No. 19A – 108

In the Supreme Court of the United States

Mark Thompson

Petitioner,

v.

Board of Education City of Chicago, *et al.*

Respondents.

On Petition for A Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Petition for A Writ of Certiorari

SEPARATE APPENDIX

B

SEPARATE APPENDIX B

Seventh Circuit Plaintiff-Appellant's Brief Separate Appendix A (Partial)*

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* For voluminous reasons, only relevant portions of *petitioner's* Separate Appendix A of his Seventh Circuit Brief is included with the original bates numbering and are identified in the body of the petition as having "App. B" prior to identifying the document's bates number.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARK THOMPSON,

Plaintiff,

v.

BOARD OF EDUCATION CITY OF CHICAGO, ILLINOIS STATE BOARD OF EDUCATION, NORTHSHORE UNIVERSITY HEALTHSYSTEM, HAROLD ARDELL, LINDA BROWN, FORREST CLAYPOOL, REGINALD EVANS, JANE DOE, JANE DOES MOTHER, THOMAS KRIEGER, DAN NIELSEN, JAMES SULLIVAN, CLAUDIA P. WELKE, and ALICIA WINCKLER,

Defendants.

Case No. 14-cv-6340

(consolidated with 14-cv-6838 and 14-cv-7575)

Honorable John Z. Lee

Magistrate Judge Jeffrey T. Gilbert

Jury Trial Requested

SECOND AMENDED COMPLAINT (#99)

NOW COMES the plaintiff Mark Thompson for his Second Amended Complaint against Defendants Board of Education City of Chicago, Illinois State Board of Education, NorthShore University HealthSystem, Harold Ardell, Linda Brown, Forrest Claypool, Reginald Evans, JANE DOE, JANE DOES MOTHER, Thomas Krieger, Dan Nielsen, James Sullivan, Claudia P. Welke, and Alicia Winckler, states as follows:

Nature of Complaint

1. This is an action related to retaliatory discharge under Title VII of the Civil Rights Act of 1966, as amended, 42 U.S.C. § 2000e *et seq.*; search and seizure and due process violations of the Fourth and Fourteenth Amendments, respectfully, of the United States ("U.S.") Constitution, and deprivation of rights under the Civil Rights Act of 1871, 42 U.S.C. § 1983; violations of the

Stored Communications Act, 18 U.S.C. §§ 2701 and 2703 *et seq.*; employment related discrimination and harassment on the basis of race, religion, and retaliation and related state claims for Conspiracy, Intentional Infliction of Emotional Distress, Negligent Supervision.

2. Thompson also brings forth federal actions in conjunction with state violations of the Personnel Records Review Act ("PRRA") under 820 ILCS 40/10(g) including Conspiracy to Interfere with Civil Rights (Denial of Access and Obstruction of Justice) under 42 U.S.C. §§ 1985 and 1986, and Concealment of Evidence under 42 U.S.C. § 1983; Intentional Infliction of Emotional Distress, and Declaratory and Injunctive Relief related to mental health records and unauthorized investigations conducted by the Board of Education City of Chicago and the Illinois State Board of Education in violation of both state and federal statutes.

3. Thompson seeks back pay, compensatory damages, prejudgment interest, punitive damages, medical fees, attorney fees and/or costs, reinstatement, rescindment of "Unsatisfactory" evaluation, corrected DS2 file, prospective relief, employment-related expungement of files related to retaliation and harassment, and anything else this court deems appropriate.

4. This court has jurisdiction over this controversy because it involves federal questions under Title VII of the Civil Rights Act of 1966, as amended, 42 U.S.C. §2000e, *et seq.*, violations of the U.S. Constitution under the Civil Rights Act of 1871, 42 U.S.C. § 1983, 42 U.S.C. §§ 1985 and 1986, and violations of the Stored Communications Act, 18 U.S.C. §§ 2701 and 2703 *et seq.*, Civil Action for Deprivation of Rights, 42 U.S.C. §1983, the U.S. Constitution under 28 U.S.C. §1331, Postal Matters under 28 U.S.C. §1339, and Civil remedies under 18 U.S.C. §1964. This court also has jurisdiction over common law claims under 28 U.S.C. §1367.

