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Tuesday, 20 October, 2015 02:27:25 PM
Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

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| Amarah Coleman, Alexis Smith, Taylor Tuck, Nia Oden, Sarah Livingston, Taylor Gleason, and Jacqui Grant,<br><br>Plaintiffs,<br><br>v.<br><br>The Board of Trustees of the University of Illinois Urbana-Champaign, a Body Politic and Corporate, Mike Thomas, Matt Bollant, and Mike Divilbiss,<br><br>Defendants. | ) | Case No. 15-cv-02146<br><br>Hon. Colin Stirling Bruce<br><br>Magistrate Judge Eric I. Long |

**DEFENDANTS' MOTION TO DISMISS**

Defendants The Board of Trustees of the University of Illinois, Mike Thomas, and Matt Bollant, through their undersigned attorneys, hereby respectfully submit Defendants' Motion to Dismiss Plaintiffs' Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), and in support thereof state as follows:

1. Plaintiffs have brought claims against the Defendants under: 42 U.S.C. §§ 1981 ("Section 1981") and 1983 ("Section 1983"); Title VI of the Civil Rights Act of 1964 ("Title VI"); and the Illinois Civil Rights Act, 740 ILCS 23/5.
2. Plaintiffs' Section 1981 claim must be dismissed because Section 1981 does not provide a private right of action against state actors.
3. Plaintiffs' Section 1981 and Section 1983 claims must also be dismissed because they are barred by the Eleventh Amendment to the U.S. Constitution, which gives state

entities sovereign immunity, and further because Plaintiffs fail to state a claim upon which relief can be granted.

4. Plaintiffs' Title VI claim must be dismissed because Title VI does not permit claims to be brought against individual defendants and because Plaintiffs have failed to state a claim against the Defendant Board of Trustees upon which relief can be granted.
5. Plaintiffs' claim under the Illinois Civil Rights Act must be dismissed because the statute does not provide for claims against individual defendants. The Court should also dismiss this state law claim as duplicative of Plaintiffs' Title VI claim, and because it lacks supplemental jurisdiction under 28 U.S.C. § 1367.

Defendants The Board of Trustees of the University of Illinois, Mike Thomas, and Matt Bollant have contemporaneously filed a Memorandum of Law in Support of this Motion to Dismiss, which is incorporated herein by reference.

WHEREFORE, Defendants The Board of Trustees of the University of Illinois, Mike Thomas, and Matt Bollant respectfully request this Court dismiss Plaintiffs' Complaint in its entirety and with prejudice, together with such other relief as this Court deems equitable and just.

Dated: October 20, 2015

Respectfully submitted,

KAYE SCHOLER LLP

By: /s/ Z. Scott

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**CERTIFICATE OF SERVICE**

On October 20, 2015, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Central District of Illinois, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

By: /s/ Emily Newhouse Dillingham

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

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| Amarah Coleman, Alexis Smith, Taylor Tuck, Nia Oden, Sarah Livingston, Taylor Gleason, and Jacqui Grant,<br><br>Plaintiffs,<br><br>v.<br><br>The Board of Trustees of the University of Illinois Urbana-Champaign, a Body Politic and Corporate, Mike Thomas, Matt Bollant, and Mike Divilbiss,<br><br>Defendants. | Case No. 15-cv-02146<br><br>Hon. Colin Stirling Bruce<br><br>Magistrate Judge Eric I. Long |

**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

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IN THE UNITED STATES DISTRICT COURT
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**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

Seven former members of the University of Illinois Women's Basketball Program have brought suit against Defendants the Board of Trustees of the University of Illinois,[1] Athletic Director Mike Thomas, Head Coach Matt Bollant, and former Assistant Head Coach Mike Divilbiss.[2] Plaintiffs allege, under various statutes and theories, that they experienced race discrimination during the time of their membership on the basketball team. Defendants move this Court under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) for dismissal of all four claims brought against them because of numerous and pervasive flaws in the Complaint.

Specifically, Plaintiffs' claims under 42 U.S.C. §§ 1981 and 1983 must be dismissed because the well-recognized principle of sovereign immunity set forth in the Eleventh

[1] In the caption of their Complaint, Plaintiffs refer to the Board of Trustees of the University of Illinois (the "University") as the "Board of Trustees of the University of Illinois Urbana-Champaign." The official name of the institution, however, does not reference the Urbana-Champaign campus.

[2] Defendant Mike Divilbiss is represented by separate counsel. As noted in his motion to dismiss, Defendant Divilbiss adopts and incorporates by reference the arguments made on his behalf in this memorandum.

Amendment to the U.S. Constitution shields Defendants from liability. In addition, it is well-settled that neither Title VI nor Plaintiffs' state law claims permit individual liability. Finally, and most critically, Plaintiffs have failed to plead any facts that plausibly establish race discrimination within the Women's Basketball Program—a threshold requirement under the law to sustain any of the claims alleged.

For these reasons, and as set forth more fully below, Defendants respectfully request that this Court enter an order dismissing Plaintiffs' Complaint in its entirety and with prejudice, and ordering any other relief the Court deems appropriate.

## FACTUAL BACKGROUND

### I. The Parties

The Plaintiffs in this matter are seven former members of the University of Illinois's Women's Basketball Program. None of these Plaintiffs is currently enrolled at the University of Illinois, and none is a current member of the Women's Basketball Program. Of these seven women, three—Nia Oden, Taylor Tuck, and Alexis Smith (collectively, "the Graduates")—spent four years at the University as members of the Women's Basketball team on full athletic scholarships. Cmplt. at ¶¶ 5-7; *see also* Exs. 1-3,[3] Scholarship Disbursement Details for Oden, Tuck, and Smith, respectively.[4] They were recruited by former Head Coach Jolette Law and began playing on the Women's Basketball team in the 2011-2012 season. Cmplt. at ¶ 16. All three student-athletes graduated in the spring of 2015, at the end of the terms of their athletic

[3] Student ID numbers and home addresses have been redacted from all exhibits.

[4] Though courts deciding motions to dismiss are typically limited to the allegations in the pleadings, "it is well-settled that they 'may consider documents attached to or referenced in the [Complaint] if they are central to the claim[s].'" *Harden v. Board of Trustees Eastern Illinois University*, 12-cv-2199, 2013 WL 6248500, at *4 (C.D. Ill. Dec. 2, 2013), quoting *Citadel Grp. Ltd. v. Wash. Reg'l Med. Ctr.*, 692 F.3d 580, 591 (7th Cir. 2012). The disbursement detail attached to this motion is explicitly referenced in the Complaint at ¶ 18 and is critical to Plaintiffs' claims under 42 U.S.C. § 1981(a). It therefore may be considered by this Court in deciding this Motion.

scholarship agreements. *Id.*; *see also* Exs. 4-6, Scholarship Agreements for Oden, Tuck, and Smith, respectively, and Exs. 7-9, Proof of Graduation and Degree Awarded for each of the Graduates.[5]

Two of the Plaintiffs, Taylor Gleason and Jacqui Grant, are Caucasian. Cmplt. at ¶¶ 20(e), 24(a)-(b). Gleason and Grant were recruited by Defendant Matt Bollant for the 2013-2014 season. Both Gleason and Grant were members of the Women's Basketball team for two seasons and received full athletic scholarships during that time.[6] Cmplt. at ¶¶ 9-10.

The remaining Plaintiffs, Sarah Livingston and Amarah Coleman, each played on the Women's Basketball team for one year.[7] Livingston was recruited by Coach Bollant for the 2013-2014 season along with teammates Gleason and Grant. She was a member of the team for the 2013-14 academic year and received a full athletic scholarship during her year at the University. Cmplt. at ¶ 8. Coleman was recruited by Coach Bollant for the 2014-2015 academic year and received a full athletic scholarship during that time as well. Cmplt. at ¶ 4.

The Defendant group includes the Board of Trustees of the University of Illinois ("the University"), referenced in the Complaint as a "body politic land grant institution incorporated under the Laws of the State of Illinois, 110 ILCS 305/1, providing, operating, maintaining and

[5] The scholarship agreements attached to this motion are referenced in the Complaint and are critical to Plaintiffs' claims under 42 U.S.C. § 1981(a). *See, e.g.*, Cmplt. at ¶¶ 18, 41. That a number of Plaintiffs graduated is explicit in ¶ 1 of the Complaint and implied in ¶¶ 5-7.

[6] While not relevant to a motion to dismiss, Defendants note that both Gleason and Grant transferred with much fanfare to basketball programs at other academic institutions. *See* http://www.goldengrizzlies.com/sports/w-baskbl/spec-rel/041715aab.html (last accessed Sept. 30, 2015); http://www.depaulbluedemons.com/sports/w-baskbl/spec-rel/041515aaa.html (last accessed Sept. 30, 2015).

[7] While not relevant to a motion to dismiss, Defendants note that both Livingston and Coleman transferred after their freshman year to comparable academic institutions. Livingston now attends the University of Southern California, where she is a standout member of the Women's Volleyball team. *See* http://www.usctrojans.com/sports/w-volley/spec-rel/051215aaa.html (last accessed Sept. 30, 2015). Coleman now attends DePaul University, where she, along with Grant, is a member of the Women's Basketball team, which had a 27-8 record in the 2014-15 season. *See* http://www.depaulbluedemons.com/sports/w-baskbl/sched/depa-w-baskbl-sched.html (last accessed Sept. 30, 2015).

controlling facilities and instructors of higher education at the Urbana-Champaign campus. . . ." Cmplt. at ¶ 11. "At all times relevant hereto, the Defendant University has received and continues to receive federal assistance as described and defined by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d." *Id.*

In addition, as alleged, Defendants Mike Thomas and Matt Bollant are University employees. Thomas ("AD Thomas") is the University Athletic Director, and Bollant ("Coach Bollant") is the Head Coach of the Women's Basketball team. For the period relevant to this suit, Defendant Mike Divilbiss ("Coach Divilbiss," and collectively with Coach Bollant, the "Defendant Coaches") was employed by the University as the Assistant Head Coach of the Woman's Basketball team. Coach Divilbiss resigned following the 2014-2015 season and is no longer a University employee. The Defendant Coaches and Defendant Thomas have been named in their individual, rather than official, capacities. Cmplt. at ¶12-14.

## II. The Allegations

Plaintiffs' factual allegations, set forth primarily in ¶¶ 19-32 of the Complaint, fall into six categories: (1) from 2013-2015, the Defendant Coaches[8] allegedly favored some Caucasian players over African-American players;[9] (2) from 2013-2015, the Defendant Coaches allegedly used implicitly discriminatory language;[10] (3) from 2013-2015, the Defendant Coaches allegedly

[8] The Women's Basketball Program coaching staff includes two additional coaches, LaKale Malone and Tianna Kirkland, both of whom are African-American women. Malone was promoted to Associate Head Coach after Divilbiss's resignation.

[9] *See* Cmplt. at ¶ 20(d) (appointing a Caucasian player captain without a team vote); ¶ 20(k) (disciplining African-American players and the Caucasian plaintiffs who associated with them more harshly than the remaining Caucasian players); ¶ 20(l) (recruiting several Caucasian players, thereby changing the racial composition of the team); ¶ 21(encouraging Caucasian players and coaching them for improvement, while insulting African-American players).

[10] *See* Cmplt. at ¶ 20(a)-(b) (calling the graduates (but not the other African-American plaintiffs) "crabs" and "toxic"); ¶ 20(c), (e) (referring to practices attended primarily by African-American players as "the dog pound" and labeling Caucasian players in these practices as "mascots"); ¶ 20(g)-(h) (implying that all African-American players think differently than Caucasian players and/or have less discipline and intelligence); ¶ 20(i) (referring to primarily

had policies that occasionally but not always separated Caucasian players from African-American players;[11] (4) from 2013-2015, the Caucasian Plaintiffs were discriminated against for supporting and associating with the African-American Plaintiffs; (5) Coach Bollant and Defendant Thomas acted with deliberate indifference to these facts;[12] and (6) some Plaintiffs surrendered their scholarships as a result of the allegedly hostile environment.[13]

Notably, Plaintiffs do not allege that their scholarship disbursements were withheld, that they were dismissed from the Women's Basketball Program, prevented from playing in games, refused access to athletic facilities, excluded from team meetings, prohibited from enrolling in or attending classes, or prevented in any way from obtaining a college education on account of their race. No Plaintiff seeks reinstatement to the Women's Basketball Program (the "Program") as part of the relief sought in the Complaint. They do not allege that they were prevented from raising concerns about the Program or that concerns they raised were ignored or unreasonably addressed by University officials.[14]

## STANDARD OF REVIEW

Each of Plaintiffs' claims must be dismissed, based on prevailing law, for three reasons: because this Court lacks jurisdiction; because the claims asserted are prohibited as a matter of law; or because Plaintiffs' allegations are insufficient to sustain them.

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African-American opposing teams as "undisciplined and unintelligent" and referring to primarily Caucasian opposing teams as "disciplined and intelligent"); ¶ 20(j) (referring to a style of play as "west-side ghetto").

