' counsel subsequently confirmed this information in an email to Plaintiff's counsel, who responded that he believed Defendants' bases for dismissal were "wholly frivolous." The parties previously met and conferred with respect to the original Complaint, and Plaintiff subsequently amended.

Dated: August 9, 2023

/s/ Jeremy D. Engle
Jeremy D. Engle

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2023, a true and correct copy of the foregoing was electronically filed and served via operation of the Court's CM/ECF system, which will automatically send e-mail notification of such filing to the attorneys of record entitled to notice who are registered users of ECF.

/s/ Jeremy D. Engle

Jeremy D. Engle