5. Venue is proper under 28 U.S.C. §1391(b), because the facts that gave rise to the claims occurred within the Northern District of Illinois.

Parties

6. Plaintiff Mark Thompson, an African American male, resides in Champaign County, Illinois, and was dismissed by the Board on August 16, 2013 related to an "Unsatisfactory" evaluation after filing a federal lawsuit against the Board.

7. Defendant Board of Education City of Chicago ("Board"), a body corporate and politic organized under and existing pursuant to Article 34 of the Illinois School Code under 105 ILCS 5/34-2 and 105 ILCS 5/34-18, is headquartered at 1 N. Dearborn St. #950, Chicago, IL 60602.

8. Defendant Illinois State Board of Education ("ISBE"), a body corporate and politic organized under and existing pursuing to the Illinois School Code 105 ILCS 1 *et seq.* and is headquartered at 100 N. 1st Street, Springfield, IL 62777.

9. Defendant Northshore University Health System is an Illinois not-for-profit corporation with its headquarters located in Evanston, Cook County, Illinois.

10. Defendant Harold Ardell ("Ardell") resides in Cook County, IL, and was employed as a CPS law department investigator during the relevant time period.

11. Defendant Linda Brown ("Brown") resides in Cook County, IL, and was employed by the Board as the Office of the Inspector General ("OIG") Director of Investigations during the relevant time period.

12. Defendant Forrest Claypool ("Claypool"), a Caucasian male, resides in Cook County, Illinois and is currently employed by the Board as the Chief Executive Officer ("CEO").

13. Defendant Reginald Evans ("Evans") is believed to now be residing in Arizona and was employed by Defendant Board as the Harlan principal during the relevant time period.

14. Defendant JANE DOE'S MOTHER, the mother of JANE DOE, resides in IL.

15. Defendant ("Jane Doe"), a Caucasian female whom Thompson used to privately train, resides in Illinois, was a recipient of mental health services during the relevant time period in which she made false rape claims, and was never a Board student.

16. Defendant Thomas Krieger ("Krieger") resides in Cook County and employed by Defendant Board as the Director of the Office of Employee Relations during the relevant time period.

17. Defendant Dan Nielsen ("Nielsen"), the Illinois State Board of Education Hearing Officer presiding over Thompson's "dismissal" hearing, resides in Lake County, Illinois.

18. Defendant James Sullivan ("Sullivan") resides in Cook County and was employed by Defendant Board as the Board's Inspector General during the relevant time period.

19. Defendant Dr. Claudia P. Welke ("Dr. Welke") resides in Lake County, Illinois and was the psychologist who knowingly reported false claims that Thompson raped Jane Doe.

20. Defendant Alicia Winckler ("Winckler") is a resident of Cook County and was employed as the CPS Chief Talent Officer during the relevant time period.

Relevant Facts of the Complaint

21. Thompson is a United States Army veteran (1982-1989) who obtained doctoral (2006), masters (2003), and bachelor (1995) degrees in the field of education.

22. Unrelated to employment as a teacher, Thompson began private running lessons in 1992 with Christian-based rules for middle and high school aged youths.

23. From 2001-2003 and 2005-2013, Thompson was employed as both a teacher and coach with the Board, the last assignment with Harlan High School ("Harlan").

24. During Thompson's entire employment career since 1982, Thompson had never received an "Unsatisfactory" evaluation nor been disciplined until after he filed an Equal Opportunity Employment Commission ("EEOC") charge in 2010.

25. In 2010, shortly after Harlan head football coach Keith Brookshire ("Brookshire") received a Physical Education ("PE") certificate, both Evans and Brookshire were involved with a student who made false claims against Thompson that he supplied "pills" to him.

26. The Harlan student admitted in writing to another student that both Evans and Brookshire coerced him to make false claims against Thompson under the threat of expulsion from school.