[11] *See* Cmplt. at ¶ 20(a)-(c), (e) (holding practices attended primarily by African-American players, as well as at least one of the Caucasian plaintiffs); ¶ 20(f) (prohibiting Caucasian players from rooming with African-American players during team travel).

[12] *See* Cmplt. at ¶ 26.

[13] *See* Cmplt. at ¶¶ 22-24, 27-31.

[14] Indeed, at the time Plaintiffs brought this suit, the University was engaged in a thorough investigation of Plaintiffs' claims. A 226-page report of that investigation, which was conducted by outside counsel, was published on the University's website, and can be accessed at http://illinois.edu/resources/wbbreview_7-31-2015_public_web.pdf.

A motion to dismiss for failure to state a claim serves to test the sufficiency of the complaint. *See Clarke v. Arena Food Servs., Inc.*, No. 12-cv-2312, 2014 WL 2609772, at *2 (C.D. Ill. June 10, 2014), citing *AnchorBank, FSB v. Hofer*, 649 F.3d 610, 614 (7th Cir. 2011). To survive a motion to dismiss, the complaint must contain sufficient factual allegations to "state a claim to relief that is plausible on its face." *Id.*, quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted). To meet this standard, the allegations in the complaint must be sufficiently detailed to "plausibly suggest that the plaintiff has a right to relief." *E.E.O.C. v. Concentra Health Servs., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007).

In considering a motion to dismiss for failure to state a claim, courts are limited to the allegations in the pleadings, though it is well-settled that they may consider documents attached to or referenced in the pleading if they are central to a claim. *See Harden v. Board of Trustees E. Ill. Univ.*, 12-cv-2199, 2013 WL 6248500, at *4 (C.D. Ill. Dec. 2, 2013), quoting *Citadel Grp. Ltd. v. Wash. Reg'l Med. Ctr.*, 692 F.3d 580, 591 (7th Cir. 2012). A court need not accept as true mere legal conclusions, unsupported by factual allegations, or "[t]hreadbare recitals of the elements of a cause of action." *Iqbal*, 556 U.S. at 678. In other words, while Fed. R. Civ. P. 8(a)(2) does not require detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *White v. Anglin*, No. 13-CV-2038, 2014 WL 236878, at *2 (C.D. Ill. Jan. 22, 2014), citing *Iqbal*, 556 U.S. at 678. Where the facts as pled do not permit the court to infer that the defendant is liable for the misconduct alleged, a motion to dismiss must be granted. *Id.*

## ARGUMENT

### 1. Plaintiffs' Claims Under 42 U.S.C. §§ 1981 and 1983 (Counts II and III) Must Be Dismissed On Procedural Grounds.

Plaintiffs Coleman, Smith, Livingston, Gleason, and Grant have brought a claim against the University and the individual Defendants under 42 U.S.C. § 1981 ("Section 1981"), alleging they were "denied and/or deprived of [their] existing and/or expected benefit of the athletic scholarship contractual agreement." Cmplt. at ¶ 42.[15] Section 1981 addresses race discrimination in contractual relationships and provides that "[a]ll persons within the jurisdiction of the United States shall have the same right…to make and enforce contracts…as is enjoyed by white citizens," which includes "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(a)-(b).

All Plaintiffs have also brought a separate claim against the individual Defendants (but not the University) under 42 U.S.C. § 1983 ("Section 1983"), alleging that their "rights, privileges and freedoms of the Fourteenth Amendment . . . including specifically the right to Equal Protection of the Laws" were violated. Cmplt. at ¶¶ 44-46.

Although Plaintiffs technically bring these claims against the individual Defendants in their individual capacities, rather than as state actors (Cmplt. at ¶¶ 12-14), Count II of the Complaint effectively brings these claims against the individual Defendants in their official capacities, specifically stating that the individual Defendants were "acting under color of law and within the scope of their employment with the Defendant University" in allegedly depriving the Plaintiffs of the benefits of their athletic scholarship contractual agreements. Cmplt. at ¶ 42.

[15] Plaintiffs Tuck and Oden are not named in Count II of the Complaint and do not seek relief under 42 U.S.C. § 1981, presumably because they have graduated and no longer have standing to pursue a claim based on the terms of their athletic scholarship agreements. As discussed below, for the same reason, Plaintiff Smith's Section 1981 claim is moot and must be dismissed with prejudice.

As a preliminary matter, this Court must dismiss with prejudice both the Section 1981 and Section 1983 claims on procedural grounds. First, under controlling law in the Seventh Circuit, Plaintiffs cannot assert Section 1981 claims against state actors acting in their official capacities, which is what Plaintiffs have alleged regarding the individual Defendants. Further, both the Section 1981 and Section 1983 claims are barred on the basis of Eleventh Amendment sovereign immunity. It is well-settled that the University, as a state agency, and the individual Defendants, as agents of the state, are shielded from liability under Sections 1981 and 1983 by the Eleventh Amendment.

Should this Court determine that Plaintiffs' claims are brought against the individual Defendants in their individual capacities, the Court must still dismiss the claims in their entirety, and with prejudice, due to the Eleventh Amendment's sovereign immunity bar. Finally, should the Court determine that the claims brought against the individual Defendants are not barred by sovereign immunity, they must nevertheless be dismissed for Plaintiffs' failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

A. Plaintiffs' Section 1981 Claim Against the University Is Barred as a Matter of Law Under Both Seventh Circuit Precedent and the Doctrine of Sovereign Immunity.

Count II alleges that all Plaintiffs have violated Section 1981. Under Seventh Circuit case law binding on this Court, a Section 1981 claim against a state actor cannot stand. Indeed, the sole and exclusive remedy in this regard is a claim brought under Section 1983. As a consequence, Plaintiffs' Section 1981 claim must be dismissed pursuant to Fed. R. 12(b)(6). Moreover, Plaintiffs' Section 1981 claim is barred under the Eleventh Amendment to the U.S. Constitution pursuant to the doctrine of sovereign immunity.

1. *Plaintiffs' Section 1981 Claim Is Prohibited by Seventh Circuit Precedent.*

As a matter of first impression, the Seventh Circuit has held that 42 U.S.C. § 1981 does not create a private right of action against state actors. *Campbell v. Forest Pres. Dist. of Cook Cnty., Ill.*, 752 F.3d 665 (7th Cir. 2014). In *Campbell*, the plaintiff was fired after a security camera recorded him having sex with a coworker in the company's office. Two and a half years later, he sued his former employer. His suit included a claim under Section 1981 that his termination violated that statute's prohibition on racial discrimination in the making and enforcement of contracts. (At first, his suit also included Section 1983 claims, but he amended his complaint to omit them, apparently conceding that they were time-barred.)

The Seventh Circuit wrote that under *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 731-35 (1989), Section 1981 provides a remedy for violations committed by private actors, but an injured party must resort to Section 1983 to obtain relief for violations committed by state actors. The *Campbell* plaintiff argued that the Civil Rights Act of 1991 superseded *Jett* by adding the following language to Section 1981 as subsection (c): "The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law." As a result, argued the plaintiff in *Campbell*, Section 1981 provides a remedy against state actors independent of Section 1983. The Seventh Circuit recognized that the Ninth Circuit had taken this position in 1996, but that all six circuits considering the issue since then had not.

Finding against the plaintiff—and affirming the decision below—the Seventh Circuit observed that Section 1981(c) was intended not to overrule *Jett*, but rather to codify an earlier Supreme Court holding that Section 1981 prohibits intentional racial discrimination in both private and public contracting. Further, the Seventh Circuit reasoned that the fact that Congress has created a specific remedy against state actors under Section 1983 still counsels against inferring a remedy against them under Section 1981, even after the Civil Rights Act of 1991.

Joining the "overwhelming weight of authority," the Seventh Circuit held that *Jett* remains good law, and consequently, Section 1983 remains the exclusive remedy for violations of Section 1981 committed by state actors. *Campbell*, 752 F.3d at 671. Further, the Sixth Circuit has held, applying the reasoning of *Jett*, that "§ 1983 is the exclusive mechanism to vindicate violations of § 1981 by an individual state actor acting in his individual capacity." *McCormick v. Miami Univ.*, 693 F.3d 654, 661 (6th Cir. 2012) (affirming dismissal of Section 1981 claims brought against individual defendants acting in their individual capacities).

Here, Plaintiffs' Section 1981 claim is brought completely independently from their Section 1983 claim; no reference to Section 1983 is made in Count II of the Complaint for violations of Section 1981. Plaintiffs have therefore failed to sufficiently allege their Section 1981 claim against the Defendant University and the individual Defendants. *See, e.g., Minnis v. Bd. of Supervisors of Louisiana State Univ. and Agr. And Mech. College*, 972 F. Supp. 2d 878, at *884 (M.D. La. 2013) (plaintiff's "§ 1981 claims are brought independently from his claims under § 1983 against Defendants in their official capacities. Therefore, the Court finds he has failed to sufficiently allege his § 1981 claims against the [individual] Defendants in their official capacities and LSU"). Further, to the extent that this Court determines that Plaintiffs have brought their Section 1981 claim against the individual Defendants in their individual capacities, "Section 1983's express clause permitting these suits obviates the need to imply the same right under the general provisions of §1981…[W]e conclude that § 1983 is the exclusive mechanism to vindicate violations of § 1981 by an individual state actor acting in his individual capacity." *McCormick*, 693 F. 3d at 661. Defendants urge the Court to adopt the persuasive reasoning of the Sixth Circuit in *McCormick, supra*, and hold that this claim is barred because Section 1983 is Plaintiffs' exclusive remedy. Count II must be dismissed with prejudice.

2. *Plaintiff's Section 1981 Claim Is Barred By Sovereign Immunity.*

In addition to the fact that Plaintiffs have pled a violation of Section 1981 insufficiently, such a claim is also barred by the doctrine of sovereign immunity. Such law is long-established: the Eleventh Amendment proscribes parties from bringing suit against states, state agencies, and state officials in federal court. The Eleventh Amendment specifically provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens and Subjects of any Foreign State." U.S. Const. amend. XI. Courts have construed this provision broadly, "holding that it confers the sovereign immunity that the States possessed before entering the Union." *Council of 31 of AFSCME v. Quinn*, 680 F.3d 875, 881 (7th Cir. 2012), quoting *College Sav. Bank of Fl. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 669 (1999) (internal quotation omitted). This means that "although not explicitly provided for in the text, the Eleventh Amendment guarantees that an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." *Id.*, quoting *Edelman v. Jordan*, 415 U.S. 651, 663 (1974) (internal quotation omitted). Thus, the Eleventh Amendment specifically "bars actions in federal court against a state, state agencies, or state officials acting in their official capacities." *Council of 31*, 680 F.3d at 881; *Mutter v. Madigan*, 17 F. Supp. 3d 752, 757 (N.D. Ill. 2014).

The University is immune to Plaintiffs' claim under Section 1981 because the Eleventh Amendment bars such claims against state agencies unless the agency in question consents to jurisdiction or unless Congress has abrogated the state's Eleventh Amendment immunity. *Ameritech v. McCann*, 297 F.3d 582, 585 (7th Cir. 2002). "It is well established in the Seventh Circuit that Illinois state universities are state agencies subject to Eleventh Amendment immunity." *Harden v. Board of Trustees of E. Ill. Univ.*, Case No. 12-CV-2199, 2013 WL

6248500, at *5 (C.D. Ill. Dec. 2, 2013), citing *Cannon v. Univ. of Health Sci./The Chi. Medical Sch.*, 710 F.2d 351, 357 (7th Cir. 1983). As discussed above, the University is, of course, an Illinois state university. *See* 110 ILCS 305, "University of Illinois Act"; 110 ILCS 310, "University of Illinois Trustees Act" (recognizing University of Illinois as a state university).[16]

The University has not consented to jurisdiction with respect to Plaintiffs' Section 1981 claim. Further, Congress has not abrogated Eleventh Amendment immunity for claims arising under Section 1981. *See Keri v. Bd. of Trs. of Purdue Univ.*, 458 F.3d 620, 640-41 (7th Cir. 2006), *overruled on other grounds by Hill v. Tangherlini*, 724 F.3d 965, 968 n.1 (7th Cir. 2013).

Under these well-settled legal principles, Plaintiffs' Section 1981 claim against the University cannot stand. This Court must therefore dismiss Count II with prejudice with respect to the University.

B. Plaintiffs' Section 1981 and Section 1983 Claims Against the Defendant Coaches Are Also Barred by Sovereign Immunity.

Eleventh Amendment sovereign immunity also bars Plaintiffs' Section 1981 and Section 1983 claims against the Defendant Coaches.[17] The Eleventh Amendment specifically "bars actions in federal court against a state, state agencies, or state officials acting in their official

[16] The Board likewise qualifies for protection under the Eleventh Amendment because it is "'an agency of the state, which operates the school under state oversight.'" *Harden*, 2013 WL 6248500 at *5, quoting *Peirick v. Ind. Univ.-Purdue Univ. Indianapolis Athletics Dep't*, 510 F.3d 681, 695-96 (7th Cir. 2007) (noting that state university boards of trustees generally "enjoy the same immunity from suit as the universities themselves"). *See also Kroll v. Bd. of Trs. of Illinois*, 934 F.2d 904, 907 (7th Cir. 1991) (en banc), *cert. denied*, 549 U.S. 1210 (2007);

[17] Plaintiffs do not name AD Thomas in Counts II or III. To the extent that they intend to include him in these claims, they should be dismissed with prejudice with respect to him as well, for the reasons stated here regarding dismissal of the Defendant Coaches.

Moreover, to the extent that Plaintiffs intend to include the University in Count III, the claim should also be dismissed with prejudice with respect to the University on the basis of Eleventh Amendment sovereign immunity, for the reasons stated above in Section II(A). The only actions alleged by Plaintiffs pertain to those of individual employees and not the actions of the Defendant University. Thus, the only theory of recovery possible against the University is that of *respondeat superior*. The case law, however, is clear—Section 1983 will not support a claim based on *respondeat superior* liability. *Monell v. Dep't of Social Servs. of the City of New York*, 436 U.S. 658, 693-94 (1978).

capacities." *Council of 31 of AFSCME*, 680 F.3d at 881; *Mutter*, 17 F. Supp. 3d at 757. Individuals employed at state universities are protected from suit under the Eleventh Amendment by virtue of sovereign immunity when acting in their official capacities. *See e.g.*, *Cannon v. University Health Sciences/The Chicago Medical School*, 710 F.2d 351, 356-57 (7th Cir. 1983).

Here, Plaintiffs allege that the Defendant Coaches, at all times relevant to Plaintiffs' suit, acted under the color of law and within the scope of their employment with the University. Cmplt. at ¶¶ 13-14. Because these Defendants were state officials employed by the University, a state entity, Plaintiffs' Section 1981 and Section 1983 claims against the Defendants are barred by Eleventh Amendment sovereign immunity. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) ("a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office" and "[a]s such, is not different from a suit against the State itself").

Although Plaintiffs name the individual Defendants in their individual capacities (Cmplt. at ¶¶ 12-14), "even when a suit is against a public officer in his or her individual capacity, the court is obliged to consider whether it may really and substantially be against the state." *Luder v. Endicott*, 253 F.3d 1020, 1023 (7th Cir. 2001). An individual capacity suit under Section 1981 and Section 1983 is "really and substantially" against the state when a monetary judgment would (1) "expend itself on the public treasury of domain"; (2) "interfere with the public administration"; or (3) "restrain the Government from acting . . . or compel it to act." *Id*., citing *Pennhurst State Sch. & Hosp. v. Halderman*, 469 U.S. 89, 101 n. 11 (1984). Claims brought against state officers in their individual capacities may "expend [themselves] on the public treasury" and thus be barred by the Eleventh Amendment when the bringing of such claims

"*demonstrably* has the *identical* effect as a suit against the state." *Luder*, 253 F.3d at 1023 (emphasis in original).

In *Luder*, the Seventh Circuit considered a suit brought against certain state officials in their individual capacities. The court found that the suit against the defendants was effectively against the state and therefore barred by the Eleventh Amendment. The court determined that the significant damages the plaintiffs sought to recover from the individual state employees, which was undefined but apparently quite large, would clearly exceed the employees' ability to pay personally. *Id.* at 1024. Consequently, even if judgment was rendered against the individual state employees, the state, as their employer, would be forced to pay the damages instead. Thus, "the effect [would] be identical to a suit against the state," in that the state would pay damages if plaintiffs prevailed in either scenario. *Id.* The court found that by seeking damages only from the individual state employees and not the state itself, the plaintiffs' suit was "transparently an effort at an end run around the Eleventh Amendment" and its sovereign immunity bar. *Id.* at 1025. *See also Omosegbon v. Wells*, 335 F.3d 668, 673 (7th Cir. 2003) (determining that it was "so inescapable that any resulting judgment will be paid by the state rather than the individual defendants that [plaintiff's claim] b[ore] no resemblance to a bona fide individual capacity suit."); *Harden*, 2013 WL 6248500, at *9 (finding that the plaintiff's "individual capacity claims against Defendants are not 'bona fide individual capacity suit[s] and, instead, seek relief that would expend itself on the public treasury.'").

The same reasoning that the *Luder*, *Omosegbon*, and *Harden* courts articulated applies here. Plaintiffs seek monetary damages in excess of $10 million from the Defendant Coaches, state officials at all relevant times to Plaintiffs' suit. Cmplt. at ¶¶ 42, 46. Like the defendants in *Luder*, the Defendant Coaches do not have the ability to pay such large damages. As a result, the

state instead would be required to pay if Plaintiffs prevailed on their claims. Since this "effect [would] be identical to a suit against the state," the claims are barred under the Eleventh Amendment.[18] Plaintiffs' claims are "transparently an effort at an end run around the Eleventh Amendment" and its sovereign immunity bar.

Thus, pursuant to *Luder*, *Omosegbon*, and *Harden*, Plaintiffs' claims against the Defendant Coaches are, in fact, claims against the state, and they are barred by the Eleventh Amendment. This Court must therefore dismiss Counts II and III with prejudice with respect to the Defendant Coaches.

## II. Plaintiffs' Claim Under Section 1981 (Count II) Must Also Be Dismissed Pursuant to Fed. R. Civ. P. 12(b)(6).

This Court must dismiss Count II's Section 1981 claim brought by Plaintiff Smith, who has graduated from the University, as both parties have fulfilled their obligations under the terms of her athletic scholarship, rendering her claim moot.

This Court must also dismiss Count II as brought against the individual Defendants because the other Plaintiffs asserting it fail to state a claim as required under Fed. R. Civ. P. 12(b)(6). Plaintiffs Gleason and Grant cannot meet the pleading standards required for a Section 1981 claim because they are not members of a racial minority and have not properly alleged a claim for retaliation. Further, none of the Plaintiffs has sufficiently alleged that she was deprived of any benefit associated with her athletic scholarship.

[18] Similar to Plaintiffs' Section 1981 claim, neither the State nor the University has consented to jurisdiction with respect to Plaintiffs' Section 1983 claim. Further, Congress has not abrogated Eleventh Amendment immunity for claims arising under Section 1983. *See Will v. Michigan Department of State Police*, 491 U.S. 58, 66-70 (1989); *Quern v. Jordan*, 440 U.S. 332, 342 (1979); *Thomas v. State of Illinois*, 697 F.3d 612, 613 (7th Cir. 2012); *Mutter*, 17 F. Supp. 3d at 757.

A. Alexis Smith's Section 1981 Claim Is Moot.

Smith claims that she was "denied and/or deprived of the . . . benefit of [her] athletic scholarship contractual agreement." Cmplt. at ¶ 42. This is simply not true. As referenced in the Complaint, Smith was "enrolled as a student with the Defendant University for the 2011-2014 academic calendar year[s], and was under athletic scholarship with the Defendant University in its Division I Women's Basketball Program during that time." Cmplt. at ¶ 5. In referencing Smith's athletic scholarship, however, Plaintiffs fail to mention that Smith was also enrolled as a student at the University for the 2014-2015 academic calendar year and received an athletic scholarship from the University during that time. *See* Ex. 6 (Smith's athletic scholarship agreements for the 2011-2015 academic calendar years). Although Smith was injured and did not receive court time during the 2014-2015 school year, she was still a member of the University of Illinois Women's Basketball team during that time.[19] Ultimately, Smith graduated from the University in August 2015 after receiving a full athletic scholarship for the entire period of her enrollment at the University. *See* Ex. 9 (Proof of Smith's graduation).[20]

In evaluating the validity of a claim under Section 1981, the Supreme Court has held that "jurisdiction, properly acquired, may abate if the case becomes moot because (1) it can be said with assurance that 'there is no reasonable expectation . . .' that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation. When both conditions are satisfied it may be said that the case is moot because neither party has a legally cognizable interest in the final determination of the underlying

[19] See, *e.g.*, University of Illinois 2014-15 Women's Basketball Roster, *available at* http://www.fightingillini.com/roster.aspx?roster=70&path=wbball (last visited Sept. 29, 2015), documenting Ms. Smith's status as a member of the team.

[20] *See also* p. 23, n. 18 of the investigation report, *supra* n. 11 ("Alexis Smith graduated in 2015. She has one year of playing eligibility remaining, and is expected to play basketball at Wagner College while she is enrolled in a graduate program.").

questions of fact and law." *County of Los Angeles v. Davis*, 99 S. Ct. 1379, 1383 (1979) (internal citations and quotations omitted).

Here, Smith and the University entered into a contract to provide her with a four-year athletic scholarship while she participated in the Women's Basketball Program. The terms of the contract were fulfilled: Smith was a member of the basketball team for four seasons, she received a four-year scholarship, and she graduated from the University. There is thus no possibility that any actions alleged in the Complaint will recur with respect to Smith, and further, interim events—Smith's graduation after receipt of a full scholarship—have "completely and irrevocably eradicated the effects of the alleged violation." Ms. Smith's Section 1981 claim is moot, and the Court must therefore dismiss it with prejudice. *See Kinnon v. Arcoub, Gopman & Assocs., Inc.*, 490 F.3d 886, 890 (11th Cir. 2007) ("To state a claim under § 1981, a plaintiff must identify an impaired contractual relationship under which the plaintiff has rights.").

B. Plaintiffs Taylor Gleason and Jacqui Grant Are Not Members of a Racial Minority.

To state a claim for race discrimination under Section 1981, plaintiffs "must allege that: (1) [they] are members of a racial minority; (2) the defendants had the intent to discriminate on the basis of race; and (3) the discrimination concerned the making or enforcing of a contract." *Nieman v. Versuslaw, Inc.*, No. 12-3104, 2012 WL 3201931, at *4 (C.D. Ill. Aug. 3, 2012), citing *Pourghoraishi v. Flying J, Inc.*, 449 F.3d 751, 756 (7th Cir. 2006).

As stated in the Complaint, both Ms. Gleason and Ms. Grant are Caucasian. Cmplt. at ¶¶ 20(e), 24(a)-(b). On this basis, alone, their claim fails, as they have not pled—because they cannot—that they are members of a racial minority.

The Seventh Circuit does permit Caucasian plaintiffs to bring Section 1981 claims in which they allege retaliation for "complaining about the discrimination of others." *Humphries v.*

*CBOCS West, Inc.*, 474 F.3d 387, 398 (7th Cir. 2007). To state such a claim, however, a Caucasian plaintiff must actually allege that she, in fact, complained about the discrimination of others. Here, Plaintiffs Gleason and Grant make only conclusory allegations that they "associated with and/or supported" their African-American teammates. Cmplt. at ¶ 24. At ***no point*** do they allege that they complained to ***anyone*** of discrimination allegedly being experienced by the other Plaintiffs. Plaintiffs' claim under Section 1981 must fail, and this Court must dismiss it with prejudice.

C. Plaintiffs Have Not Pled a Sufficient Claim.

As referenced above, to state a claim under Section 1981, Plaintiffs must establish that: (1) the individual Defendants had the intent to discriminate on the basis of race; and (2) that the alleged discrimination in question concerned the making or enforcing of a contract. *Nieman*, 2012 WL 3201931 at *4. *See also Beckon v. Ill. Dep't of Trans.*, 14-cv-03227, 2015 WL 4978457, at *3 (C.D. Ill. Aug. 20, 2015) ("Individual liability under § 1981 requires that the individual himself has participated in the alleged discrimination against the plaintiff."), citing *Musikiwamba v. Essi, Inc.*, 760 F.2d 740, 753 (7th Cir. 1985).

Plaintiffs have not made more than conclusory allegations—because nothing more exists—that the discrimination they allegedly experienced concerned the making or enforcing of a contract. As discussed above, the contracts at issue are for athletic scholarships, pursuant to which the "Defendant University would and ***did provide*** each Plaintiff with financial assistance in the form of the costs of tuition, costs of room and board, and costs of certain education materials, with the expectation of continuation of such agreement for the successive academic years until the Plaintiff's graduation or depending on the exhaustion/elimination otherwise of the Plaintiff's eligibility." Cmplt. at ¶ 18 (emphasis added).

By Plaintiffs' own admission, then, they ***did*** receive the financial assistance for which they contracted. At no point in the Complaint do Plaintiffs ever allege that any Defendant interfered with their financial assistance, threatened that assistance, or otherwise interfered with Plaintiffs' academic scholarships. Any conclusory allegations with respect to coaching style, terms of practice, etc. are not part of the contracts for financial assistance at issue in Count II of Plaintiffs' Complaint.

At bottom, no individual Defendant interfered with the making or enforcing of any contract with any Plaintiff for financial assistance in the form of an athletic scholarship. Indeed, each Plaintiff's scholarship was renewed for each academic year she wished to remain a member of the University's Women's Basketball team (including, with respect to Smith, during a period of injury). For that reason, the Court must dismiss Count II with prejudice with respect to the individual Defendants.