27. After a Board investigation concluded, Thompson received an "Excellent" rating evaluation.

28. A Harlan teacher later admitted to Thompson that Evans had attempted to recruit her to file false sexual assault claims against Thompson during the same time period related to the "pills."

29. In July 2010, Thompson filed a complaint against Evans and Brookshire to the Board.

30. The next day, Evans reassigned Thompson to U.S. History, a position he was not highly qualified for, prompting Thompson to file an EEOC charge against the Board for cutting both male PE positions at Harlan.

31. The Board retaliated by suspending Thompson for two weeks pay and a Warning Resolution, despite receiving an "Excellent" evaluation after the "pill" investigation and was told no action would be taken against him.

32. In May 2010, the Board declined to investigate email related stalking claims made by Jane Doe to Deerfield Police Department ("PD") counselor Stephanie Locascio.

33. Thompson filed his first lawsuit against the Board in December 2010, which was later removed to federal court in March 2011 (11-cv-1712), claiming retaliation under Title VII.[1]

34. In retaliation for Thompson filing the lawsuit against the Board in December 2010, the Board solicited Jane Doe through mother . to make false sexual assault claims against

[1] The Board settled 11-cv-1712 after Judge Guzman sided with Thompson when denying the Board's motion to dismiss citing the Board had given Thompson an "Excellent" evaluation rating after the "pill" investigation concluded but only initiated disciplinary action after Thompson filed an EEOC charge in the next school year.

Thompson to her therapists to enable the Board to subpoena Thompson's AOL email account to determine if Thompson had stalked Jane Doe in May 2010.

35. After the Department of Child and Family Services ("DCFS") in Lake County refused to investigate Jane Doe's false rape claims in April 2011 DOES NOM Jane Doe, and the Board solicited Jane Doe's psychologist Dr. Welke to file the false rape report to Cook County DCFS and make it appear that Jane Doe was a student at Harlan so DCFS would investigate at Harlan.

36. When a DCFS investigator attempted to notify Thompson of Jane Doe's rape claims in May 2011, Board officials obstructed the DCFS investigation by making false claims Thompson was unavailable, stole and opened his sealed mail from DCFS, failed to contact police, failed to remove Thompson from the classroom for student safety reasons, and never notified Thompson of the rape claims, all in an effort to keep the allegations secret from Thompson.

37. Dr. Welke refused to call police as instructed by DCFS.

38. Therapists Locascio and Dr. Welke, and Deerfield HS principal Audris Griffith all voluntary provided the Board confidential information related to Jane Doe's counseling or mental health records as part of the Board's conspiracy to violate Thompson's rights under Title VII.

39. Jane Doe signed an authorization form to waive her mental health privileges in support of the Board's conspiracy to violate Thompson's civil rights under Title VII.

40. In June 2011, DCFS indicated Jane Doe's rape claims were "Unfounded."

41. In August 2011, the Board subpoenaed Thompson's AOL email records without his knowledge or permission after soliciting Jane Doe to make a false rape claim.

42. AOL provided the Board with subscriber information and based on information and belief also attorney-client privileged emails from January 2009 to December 2010.

43. Thompson's email account was unrelated to Jane Doe's stalking claims.

44. On January 24, 2012, Thompson became aware of the DCFS report made by Dr. Welke that Jane Doe claimed she was raped as a 17 year old under the guise she was a student at Harlan.

45. In January 2012, the Board interviewed Thompson to obtain his March 2010 training schedule so Jane Doe and MOM could use it to make a false police report so Thompson could get arrested and then terminated in retaliation for filing a federal lawsuit.

46. In February 2012 Jane Doe and MOM filed a false rape report to the Vernon Hills PD based on a 6-8 pm Sun, Tue, Thu training schedule Thompson had earlier provided to Brown.

47. However, Thompson had forgotten that in February 2010 he changed Jane Doe's outdoor training schedule to daytime hours from approximately 4:30 pm to 6:30 pm at the latest.