## III. Plaintiffs Have Not Stated a Claim Under Section 1983 (Count III).

This Court must dismiss Count III as brought against the Defendant Coaches because Plaintiffs fail to state a claim as required under Fed. R. Civ. P. 12(b)(6). Plaintiffs Gleason and Grant do not have standing to make such a claim under Section 1983. Moreover, all Plaintiffs have failed to plead that they are plausibly entitled to relief under Section 1983 for alleged violations of their Fourteenth Amendment and Equal Protection rights.

### A. Plaintiffs Taylor Gleason and Jacqui Grant Have Not Pled a Claim for Relief Under Section 1983.

Gleason and Grant base their Section 1983 claim on "discrimination on the ground of race for their association with the black Plaintiffs." Cmplt. at ¶ 46. As stated in the Complaint, both Gleason and Grant are Caucasian and therefore plainly lack standing to bring a Section 1983 claim. *See, e.g., Barlass v. Carpenter*, No. 10-cv-454, 2010 WL 3521589, at *5 (W.D.

Wisc. Sept. 7, 2010) ("Equal protection claims are most commonly brought by members of disfavored classes of citizens or by citizens attempting to enforce fundamental rights; a white plaintiff generally does not have standing under § 1983 solely for the purpose of vindicating the rights of minorities who have suffered from racial discrimination").

Plaintiffs Gleason and Grant have not made a sufficient pleading that they were, in fact, discriminated against for their "association" with the African-American Plaintiffs, let alone that they took any action on behalf of those Plaintiffs or otherwise attempted to "vindicate their rights." Simply put, Plaintiffs Gleason and Grant have no standing to pursue a Section 1983 claim.

Further, assuming *arguendo* that Plaintiffs Gleason and Grant did have standing based on their "association" with the African-American Plaintiffs, they have pled nothing but conclusory assertions that they "associated with and/or supported" those Plaintiffs. Such claims, with nothing more to support them, cannot serve as the basis for a claim under Section 1983. This Court must dismiss Count III of the Complaint with prejudice with respect to these two Plaintiffs.

B. None of the Plaintiffs Has Pled a Claim for Relief Under Section 1983.

To state an equal protection claim based on race discrimination under Section 1983, a plaintiff must demonstrate the following four criteria: (1) that she was a member of a protected class; (2) that she was similarly situated to individuals not of the protected class; (3) that she was treated differently than those similarly situated individuals; and (4) that those who treated her differently acted with discriminatory intent. *Brown v. Illinois Dept. of Public Aid*, 318 F. Supp. 2d 696, 699 (N.D. Ill. 2004), citing *Johnson v. City of Fort Wayne*, 91 F.3d 922, 944-45 (7th Cir. 1996). To demonstrate discriminatory intent, a plaintiff must show that the defendant acted with "nefarious discriminatory purpose" and discriminated against her based on "membership in a

definable class"—either intentionally or with deliberate indifference. *Yaodi Hu v. Village of Midlothian*, 631 F. Supp. 2d 990, 1005 (N.D. Ill. 2009), citing *Nabozny v. Podlesny*, 92 F.3d 446, 453-54 (7th Cir. 1996). *See also Indianapolis Minority Contractors Ass'n, Inc. v. Wiley*, 187 F.3d 743, 752 (7th Cir. 1999) ("Discriminatory purpose, however, implies more than intent as volition or intent as awareness of consequences. It implies that a decisionmaker singled out a particular group for disparate treatment and selected his course of action at least in part for the purpose of causing its adverse effects on the identifiable group."). Put plainly, to proceed with their Section 1983 claim, Plaintiffs must plausibly allege that the Defendant Coaches discriminated against them on the basis of their race. They have not done so.

Plaintiffs have made no allegations that Defendant Coaches used racial slurs or epithets. Instead, Plaintiffs have pled only that the Defendant Coaches engaged in "name calling" by allegedly referring to three of the Plaintiffs as "toxic" and "crabs." Cmplt. at ¶ 20(a)-(b). Plaintiffs never explain how these terms are related to Plaintiffs' race, nor can they, as the terms have nothing to do with race.

Moreover, Plaintiffs make conclusory allegations that the Defendant Coaches "began and continued to mistreat and abuse the Plaintiffs physically." Cmplt. at ¶ 19. This statement contains no reference to race and, even if true, in fact alleges that the Defendants treated Plaintiffs of different races in the same manner. Plaintiffs also allege that the team's roster changed over time and that the Defendants recruited more Caucasian players than had been recruited in previous years. Again, even if this statement were true, it demonstrates nothing more than that Defendants recruited a more diverse team of student-athletes than in years past. None of these statements provides support for the claim that the Defendant Coaches treated Plaintiffs differently with discriminatory intent.

Plaintiffs' only allegations regarding different treatment on the basis of their race are conclusory statements regarding the Defendant Coaches' alleged: asking of African-American team members about their opinions of opposing teams consisting primarily of African-American players; appointment of a Caucasian player as team captain; making generalized comments about opposing teams; and "level[ing] discipline against the black players more severe than as against white players despite the same or similar conduct." Cmplt. at ¶ 20. With respect to the last allegation, Plaintiffs do not assert the type of discipline "leveled" or what conduct was at issue when the players in question were disciplined. Moreover, they do not assert that any named Plaintiff was the recipient of the allegedly disparate discipline. Such conclusory statements are insufficient to demonstrate different treatment or discriminatory intent, as required to assert an equal protection race discrimination claim under Section 1983.

Thus, Plaintiffs have not stated an equal protection claim under Section 1983, and Count III of the Complaint must be dismissed with prejudice.

**IV. Plaintiffs Have Not Stated a Claim Under Title VI (Count I).**

Plaintiffs seek redress from Defendants under Title VI of the Civil Rights Act of 1964 ("Title VI"), alleging a racially hostile educational environment resulting in their exclusion from participation in or deprivation of benefits of the Women's Basketball Program. Cmplt. at ¶ 36. Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

As a threshold matter, this claim must be dismissed as to the individual Defendants because a Title VI claim may only stand against "a *program or activity* receiving Federal financial assistance." *Id*. (emphasis added).

Further, Plaintiffs have not sustained their factual pleading burden under Fed. R. Civ. P. 12(b)(6) with respect to the Defendant University. To "establish a hostile educational environment under Title VI," Plaintiffs must plead (1) intentional race discrimination "severe or pervasive enough to" (2) "deprive [them] of access to educational benefits." *Qualls v. Cunningham*, 183 Fed. Appx. 564, 567 (7th Cir. 2006) (affirming district court's granting of summary judgment in favor of Northern Illinois University). The Complaint fails in both regards.

In addition, "where the plaintiffs are suing an entity under what is essentially a *respondeat superior* theory, they must also prove that an official of the school had actual knowledge of and was deliberately indifferent to the conduct in question." *N.K. v. St. Mary's Springs Acad. of Fond Du Lac*, 965. F. Supp. 2d 1025, 1032 (E.D. Wisc. 2013), citing *Doe v. St. Francis Sch. Dist.*, 694 F.3d 869, 871 (7th Cir. 2012); *see also Doe v. Galster*, 768 F. 3d 611, 617 (7th Cir. 2014). Plaintiffs have not pled knowledge or deliberate indifference, and their Complaint therefore fails in this aspect as well.

Finally, the claim as brought by Gleason and Grant fails for an additional reason: these Plaintiffs have neither pled reverse discrimination nor alleged a single fact in support of their conclusory claim of retaliation for "associating" with their African-American teammates. Without either, they cannot state a claim for relief under Title VI.

A. Title VI Does Not Permit Claims Against the Individual Defendants.

Plaintiffs' Title VI claim cannot stand against the individual Defendants. By its language, Title VI is directed at "any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

Although the Seventh Circuit has not directly addressed whether an individual may be held liable under Title VI, it has rejected such liability in the context of Title IX, which contains

nearly identical language. *See Smith v. Metro. Sch. Dist.*, 128 F. 3d 1014, 1019 (7th Cir. 1997), *cert. denied*, 524 U.S. 951 (1998) (holding that a Title IX claim can only be brought against a grant recipient and not an individual). Other circuits addressing liability under Title VI have held unequivocally that claims against individuals may not stand. *See, e.g., Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1169-70, n. 11 (11th Cir. 2003) ("[I]ndividuals may not be held liable for violations of Title VI because it prohibits discrimination only by recipients of federal funding.") (collecting cases); *Buchanan v. City of Bolivar, Tenn.*, 99 F.3d 1352 (6th Cir. 1996) ("Plaintiff's claim [ ] fails because she asserts her claim against [individuals] and not against the school, the entity [ ] receiving the financial assistance."), citing *West Zion Highlands v. City of Zion*, 549 F. Supp. 673, 675 (N.D. Ill. 1982).

Numerous district courts within the Seventh Circuit have applied these cases to dismiss with prejudice Title VI claims brought against individuals. *See, e.g., Bryant v. Oak Forest High School Dist. 228, Bd. of Ed.*, No. 06 C 5697, 2007 WL 2738544, at *3 (N.D. Ill. Sept. 12, 2007) (relying on *Smith* in holding that "[i]ndividuals cannot be liable under Title VI; instead, the appropriate party to be sued is the entity receiving federal financial assistance"); *Roger C. ex rel. Valley View Pub. Sch. Dist. #365-U*, No. 08 C 1254, 2008 WL 4866353, at *8 (N.D. Ill. June 23, 2008) (relying on *Smith* and *Shotz* in holding that "individual defendants cannot be held liable for violations of Title VI"); *Torrespico v. Columbia College*, 97 C 8881, 1998 WL 703450, at *16 (N.D. Ill. Sept. 30, 1998) (relying on *Smith* to dismiss a Title VI claim against employees of Columbia College, holding that only the college itself constitutes a "program or entity" within the meaning of Title VI).

Accordingly, because Title VI only applies to "program[s] or activit[ies]" and not individuals, Count I must be dismissed with prejudice as to AD Thomas and the Defendant Coaches.

B. Plaintiffs Have Not Pled a Sufficient Claim Against the Defendant University.

As set forth above, to state a claim under Title VI for a racially hostile educational environment, Plaintiffs are required to plead, with respect to the Defendant University, (1) intentional race discrimination so severe and pervasive that (2) it deprived them of access to educational benefits. They must also plead facts establishing that the University had knowledge of the allegedly hostile environment and either was deliberately indifferent or failed to take adequate remedial measures. *N.K.*, 965. F. Supp. 2d at 1032-33, citing *Doe*, 694 F.3d at 871; *see also Doe v. Galster*, 768 F. 3d at 617. Plaintiffs have not plausibly established any of these elements. Accordingly, Count I should be dismissed with prejudice.

1. *Plaintiffs Have Not Adequately Pled Severe or Pervasive Race Discrimination.*

The "severe or pervasive" element of a Title VI harassment claim has both a subjective and an objective component. *See Langadinos v. Appalachian Sch. of Law*, 05-CV-00039, 2005 WL 2333460, at *9 (W.D. Va. Sept. 25, 2005), citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21-22 (1993); *see also Doe v. Blackburn Coll.*, No. 06-3205, 2012 WL 640046, at *11 (C.D. Ill. Feb. 27, 2012) (applying the same standard to a claim of sex discrimination in education under Title IX). To determine whether Plaintiffs were subjected to an objectively hostile environment, the Court must consider the totality of the circumstances. *Id.*; *see also Elliott v. Delaware State Univ.*, 879 F. Supp. 2d 438, 446 (D. Del. 2012), citing *Hendrichsen v. Ball State Univ.*, 107 Fed. Appx. 680, 684 (7th Cir. 2004).

Here, Plaintiffs have not pled severe or pervasive race discrimination. As discussed above, Plaintiffs have not made a single allegation that the Defendant Coaches used racial slurs or epithets. Instead, Plaintiffs have pled that the Defendant Coaches engaged in "name calling," referring to three of the African-American Plaintiffs as "crabs" and "toxic," and to the Caucasian Plaintiffs as "mascots." Cmplt. at ¶ 20(a)-(b), (e). At no point in the Complaint do Plaintiffs explain how these terms are related to race. Plaintiffs also make conclusory allegations that the Defendant Coaches engaged in a discriminatory "campaign of statements," without pointing to a single explicitly racist statement they allegedly made. Cmplt. at ¶ 21. Rather, Plaintiffs plead vaguely and in a conclusory fashion that the Defendant Coaches asked African-American team members their opinions of opposing teams consisting primarily of African-American players, and made generalized comments about these teams' intelligence, discipline, and style of play. Cmplt. at ¶ 20(g)-(j). These alleged remarks, even if construed negatively, do not meet the pleading threshold of objectively severe race discrimination.

Similarly, the Complaint makes conclusory allegations that the Defendant Coaches "began and continued to mistreat and abuse the Plaintiffs physically" without alleging a single example of physical abuse. Cmplt. at ¶ 19. Plaintiffs also allege that the Defendant Coaches "leveled discipline against the black players more severe than as against white players despite the same or similar conduct." Cmplt. at ¶ 20(k). But Plaintiffs do not assert the type of discipline "leveled" or specify the conduct that was at issue when the players in question were disciplined. Moreover, they do not assert that any named Plaintiff was the recipient of the allegedly disparate treatment.

As discussed above, Plaintiffs also state that the Defendant Coaches held practices known as the "dog pound" that were allegedly attended primarily by African-American players. Cmplt.

at ¶ 20(a), (c), (e). Plaintiffs concede, though, that both Caucasian Plaintiffs also attended these practices. Cmplt. at ¶ 20(e). Further, Plaintiffs provide no factual allegations regarding how players were selected to attend these practices, the purpose of these practices, or how these practices were run. Without such detail, conclusory allegations that the Defendant Coaches held practices attended by both African-American and Caucasian players cannot serve as a basis for a claim of a racially hostile environment.

Finally, the Complaint also alleges that the team roster changed, and that the Defendant Coaches recruited more Caucasian players than had been recruited in previous years. Cmplt. at ¶ 20(l). Again, even assuming the statement is true, the fact that the Defendant Coaches recruited a diverse team does not demonstrate racial hostility. Nor is selection of a Caucasian student as captain, without any allegation that she was unsuited to the role, evidence of race discrimination. Cmplt. at ¶ 20.

Considered in their totality, Plaintiffs' allegations do not plausibly establish the existence of an objectively hostile environment. Accordingly, their Title VI Claim should be dismissed with prejudice.

2. *Plaintiffs Have Not Plead Deprivation of Access to Educational Benefits.*

To state a claim under Title VI, Plaintiffs must also show that the objectively offensive race discrimination they experienced deprived them of the benefits of the Women's Basketball Program. The deprivation alleged must meet a minimum threshold of severity. *See*, *e.g.*, *Elliott*, 879 F. Supp. 2d at 446, citing *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629, 648-52 (1999).

Here, Plaintiffs' allegations do not rise to the level of "deprivation of access to educational benefits." No Plaintiff alleges that she was removed from the Women's Basketball team; that she did not receive promised athletic scholarship funds; that any scholarships were revoked; that she was prohibited from enrolling in or attending classes; or that she otherwise was

prevented from receiving an education from the University. Indeed, three of the seven Plaintiffs graduated from the University last spring, having obtained four-year, full grant-in-aid scholarships to attend the University and recognition from the Big Ten and the University for their commitment to and participation in the Women's Basketball Program.

Instead, Plaintiffs' allegation of "deprivation" involves conclusory statements that certain "favored" Caucasian players received superior encouragement and coaching. *See, e.g.*, Cmplt. at ¶ 21 (contrasting the encouraging coaching style directed at "favored white girl(s)" against the insulting coaching style directed a "black girl(s) and/or associating white girl(s)"), ¶ 25 (contrasting the "disparate and divisive" treatment of Plaintiffs with "the positive and productive treatment of those similarly situated but for the race and/or association of the person"). Allegations of deprivation must be significantly more severe to survive a motion to dismiss. *See, e.g., Su v. Eastern Illinois Univ.*, 565 Fed. Appx. 520 (7th Cir. 2014) (reversing district court's dismissal of complaint where plaintiff-appellant alleged that he was refused admission to the university based on his race and national origin); *Thompson v. Ohio State Univ.*, 990 F. Supp. 2d 801 (S.D. Oh. 2014) (denying motion to dismiss Title VI claim where African-American plaintiff alleged she was charged with academic misconduct and suspended twice based on her race).

The claims alleged here are not comparable to the situations in which courts have allowed Title VI claims to proceed. Plaintiffs have not sufficiently alleged a deprivation of educational benefits, and this Court should grant Defendants' motion to dismiss Count I with prejudice.

3. *Plaintiffs Have Not Pled Actual Knowledge or Deliberate Indifference.*

To state a claim under Title VI, Plaintiffs must also establish that an official of the University was aware of a racially hostile environment and acted with deliberate indifference. Plaintiffs assert only one conclusory allegation in this regard, simply parroting the elements of *respondeat superior* liability:

"[T]he Defendant Bollant was actually aware of the racially hostile environment, was in a position to take measures to end it, and was deliberately indifferent to the racially hostile environment and its consequences on the Plaintiffs. Plaintiffs believe that after a reasonable opportunity for further investigation or discovery, they will likely have evidentiary support that the Defendant, Thomas, was actually aware of the racially hostile environment, was in a position to take measures to end it, and was deliberately indifferent to the racially hostile environment and its consequences on the Plaintiffs.

Cmplt. at ¶ 26. This paragraph does not plausibly establish *respondeat superior* liability for several reasons. First, because, as explained above, Plaintiffs have not established facts supporting a racially hostile environment, they also cannot establish that either Coach Bollant or AD Thomas was "aware" of any such environment. After all, one cannot be aware of circumstances that do not exist.

Even assuming *arguendo* that there was a racially hostile environment of which to be aware, Plaintiffs have not pled that they brought their complaints to the attention of Coach Bollant or AD Thomas or that either failed to adequately respond. Indeed, they explicitly admit in the Complaint that AD Thomas may not have even known about their alleged concerns.[21] To support their Title VI claim, Plaintiffs merely recite the elements of *respondeat superior* liability. Such formulaic recitations are insufficient to withstand 12(b)(6) scrutiny. Accordingly, Plaintiffs' Title VI claim must be dismissed with prejudice.

[21] *See* Cmplt. at ¶ 26 ("[T]he Plaintiffs believe that, after a reasonable opportunity for further investigation or discovery, they will likely have evidentiary support that the Defendant, Thomas…was actually aware of the racially hostile environment….").

C. The Caucasian Plaintiffs Have Not Pled a Racially Hostile Environment.

At a minimum, Gleason and Grant must be dismissed from Count I. The Complaint purports to allege a racially hostile environment for the African-American Plaintiffs; it does not allege reverse discrimination against Gleason and Grant. Rather, it asserts conclusory and formulaic allegations of retaliation for Gleason and Grant's "continued association with and support of the black Plaintiffs against the racially hostile environment created by Defendants." *See, e.g.*, Cmplt. at ¶ 20(e). Even if this "discrimination by association" were a plausible basis for a Title VI claim, Plaintiffs Gleason and Grant fail to allege a single fact in support—indeed, they do not plead even one way in which they supported or associated with the African-American Plaintiffs so as to differentiate themselves from their "favored" or "non-associating" Caucasian teammates. Cmplt. at ¶ 21. Accordingly, the Title VI claim must be dismissed with prejudice with respect to Plaintiffs Gleason and Grant.

## V. This Court Must Dismiss Plaintiffs' Claim Under the Illinois Civil Rights Act (Count IV).

Count IV of the Complaint alleges a violation of the Illinois Civil Rights Act, 740 ILCS 23/5. As a preliminary matter, the Court must dismiss this claim as to the individual Defendants, as "individuals cannot be sued under" the Illinois Civil Rights Act. *Hosick v. Chicago State Univ.*, No. 10 C 5132, 2011 WL 6337776, at *2 (N.D. Ill. Dec. 19, 2011). "The text of the Act authorizes suits only against the relevant 'unit of government.' Nowhere does it provide for suits against individuals." *Id*. at *8, citing *Neuman v. United States*, 2007 WL 3407442 (S.D. Ill. Nov. 15, 2007).

Further, "Section 5 of the Illinois Civil Rights Act of 2003, which prohibits discrimination against a person in a government program based on race and other classifications, *see* 740 ILCS 23/5, was not intended to create new rights but was instead enacted to establish a

state law remedy for discrimination that was covered by Title VI." *Dunnet Bay Const. Co. v. Hannig*, No. 10-3051, 2014 WL 552213, at *24 (C.D. Ill. Feb. 12, 2014). Because this Court must dismiss Plaintiffs' Title VI claim, dismissal of this duplicative state law claim is also warranted. *Id.* at *32 (granting summary judgment "because Section 5 of the Illinois Civil Rights Act of 2003 simply establishes a state law remedy for Title VI violations").

Finally, because this Court must dismiss Plaintiffs' federal claims pursuant to Fed. R. Civ. P. 12(b)(6), it should also dismiss this claim for lack of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c)(3) (a federal district court may dismiss a plaintiff's supplemental state law claims if it "has dismissed all claims over which it has original jurisdiction"). *See Groce v. Eli Lilly & Co.*, 193 F.3d 496, 501 (7th Cir. 1999) ("the well-established law of [the Seventh Circuit holds] that the usual practice is to dismiss without prejudice state supplemental claims whenever all federal claims have been dismissed prior to trial"). *See also Spain v. Elgin Mental Health Center*, No. 10 CV 1065, 2011 WL 1485285, at *5 (N.D. Ill. Apr. 18, 2011) ("Because all of plaintiff's federal claims are dismissed, the court dismisses plaintiff's state law claims without prejudice for lack of federal jurisdiction.")

## CONCLUSION

Plaintiffs cannot escape the fact that their claims under Sections 1981 and 1983 are barred pursuant to Eleventh Amendment sovereign immunity. Further, Plaintiffs fail to state a claim under Sections 1981 and 1983 as well as under Title VI. Finally, for the same reasons, Plaintiffs' claim under the Illinois Civil Rights Act fails, and this Court also has no jurisdiction to consider that claim. Thus, Plaintiffs' Complaint should be dismissed with prejudice in its entirety.

Dated: October 20, 2015

Respectfully submitted,

KAYE SCHOLER LLP

By: /s/ Zaldwaynaka L. Scott

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*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

On October 20, 2015, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Central District of Illinois, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

By: /s/ Emily Newhouse Dillingham

E-FILED
Tuesday, 20 October, 2015 02:33:02 PM
Clerk, U.S. District Court, ILCD

# EXHIBIT 1

Award Maintenance RPAAWRD 8.23.0.4 (BANPROD) [1DICJ] 24-SEP-2015 11:45 AM EDT 2015.5

Aid Year: 1112 ID: [redacted] Nia L Oden

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

Amounts | Overrides | Locks/Indicators

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 1140DU | Fed Direct Unsubsidized Loan | DECL | | | 3,176.00 | | | ☐ |
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | 4,734.00 | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 34,804.00 | 34,804.00 | .00 | | 34,804.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 4,133.00 | 4,133.00 | .00 | | 4,133.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 500.00 | 500.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 3,256.00 | 3,256.00 | | | 3,256.00 | ☐ |
| 13L6ZZ | Athletic Room & Board Full | ACPT | 10,080.00 | 10,080.00 | | | 10,080.00 | ☐ |
| 13M4ZZ | Athletic Evening Meals | ACPT | 272.00 | 272.00 | | | 272.00 | ☐ |
| | | Total: | 53,045.00 | 53,045.00 | 7,910.00 | | 52,745.00 | |

Summary | Packaging Group | Pell | Loans

Offered: 53,045.00
Resource: .00
Crossover Pell Award:
Crossover Aid Year:
☐ Packaging Lock

Aid Period: 1FSA
Pell Aid Period:
Budget Group: 11UNCO

| | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|
| FM: | 47,170.00 | 19,089 | 28,081.00 | -24,964.00 |
| IM: | | | | |
| Pell: | 47,170.00 | 19,089 | | |

Period Budget Group Detail

☐ BBAYS Awarded

Award Maintenance RPAAWFD 8.23.0.4 BANPROD (PILOT) 24-SEP-2015 11:47 Page 3 of 5

Aid Year: 1213 ID: [redacted] Nia L Oden

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

Amounts | Overrides | Locks/ Indicators

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 1954 | Employment - Regular | ACPT | .00 | .00 | | | 825.00 | ☐ |
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 31,140.00 | 31,140.00 | | | 31,140.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 4,293.00 | 4,293.00 | | | 4,293.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 1,333.00 | 1,333.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 3,532.00 | 3,532.00 | | | 3,532.00 | ☐ |
| 13L5ZZ | Athletic Room & Board Fall | ACPT | 5,333.00 | 5,333.00 | | | 5,333.00 | ☐ |
| 13LSZZ | Athletic Spring Room | ACPT | 5,333.00 | 5,333.00 | | | 5,333.00 | ☐ |
| | | Total: | 50,964.00 | 50,964.00 | | | 50,454.00 | |

Summary | Packaging Group | Pell | Loans

Offered: 50,964.00
Resource: .00
Crossover Pell Award:
Crossover Aid Year:
☐ Packaging Lock

Aid Period: 1FS
Pell Aid Period:
Budget Group:

| | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|
| FM: | | | | |
| IM: | | | | |
| Pell: | | | | |

Period Budget Group Detail
☐ BBAYS Awarded

Aid Year: 1314 ID: [redacted] Nia L Oden

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

Amounts | Overrides | Locks/ Indicators

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 109[redacted] | Employment - Regular | ACPT | .00 | .00 | | | 313.66 | ☐ |
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 30,298.00 | 30,298.00 | | | 30,298.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 4,435.00 | 4,435.00 | | | 4,435.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 1,333.00 | 1,333.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 3,344.00 | 3,344.00 | | | 3,344.00 | ☐ |
| 13L5ZZ | Athletic Room & Board Fall | ACPT | 5,489.00 | 5,489.00 | | | 5,489.00 | ☐ |
| 13LSZZ | Athletic Spring Room | ACPT | 5,489.00 | 5,489.00 | | | 5,489.00 | ☐ |
| | | Total: | 50,388.00 | 50,388.00 | | | 49,368.66 | |

Summary | Packaging Group | Pell | Loans

Offered: 50,388.00
Resource: .00
Crossover Pell Award:
Crossover Aid Year:
☐ Packaging Lock

Aid Period: 1FS
Pell Aid Period:
Budget Group:
Period Budget Group Detail

| | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|
| FM: | | | | |
| IM: | | | | |
| Pell: | | | | |

☐ BBAYS Awarded

Award Maintenance RPAAWRD 8.23.0.4 (BANPROD1 PIUC) 24-SEP-2015 11:47 AM Page 5 of 5

Aid Year: 1415 ID: [redacted] Nia L Oden

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

Amounts | Overrides | Locks/Indicators

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 1094 | Employment - Regular | ACPT | .00 | .00 | | | 1,110.50 | ☐ |
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 31,982.00 | 31,982.00 | | | 31,982.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 4,660.00 | 4,660.00 | | | 4,660.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 1,333.00 | 1,333.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 3,627.00 | 3,627.00 | | | 3,627.00 | ☐ |
| 13L5ZZ | Athletic Room & Board Fall | ACPT | 5,424.00 | 5,424.00 | | | 5,424.00 | ☐ |
| 13LSZZ | Athletic Spring Room | ACPT | 5,424.00 | 5,424.00 | | | 5,424.00 | ☐ |
| | | Total: | 52,450.00 | 52,450.00 | | | 52,227.50 | |

Summary | Packaging Group | Pell | Loans

| | | | | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|---|---|---|
| Offered: | 52,450.00 | Aid Period: | 1FS | | | | |
| Resource: | .00 | Pell Aid Period: | | FM: 43,360.00 | | .00 | -52,450.00 |
| Crossover Pell Award: | | | | IM: | | | |
| Crossover Aid Year: | | Budget Group: | 11UNBR | Pell: 43,360.00 | | | |

☐ Packaging Lock  Period Budget Group Detail  ☐ BBAYS Awarded

E-FILED
Tuesday, 20 October, 2015 02:33:02 PM
Clerk, U.S. District Court, ILCD

# EXHIBIT 2

Award Maintenance RPAAWRD 8.23.0.4 (BANPROD) (10UCG) 24-SEP-2015 11:44 Page: 2 of 5

Aid Year: 1112 ID: [redacted] Taylor Danielle Tuck

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

Amounts | Overrides | Locks/Indicators

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 1094 | Employment - Regular | ACPT | .00 | .00 | | | 675.00 | ☐ |
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 13,880.00 | 13,880.00 | | | 13,880.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 4,135.00 | 4,135.00 | | | 4,119.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 500.00 | 500.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 3,256.00 | 3,256.00 | | | 3,256.00 | ☐ |
| 13L6ZZ | Athletic Room & Board Full | ACPT | 10,080.00 | 10,080.00 | | | 10,080.00 | ☐ |
| 13M4ZZ | Athletic Evening Meals | ACPT | 272.00 | 272.00 | | | 272.00 | ☐ |
| | | Total: | 32,123.00 | 32,123.00 | | | 32,282.00 | |

Summary | Packaging Group | Pell | Loans

Offered: 32,123.00
Resource: .00
Crossover Pell Award:
Crossover Aid Year:
☐ Packaging Lock

Aid Period: 1FS
Pell Aid Period:
Budget Group:

| | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|
| FM: | | | | |
| IM: | | | | |
| Pell: | | | | |

Period Budget Group Detail
☐ BBAYS Awarded

Award Maintenance RPAAWRD 8.7.3.0.0 (BANPROD1DUC) 24-SEP-2015 11:4 Page 3 of 5

Aid Year: 1213 ID: [redacted] Taylor Danielle Tuck

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 109Z | Employment - Regular | ACPT | .00 | .00 | | | 726.00 | ☐ |
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 14,443.00 | 14,443.00 | | | 14,443.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 4,431.00 | 4,431.00 | | | 3,717.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 1,600.00 | 1,600.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 5,298.00 | 5,298.00 | | | 5,298.00 | ☐ |
| 13L5ZZ | Athletic Room & Board Fall | ACPT | 5,333.00 | 5,333.00 | | | 5,333.00 | ☐ |
| 13LSZZ | Athletic Spring Room | ACPT | 5,333.00 | 5,333.00 | | | 5,333.00 | ☐ |
| | | Total: | 36,438.00 | 36,438.00 | | | 34,849.00 | |

Amounts | Overrides | Locks/Indicators

Summary | Packaging Group | Pell | Loans

Offered: 36,438.00
Resource: .00
Crossover Pell Award:
Crossover Aid Year:
☐ Packaging Lock

Aid Period: 1FS
Pell Aid Period:
Budget Group: Pell:
Period Budget Group Detail

| | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|
| FM: | | | | |
| IM: | | | | |

☐ BBAYS Awarded

Award Maintenance RPAAWRD 8.23.0.0 (BANPROD, 11UIUC) 24-SEP-2015 11:45 PAGE 1 of 5

Aid Year: 1314 ID: [redacted] Taylor Danielle Tuck

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 1140DU | Fed Direct Unsubsidized Loan | ACPT | 2,558.00 | 2,558.00 | | | 2,532.00 | ☐ |
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 13,701.00 | 13,701.00 | | | 13,701.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 3,853.00 | 3,853.00 | | | 3,853.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 1,333.00 | 1,333.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 3,344.00 | 3,344.00 | | | 3,344.00 | ☐ |
| 13L5ZZ | Athletic Room & Board Fall | ACPT | 5,489.00 | 5,489.00 | | | 5,489.00 | ☐ |
| 13LSZZ | Athletic Spring Room | ACPT | 5,489.00 | 5,489.00 | | | 5,489.00 | ☐ |
| | | Total: | 35,767.00 | 35,767.00 | | | 34,958.00 | |

Amounts | Overrides | Locks/Indicators

Summary | Packaging Group | Pell | Loans

| | | | | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|---|---|---|
| Offered: | 35,767.00 | Aid Period: | 1FSX6 | | | | |
| Resource: | .00 | Pell Aid Period: | | FM: | 36,397.00 | 7,938 | 28,459.00 | -4,750.00 |
| Crossover Pell Award: | | | | IM: | | | | |
| Crossover Aid Year: | | Budget Group: | 11URBR | Pell: | 28,864.00 | 7,938 | | |

☐ Packaging Lock

Period Budget Group Detail

☐ BBAYS Awarded

Aid Year: 1415 ID: [redacted] Taylor Danielle Tuck

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

Amounts | Overrides | Locks/Indicators

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 2,968.00 | 2,968.00 | | | 2,968.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 4,660.00 | 4,660.00 | | | 4,660.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 1,333.00 | 1,333.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 3,627.00 | 3,627.00 | | | 3,627.00 | ☐ |
| 13L5ZZ | Athletic Room & Board Fall | ACPT | 5,424.00 | 5,424.00 | | | 5,424.00 | ☐ |
| 13LSZZ | Athletic Spring Room | ACPT | 5,424.00 | 5,424.00 | | | 5,424.00 | ☐ |
| 1945ZZ | Athletic IL Res Tuition Waiver | ACPT | 11,104.00 | 11,104.00 | | | 11,104.00 | ☐ |
| | | Total: | 34,540.00 | 34,540.00 | | | 33,207.00 | |

Summary | Packaging Group | Pell | Loans

Offered: 34,540.00
Resource: .00
Crossover Pell Award:
Crossover Aid Year:
☐ Packaging Lock

Aid Period: 1FS
Pell Aid Period:
Budget Group: 11URBR ☐

| | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|
| FM: | 29,218.00 | | .00 | -34,540.00 |
| IM: | | | | |
| Pell: | 29,218.00 | | | |

Period Budget Group Detail
☐ BBAYS Awarded

E-FILED
Tuesday, 20 October, 2015 02:33:02 PM
Clerk, U.S. District Court, ILCD

# EXHIBIT 3

Award Maintenance RPAAWRD 3.23.0.2 (CANPROD) (DUDC) 24-SEP-2015 11:37 AM 6.2.0.5

Aid Year: 1112 ID: [redacted] Alexis Cannelitte Smith

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 1084 | Employment - Regular | ACPT | .00 | .00 | | | 675.00 | ☐ |
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 31,558.00 | 31,558.00 | | | 31,558.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 4,135.00 | 4,135.00 | | | 4,119.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 500.00 | 500.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 3,256.00 | 3,256.00 | | | 3,256.00 | ☐ |
| 13L6ZZ | Athletic Room & Board Full | ACPT | 10,080.00 | 10,080.00 | | | 10,080.00 | ☐ |
| 13M4ZZ | Athletic Evening Meals | ACPT | 272.00 | 272.00 | | | 272.00 | ☐ |
| | | Total: | 49,801.00 | 49,801.00 | | | 49,960.00 | |

Amounts | Overrides | Locks/Indicators

Summary | Packaging Group | Pell | Loans

Offered: 49,801.00
Resource: .00
Crossover Pell Award:
Crossover Aid Year:
☐ Packaging Lock

Aid Period: 1FS
Pell Aid Period:
Budget Group:

| | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|
| FM: | | | | |
| IM: | | | | |
| Pell: | | | | |

Period Budget Group Detail

☐ BBAYS Awarded

Award Maintenance RPAAWRD 9.2.0.4 (BANPROD) (10UC) 24-SEP-2015 11:39 AM Page 3 of 5

Aid Year: 1213 ID: [redacted] Alexis Carmelitte Smith

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

Amounts | Overrides | Locks/Indicators

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 1140DL | Fed Direct Unsubsidized Loan | DECL | | | 2,576.00 | | | ☐ |
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 30,298.00 | 30,298.00 | | | 30,298.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 4,293.00 | 4,293.00 | | | 4,293.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 1,333.00 | 1,333.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 3,532.00 | 3,532.00 | | | 3,532.00 | ☐ |
| 13L5ZZ | Athletic Room & Board Fall | ACPT | 5,333.00 | 5,333.00 | | | 5,333.00 | ☐ |
| 13LSZZ | Athletic Spring Room | ACPT | 5,333.00 | 5,333.00 | | | 5,333.00 | ☐ |
| | | Total: | 50,122.00 | 50,122.00 | 2,576.00 | | 49,598.00 | |

Summary | Packaging Group | Pell | Loans

| | | | | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|---|---|---|
| Offered: | 50,122.00 | Aid Period: | 1FS | | | | |
| Resource: | .00 | Pell Aid Period: | | FM: 42,612.00 | 19,696 | 22,916.00 | -27,206.00 |
| Crossover Pell Award: | | | | IM: | | | |
| Crossover Aid Year: | | Budget Group: | 11UNBR | Pell: 42,612.00 | 19,696 | | |

☐ Packaging Lock

Period Budget Group Detail

☐ BBAYS Awarded

Award Maintenance RPAAWRD 5.3.3.0 (BANPROD) (DUC) 24-SEP-2015 11:40 AM

Aid Year: 1314 ID: [redacted] Alexis Carmelitte Smith

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

Amounts | Overrides | Locks/Indicators

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 1098 | Employment - Regular | ACPT | .00 | .00 | | | 550.00 | ☐ |
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 30,298.00 | 30,298.00 | | | 30,298.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 3,853.00 | 3,853.00 | | | 3,853.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 1,333.00 | 1,333.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 3,344.00 | 3,344.00 | | | 3,344.00 | ☐ |
| 13L5ZZ | Athletic Room & Board Fall | ACPT | 5,489.00 | 5,489.00 | | | 5,489.00 | ☐ |
| 13LSZZ | Athletic Spring Room | ACPT | 5,489.00 | 5,489.00 | | | 5,489.00 | ☐ |
| | | Total: | 49,806.00 | 49,806.00 | | | 49,023.00 | |

Summary | Packaging Group | Pell | Loans

Offered: 49,806.00
Resource: .00
Crossover Pell Award:
Crossover Aid Year:
☐ Packaging Lock

Aid Period: 1FS
Pell Aid Period:
Budget Group: ☐
Period Budget Group Detail

| | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|
| FM: | | | | |
| IM: | | | | |
| Pell: | | | | |

☐ BBAYS Awarded

Award Maintenance RPAAWRD 9.2.0.4 (RANPROD) [DUC] 24-SEP-2015 1:14 PM Page 5 of 5

Aid Year: 1415 ID: [redacted] Alexis Carmelitte Smith

Award Maintenance | Award Schedule | Disbursement Schedule | Direct Loan Interface

## Fund Awards

Amounts | Overrides | Locks/Indicators

| Fund | Description | Status | Offered | Accepted | Declined or Cancelled | Memoed or Authorized | Paid | Schedule |
|---|---|---|---|---|---|---|---|---|
| 131AZZ | Estimated Athletic Award | ACPT | .00 | .00 | | | | ☐ |
| 131CZZ | Athletic Tuition Scholarship | ACPT | 31,982.00 | 31,982.00 | | | 31,982.00 | ☐ |
| 131DZZ | Athletic Fees Waiver | ACPT | 4,660.00 | 4,660.00 | | | 4,660.00 | ☐ |
| 131FZZ | Athletic Books | ACPT | 1,333.00 | 1,333.00 | | | | ☐ |
| 13DUZZ | Athletic Room and Board Summer | ACPT | 3,627.00 | 3,627.00 | | | 3,627.00 | ☐ |
| 13L5ZZ | Athletic Room & Board Fall | ACPT | 5,424.00 | 5,424.00 | | | 5,424.00 | ☐ |
| 13LSZZ | Athletic Spring Room | ACPT | 5,424.00 | 5,424.00 | | | 5,424.00 | ☐ |
| | | | | | | | | ☐ |
| | | Total: | 52,450.00 | 52,450.00 | | | 51,117.00 | |

Summary | Packaging Group | Pell | Loans

Offered: 52,450.00
Resource: .00
Crossover Pell Award:
Crossover Aid Year:
☐ Packaging Lock

Aid Period: 1FS
Pell Aid Period:
Budget Group: 11UNBR

| | Budget | EFC | Gross Need | Unmet Need |
|---|---|---|---|---|
| FM: | 43,360.00 | | .00 | -52,450.00 |
| IM: | | | | |
| Pell: | 43,360.00 | | | |

Period Budget Group Detail

☐ BBAYS Awarded

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# EXHIBIT 4

RECEIVED NOV 11 2010

BIG TEN CONFERENCE

# TENDER OF FINANCIAL AID DURING ACADEMIC YEAR 2011-12

_____ MEN X _____ WOMEN

From University of Illinois Urbana-Champaign
(University)

To Nia Lanea Oden
(Name)

[redacted]
(Street Address)

[redacted]
(City, State, Zip)

Date November 10, 2010 Sport Women's Basketball

**Date of First Attendance:**

At this institution Fall 2011 At any institution Fall 2011

**Period of Award:** X 1 academic year or _____ For the following terms:

_____ Fall _____ Winter _____ Spring _____ Summer

Type of Award: _____ Initial X Initial w/ Letter of Intent _____ Renewal

_____ Noncounter (Competition completed/Medical Exemption)

## CONDITIONS OF FINANCIAL AID

I. This Tender covers the following as checked:

X (A) Full Grant (includes tuition and fees, room, board, and use of necessary books in your selected course of study).

_____ (B) The following items: _____ (1) Tuition and _____(2) Fees in your selected course of study._____ (3) Board _____ (4) Room
_____ (5) Use of necessary books in your selected course of study.
_____ (6) Other explanation of award:_____

2. This Tender is subject to your fulfillment of the admission requirements of this institution, and the receipt of financial aid institutional, Big Ten Conference, and NCAA legislation.

3. This Tender is not automatically renewed. Your eligibility for a renewal of this Tender is subject to this institution's renewal policies at the end of its term.

4. This Tender also is subject to the additional conditions of financial aid, if any, that are established by the institution and set forth on Schedule A, a copy of which is attached hereto and incorporated herein.

5. If this Tender is issued with a National Letter of Intent, it must be signed in accordance with the National Letter of Intent procedures, signing and filing dates. If you wish to accept this Tender, return this form to the Financial Aid Office of this institution BY: November 17, 2010

SIGNED Tony W. Cole
Director of Athletics

SIGNED Michelle K Tuane
Financial Aid Director

---

ACCEPTANCE ***By signing this offer of financial aid and Schedule A, I understand that:***

I. I will become ineligible for intercollegiate athletics competition if I receive any financial assistance other than that authorized by the NCAA or exceed the financial aid limits stipulated under NCAA Bylaw 15 (Financial Aid).

2. I will become ineligible to receive this Tender if I am under contract to or currently receiving compensation from a professional sports organization except as provided under NCAA Bylaw 12 (Amateurism) and NCAA Bylaw 15 (Financial Aid).

3. My modification or cancellation of this Tender must be in compliance with institutional, Big Ten Conference, and NCAA legislation.

4. This Tender may not be renewed if I am suspended from athletic competition or dismissed from an athletic team for participating in the use, sale, or distribution of any narcotic drug or controlled substance.

5. After signing this Tender, I may not represent any other Conference institution in athletics competition until I have served one (1) year of residence (as "year of residence" is defined under NCAA Bylaw 14.02.13) at that Conference institution. Further, upon my enrollment at any other Conference institution, I will be charged with the loss of one (1) season of athletics eligibility in all sports.

SIGNED Nia Oden DATE 11/10/10 STUDENT ID # (optional) [redacted]
Student's Signature

SIGNED Ranada B. Oden DATE 11/10/10
Parent or Legal Guardian's Signature
Rebecca P. Oden

**SCHEDULE A TO TENDER OF FINANCIAL AID DURING ACADEMIC YEAR** 2011-12

Pursuant to paragraph 4 of the "Conditions of Financial Aid" section of the Tender of Financial Aid, the following additional conditions of financial aid apply at this institution:

SIGNED _____ SIGNED _____
Director of Athletics Financial Aid Director

SIGNED _____ DATE 11/10/10 STUDENT ID # (optional) [redacted]
Student's Signature

SIGNED _____ DATE 11/10/10
Parent or Legal Guardian's Signature

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# EXHIBIT 5

RECEIVED NOV 16 2010

BIG TEN CONFERENCE

# TENDER OF FINANCIAL AID DURING ACADEMIC YEAR 2011-12

_____ MEN X _____ WOMEN

From University of Illinois Urbana-Champaign
(University)

**Date** November 10, 2010 **Sport** Women's Basketball

To Taylor Danielle Tuck
(Name)

[redacted]
(Street Address)

[redacted]
(City, State, Zip)

**Date of First Attendance:**
At this institution Fall 2011 At any institution Fall 2011

**Period of Award:** X 1 academic year or _____ For the following terms:

_____ Fall _____ Winter _____ Spring _____ Summer

Type of Award: _____ Initial X Initial w/ Letter of Intent _____ Renewal

_____ Noncounter (Competition completed/Medical Exemption)

## CONDITIONS OF FINANCIAL AID

I. This Tender covers the following as checked:

X (A) Full Grant (includes tuition and fees, room, board, and use of necessary books in your selected course of study).

_____ (B) The following items: _____ (1) Tuition and _____(2) Fees in your selected course of study._____ (3) Board _____ (4) Room
_____ (5) Use of necessary books in your selected course of study.
_____ (6) Other explanation of award:_____

2. This Tender is subject to your fulfillment of the admission requirements of this institution, and the receipt of financial aid institutional, Big Ten Conference, and NCAA legislation.

3. This Tender is not automatically renewed. Your eligibility for a renewal of this Tender is subject to this institution's renewal policies at the end of its term.

4. This Tender also is subject to the additional conditions of financial aid, if any, that are established by the institution and set forth on Schedule A, a copy of which is attached hereto and incorporated herein.

5. If this Tender is issued with a National Letter of Intent, it must be signed in accordance with the National Letter of Intent procedures, signing and filing dates. If you wish to accept this Tender, return this form to the Financial Aid Office of this institution BY: November 17, 2010

SIGNED Terry W. Col
Director of Athletics

SIGNED Michelle K Leame
Financial Aid Director

---

ACCEPTANCE ***By signing this offer of financial aid and Schedule A, I understand that:***

I. I will become ineligible for intercollegiate athletics competition if I receive any financial assistance other than that authorized by the NCAA or exceed the financial aid limits stipulated under NCAA Bylaw 15 (Financial Aid).

2. I will become ineligible to receive this Tender if I am under contract to or currently receiving compensation from a professional sports organization except as provided under NCAA Bylaw 12 (Amateurism) and NCAA Bylaw 15 (Financial Aid).

3. My modification or cancellation of this Tender must be in compliance with institutional, Big Ten Conference, and NCAA legislation.

4. This Tender may not be renewed if I am suspended from athletic competition or dismissed from an athletic team for participating in the use, sale, or distribution of any narcotic drug or controlled substance.

5. After signing this Tender, I may not represent any other Conference institution in athletics competition until I have served one (1) year of residence (as "year of residence" is defined under NCAA Bylaw 14.02.13) at that Conference institution. Further, upon my enrollment at any other Conference institution, I will be charged with the loss of one (1) season of athletics eligibility in all sports.

SIGNED Taylor Tuck
Student's Signature

DATE 11/11/10 STUDENT ID # (optional) _____

SIGNED
Parent or Legal Guardian's Signature

DATE 11/11/10

**SCHEDULE A TO TENDER OF FINANCIAL AID DURING ACADEMIC YEAR** 2011-12

Pursuant to paragraph 4 of the "Conditions of Financial Aid" section of the Tender of Financial Aid, the following additional conditions of financial aid apply at this institution:

SIGNED _____ SIGNED _____
Director of Athletics Financial Aid Director

SIGNED _____ DATE 11/11/10 STUDENT ID # (optional) _____
Student's Signature

SIGNED _____ DATE 11/11/10
Parent or Legal Guardian's Signature

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# EXHIBIT 6

RECEIVED NOV 1 1 2010

BIG TEN CONFERENCE

# TENDER OF FINANCIAL AID DURING ACADEMIC YEAR 2011-12

_____ MEN X _____ WOMEN

From University of Illinois Urbana-Champaign
(University)

To Alexis Carmelitte Cassandra Smith
(Name)

[redacted]
(Street Address)

[redacted]
(City, State, Zip)

Date November 10, 2010 Sport Women's Basketball

**Date of First Attendance:**
At this institution Fall 2011 At any institution Fall 2011

**Period of Award:** X 1 academic year or _____ For the following terms:

_____ Fall _____ Winter _____ Spring _____ Summer

Type of Award: _____ Initial X Initial w/ Letter of Intent _____ Renewal

_____ Noncounter (Competition completed/Medical Exemption)

## CONDITIONS OF FINANCIAL AID

1. This Tender covers the following as checked:

X (A) Full Grant (includes tuition and fees, room, board, and use of necessary books in your selected course of study).

_____ (B) The following items: ____ (1) Tuition and ____ (2) Fees in your selected course of study. ____ (3) Board ____ (4) Room
____ (5) Use of necessary books in your selected course of study.
____ (6) Other explanation of award: _____

2. This Tender is subject to your fulfillment of the admission requirements of this institution, and the receipt of financial aid institutional, Big Ten Conference, and NCAA legislation.

3. This Tender is not automatically renewed. Your eligibility for a renewal of this Tender is subject to this institution's renewal policies at the end of its term.

4. This Tender also is subject to the additional conditions of financial aid, if any, that are established by the institution and set forth on Schedule A, a copy of which is attached hereto and incorporated herein.

5. If this Tender is issued with a National Letter of Intent, it must be signed in accordance with the National Letter of Intent procedures, signing and filing dates. If you wish to accept this Tender, return this form to the Financial Aid Office of this institution BY: November 17, 2010

SIGNED Terry W. Col
Director of Athletics

SIGNED Michelle K. Deane
Financial Aid Director

---

ACCEPTANCE ***By signing this offer of financial aid and Schedule A, I understand that:***

1. I will become ineligible for intercollegiate athletics competition if I receive any financial assistance other than that authorized by the NCAA or exceed the financial aid limits stipulated under NCAA Bylaw 15 (Financial Aid).

2. I will become ineligible to receive this Tender if I am under contract to or currently receiving compensation from a professional sports organization except as provided under NCAA Bylaw 12 (Amateurism) and NCAA Bylaw 15 (Financial Aid).

3. My modification or cancellation of this Tender must be in compliance with institutional, Big Ten Conference, and NCAA legislation.

4. This Tender may not be renewed if I am suspended from athletic competition or dismissed from an athletic team for participating in the use, sale, or distribution of any narcotic drug or controlled substance.

5. After signing this Tender, I may not represent any other Conference institution in athletics competition until I have served one (1) year of residence (as "year of residence" is defined under NCAA Bylaw 14.02.13) at that Conference institution. Further, upon my enrollment at any other Conference institution, I will be charged with the loss of one (1) season of athletics eligibility in all sports.

SIGNED Alexis C. Smith DATE 11/10/10 STUDENT ID # (optional) _____
Student's Signature

SIGNED Kelly-Ann Smith DATE 11-10-10
Parent or Legal Guardian's Signature

**SCHEDULE A TO TENDER OF FINANCIAL AID DURING ACADEMIC YEAR** 2011-12

Pursuant to paragraph 4 of the "Conditions of Financial Aid" section of the Tender of Financial Aid, the following additional conditions of financial aid apply at this institution:

SIGNED _____ SIGNED _____
Director of Athletics Financial Aid Director

SIGNED Alexis C Smith DATE 11/10/10 STUDENT ID # (optional) _____
Student's Signature

SIGNED Jessica Ann Smith DATE 11-10-10
Parent or Legal Guardian's Signature

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# EXHIBIT 7

Degrees and Other Formal Awards Inquiry RSIDEGR 8.3 (9ANPROD) (1UIUC) 23-SEP-2015 03:16 PM

2:15-cv-02140-CSB-EIL # 24-7 Page 2 of 2

ID: [redacted] Nia L Oden

Degree Number: 1

Degree: BS Bachelor of Science

Status: AW Awarded

Level: 1 U Undergrad - Urbana-Champaign

Term: 120128

Applied Date: 03-NOV-2014

Graduation Date: 10-AUG-2015

Bulletin Year: 1415

## Primary Curriculum

College: KY Applied Health Sciences

Major 1: 0349 Community Health

Major 2:

Minor 1:

Minor 2:

Concentration 1: 0495 Rehab & Disability Studies

Concentration 2:

Concentration 3:

## Secondary Curriculum

College:

Major 1:

Major 2:

Minor 1:

Minor 2:

Concentration 1:

Concentration 2:

Concentration 3:

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# EXHIBIT 8

Degrees and Other Formal Awards Inquiry RSIDEGR 8.0 (BANPROD) (1U|UC) 23-SEP-2015 03:46 PM

ID: [redacted] Taylor Danielle Tuck

| | | |
|---|---|---|
| Degree Number: | 1 | |
| Degree: | BS | Bachelor of Science |
| Status: | AW | Awarded |
| Level: | 1U | Undergrad - Urbana-Champaign |
| Term: | 120121 | |
| Applied Date: | 18-NOV-2014 | |
| Graduation Date: | 10-AUG-2015 | |
| Bulletin Year: | 1617 | |

## Primary Curriculum

| | | |
|---|---|---|
| College: | KY | Applied Health Sciences |
| Major 1: | 0349 | Community Health |
| Major 2: | | |
| Minor 1: | | |
| Minor 2: | | |
| Concentration 1: | 0474 | Health Planning & Admin |
| Concentration 2: | | |
| Concentration 3: | | |

## Secondary Curriculum

| | | |
|---|---|---|
| College: | | |
| Major 1: | | |
| Major 2: | | |
| Minor 1: | | |
| Minor 2: | | |
| Concentration 1: | | |
| Concentration 2: | | |
| Concentration 3: | | |

2:15-cv-02146-CSB-EIL # 24-8 Page 2 of 2

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Tuesday, 20 October, 2015 02:33:02 PM
Clerk, U.S. District Court, ILCD

# EXHIBIT 9

Degrees and Other Formal Awards Inquiry R5IDEGR 8.0 (BANPROD) (1UILIC) 29-SEP-2015 03:46 PM

ID: [redacted] Alexis Carmelitte Smith

Degree Number: 1

| | | |
|---|---|---|
| Degree: | BS | Bachelor of Science |
| Status: | AW | Awarded |
| Level: | 1U | Undergrad - Urbana-Champaign |
| Term: | 120138 | |
| Applied Date: | 03-NOV-2014 | |
| Graduation Date: | 10-AUG-2015 | |
| Bulletin Year: | 1516 | |

## Primary Curriculum

| | | |
|---|---|---|
| College: | KY | Applied Health Sciences |
| Major 1: | 0349 | Community Health |
| Major 2: | | |
| Minor 1: | | |
| Minor 2: | | |
| Concentration 1: | 0485 | Rehab & Disability Studies |
| Concentration 2: | | |
| Concentration 3: | | |

## Secondary Curriculum

| | | |
|---|---|---|
| College: | | |
| Major 1: | | |
| Major 2: | | |
| Minor 1: | | |
| Minor 2: | | |
| Concentration 1: | | |
| Concentration 2: | | |
| Concentration 3: | | |

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Tuesday, 20 October, 2015 02:43:57 PM
Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

| | | |
|---|---|---|
| Amarah Coleman, Alexis Smith, Taylor Tuck, Nia Oden, Sarah Livingston, Taylor Gleason, and Jacqui Grant, | ) | |
| Plaintiffs, | ) | |
| | ) | Case No. 15-cv-02146 |
| v. | ) | |
| | ) | Hon. Colin Stirling Bruce |
| | ) | |
| The Board of Trustees of the University of Illinois Urbana-Champaign, a Body Politic and Corporate, Mike Thomas, Matt Bollant, and Mike Divilbiss, | ) | Magistrate Judge Eric I. Long |
| Defendants. | ) | |

**DEFENDANTS' MOTION TO DISMISS**

NOW COMES Defendant, Mike Divilbiss, (hereinafter "Divilbiss"), by its attorneys, Monica H. Khetarapal and Jody Kahn Mason of Jackson Lewis P.C., and pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), moves to dismiss Plaintiffs' Complaint for the reasons set forth below. In support of this motion, Defendant also files the attached Memorandum in Support of Its Motion to Dismiss Plaintiffs' Complaint.

1. Plaintiffs Amarah Coleman, Alexis Smith, Taylor Tuck, Nia Oden, Sarah Livingston, Taylor Gleason, and Jacqui Grant brought claims against Divilbiss alleging the following:

- Count I, Racially Hostile Environment in Education, 42 U.S.C. §2000d (Title VI of the Civil Rights Act of 1964)
- Count II, Race Discrimination Against Right to Contract, 42 U.S.C. §1981(a) (Civil Rights Act of 1991)

- Count III, Equal Protection Violation, 42 U.S.C §1983 (Civil Rights Act of 1871)
- Count IV, Illinois Civil Right Act Violations, 740 ILCS 23/5

2. Count I of Plaintiffs' Complaint should be dismissed because Title VI precludes individual liability.

a. Plaintiffs alleged Divilbiss created a racially hostile educational environment resulting in their exclusion from participation in or deprivation of benefits of the Women's Basketball Program. Cmplt. at ¶ 36.

b. Count I must be dismissed because a Title VI claim may only stand against "a *program or activity* receiving Federal financial assistance" rather than against an individual. *See* 42 U.S.C. § 2000d; *see also Smith v. Metro. Sch. Dist.*, 128 F. 3d 1014, 1019 (7th Cir. 1997), *cert. denied*, 524 U.S. 951 (1998).

3. Counts II and III of Plaintiffs' Complaint should be dismissed due to constitutional bars and procedural flaws.

a. Plaintiffs alleged Divilbiss, acting under color of law and within the scope of his employment with the Defendant University, "denied and/or deprived [them] of [their] existing and/or expected benefit of the athletic scholarship contractual agreement." Cmplt. at ¶ 42.

b. Plaintiffs alleged Divilbiss, acting under color of law and within the scope of his employment with the Defendant University, violated their "rights, privileges and freedoms of the Fourteenth Amendment . . . including specifically the right to Equal Protection of the Laws." Cmplt. at ¶¶ 44-46.

c. Count II, Plaintiffs' Section 1981 claim, must be dismissed under Fed. R. 12(b)(6) because: Plaintiffs Gleason and Grant fail to state a claim upon which relief may

be granted; Plaintiff Smith's claim is moot; Seventh Circuit precedence and the doctrine of sovereign immunity bar Section 1981 claims against state actors; and The Board of Trustees of the University of Illinois does not consent to being sued. *See* Fed. R. Civ. P. 12(b)(6); *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 731-35 (1989); *Cannon v. University Health Sciences/The Chicago Medical School*, 710 F.2d 351, 356-57 (7th Cir. 1983).

d. Count III, Plaintiff's Section 1983 claim, must be dismissed under Fed. R. 12(b)(6) because: Plaintiffs fail to state a claim upon which relief may be granted; Plaintiff Smith's claim is moot; the doctrine of sovereign immunity bars Section 1983 claims against state actors; and The Board of Trustees of the University of Illinois does not consent to being sued. *See* Fed. R. Civ. P. 12(b)(6); *Luder v. Endicott*, 253 F.3d 1020, 1023-25 (7th Cir. 2001).

4. Count IV of Plaintiffs' Complaint must be dismissed because 740 ILCS 23/5 precludes individual liability.

a. Plaintiffs alleged Divilbiss violated the Illinois Civil Rights Act.

b. Count IV must be dismissed because individuals cannot be sued under the Illinois Civil Rights Act. *Hosick v. Chicago State Univ.*, No. 10 C 5132, 2011 WL 6337776, at *2 (N.D. Ill. Dec. 19, 2011).

c. If this court dismisses Plaintiffs' federal claims (Counts I-III), this court will lack subject matter jurisdiction and should dismiss Count IV pursuant to 28 U.S.C. § 1367(c)(3) and Fed. R. Civ. P. 12(b)(1). *Groce v. Eli Lilly & Co.*, 193 F.3d 496, 501 (7th Cir. 1999).

5. Plaintiffs have failed to plead any facts that plausibly establish race discrimination within the Women's Basketball Program—a threshold requirement under the law to sustain any of the claims alleged.

6. Plaintiffs have failed to plead any facts that plausibly establish a racially hostile environment.

WHEREFORE, Defendant, Mike Divilbiss, respectfully requests this Court dismiss all claims against him within Plaintiffs' Complaint and grant other relief as this Court deems equitable and just.

Dated: October 20, 2015

Respectfully submitted,

**MIKE DIVILBISS, Defendant**

By: /s/ Monica H. Khetarpal
One of Its Attorneys

Monica H. Khetarpal
Jody Kahn Mason
Jackson Lewis P.C.
150 North Michigan Avenue
Suite 2500
Chicago, Illinois 60601
(312) 787-4949
monica.khetarpal@jacksonlewis.com
jody.mason@jacksonlewis.com

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that on October 20, 2015, she caused the foregoing **Defendant's Motion to Dismiss Plaintiffs' Complaint** to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorney of record for Plaintiffs:

Terry A. Ekl
Patrick L. Provenzale
Tracy Stanker
Ekl, Williams & Provenzale LLC
Two Arboretum Lakes
901 Warrenville Road, Suite 175
Lisle, IL 60532
(630) 654-0045
(630) 654-0150 Facsimile
tekl@eklwilliams.com
pprovenzale@eklwilliams.com
tstanker@eklwilliams.com

/s/ Monica H. Khetarpal

4844-2543-4665, v. 1

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Tuesday, 20 October, 2015 02:45:14 PM
Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

| | | |
|---|---|---|
| Amarah Coleman, Alexis Smith, Taylor Tuck, Nia Oden, Sarah Livingston, Taylor Gleason, and Jacqui Grant, | ) | |
| Plaintiffs, | ) | Case No. 15-cv-02146 |
| v. | ) | Hon. Colin Stirling Bruce |
| The Board of Trustees of the University of Illinois Urbana-Champaign, a Body Politic and Corporate, Mike Thomas, Matt Bollant, and Mike Divilbiss, | ) | Magistrate Judge Eric I. Long |
| Defendants. | ) | |

**DEFENDANT DIVILBISS'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS**

NOW COMES Defendant, Mike Divilbiss, (hereinafter "Divilbiss"), by his attorneys, Monica H. Khetarapal, Jody Kahn Mason and Melanie I. Stewart of Jackson Lewis P.C., and hereby respectfully submits this Memorandum of Law in Support of Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Defendants The Board of Trustees of the University of Illinois ("the University"), Mike Thomas and Matt Bollant filed a Motion to Dismiss and Memorandum of Law in Support thereof ("Defendants' Memo") on October 20, 2015 (Docket No. 24). The arguments made and authorities cited in Defendants' Memo are applicable to Plaintiffs' claims against Defendant Divilbiss as well. Therefore, in the interest of efficiency, Defendant Divilbiss incorporates by reference as if fully stated herein the following sections of Defendants' Memo: Introductory Paragraphs; Factual Background; Standard of Review; Sections IA1, IB, IIA-C, IIIA-B, IVA, IVC, and V of the Argument; the Conclusion.

WHEREFORE, Defendant, Mike Divilbiss, respectfully requests this Court dismiss all claims against him within Plaintiffs' Complaint and grant other relief as this Court deems equitable and just.

Dated: October 20, 2015

Respectfully submitted,

**MIKE DIVILBISS, Defendant**

By: /s/ Monica H. Khetarpal
One of Its Attorneys

Monica H. Khetarpal
Jody Kahn Mason
Melanie I. Stewart
Jackson Lewis P.C.
150 North Michigan Avenue
Suite 2500
Chicago, Illinois 60601
(312) 787-4949
monica.khetarpal@jacksonlewis.com
jody.mason@jacksonlewis.com
melanie.stewart@jacksonlewis.com

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that on October 20, 2015, she caused the foregoing **Defendant Divilbiss's Memorandum of Law In Support of Motion to Dismiss** to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorney of record for Plaintiffs:

Terry A. Ekl
Patrick L. Provenzale
Tracy Stanker
Ekl, Williams & Provenzale LLC
Two Arboretum Lakes
901 Warrenville Road, Suite 175
Lisle, IL 60532
(630) 654-0045
(630) 654-0150 Facsimile
tekl@eklwilliams.com
pprovenzale@eklwilliams.com
tstanker@eklwilliams.com

/s/ Monica H. Khetarpal