48. Thompson provided the Vernon Hills PD indisputable I-PASS Toll records that he never practiced with Jane Doe at night on any day in 2010 and that these false rape claims were related to his filing a federal lawsuit against the Board.

49. Jane Doe told the Vernon Hills PD that her mother made her file the police report and never wanted to follow through with charges against Thompson, which she didn't.

50. The Lake County State's Attorney declined to press any charges against Thompson.

51. On May 21, 2012, Evans gave Thompson an "Unsatisfactory" evaluation prior to his second post-observation conference held on May 23, 2012, a Board-CTU contract violation.

52. After Thompson received his "Unsatisfactory" evaluation, the Board removed him from the classroom in June 2012 and was suspended without pay on September 13, 2012.

53. The Board allowed Thompson to remain teaching students in the classroom for over a year, despite an ongoing rape investigation because the Board knew the rape claims were false and the Board needed Thompson to have an "Unsatisfactory" evaluation as an alternative to terminate his employment with the Board in retaliation for filing a Title VII lawsuit.

54. In an effort to avoid a Board-CTU contract violation in violating Thompson's Title VII rights, Evans and Krieger falsely asserted in a grievance response dated January 7, 2013 that Thompson's second post-observation conference was held May 21, 2012, not May 23, 2012.

55. Evans had testified falsely that he inadvertently signed the wrong date May 23, 2012, despite Thompson's evaluation form showing it was clearly printed out on "5/23/2012".

56. Krieger unlawfully ordered Thompson's "DS2" file to alter the date of his second post-observation conference to May 21, 2012 from May 23, 2012 so they could use the "Unsatisfactory" evaluation to terminate his employment for budgetary reasons and make it appear the termination wasn't pre-textual in retaliation for Thompson filing a Title VII lawsuit.

57. Krieger intentionally ignored indisputable evidence of the evaluation's printout date of "5/23/2012" at the bottom of Thompson's evaluation form that ascertains Evans testified falsely that he signed the wrong date May 23, 2012 instead of May 21, 2012.

58. When Thompson was suspended without pay on September 13, 2012 relating to Jane Doe's rape claims to DCFS, the Board refused to turn over *any* related investigatory records.

59. On February 14, 2013, citing the Personnel Record Review Act, 820 ILCS 40/10(g), federal Judge John Tharp stated that investigative files are a part of an employee's personnel file once disciplinary action is taken and directed the Board and Sullivan to turn over all documents related to the OIG investigative file related to Jane Doe's rape claims.

60. On February 25, 2013, the Board and Sullivan provided Thompson investigative records that were manipulated, altered, destroyed, or withheld in defiance of Judge Tharp's order.

61. The Board failed to turn over an original audio recording of a May 25, 2011 interview made at the Deerfield PD station with Jane Doe; Ardell conspiring with Jane Doe and MOM to redo the recording at Board headquarters to counter Thompson's Title VII claims.

62. Investigative records were also manipulated to cover up retaliation to make it appear Jane Doe told friends about her rape claims in June *2010* as opposed to it actually occurring in May 2011 – after he filed a Title VII lawsuit in December 2010.

63. The Board also manipulated responses from Griffith and Locascio against Thompson.

64. The Board also withheld documents related to their contacts with Locascio and Welke.

65. On March 12, 2013, Thompson notified the Board's then General Counsel James Bebley *via* email of the Board's legal obligation to expunge any record identifying or gathered as a result of the DCFS report and included the "unfounded" DCFS report as an attachment.

66. Thompson had previously propounded a copy of the DCFS report in-person to two Board attorneys at Board headquarters on October 23, 2012.

67. On April 2, 2013, despite the threat of serious sanctions by federal Judge Jeffrey Cole, the Board and Sullivan again provided additional selective investigatory records; defiantly withholding portions of Jane Doe's subpoenaed phone records, notes, documents, and emails related to all contacts with Dr. Welke, Locascio, JD'S MOM , Jane Doe, and others.

68. On August 16, 2013, the Board used the illegally altered evaluation or DS2 file to terminate Thompson's employment in retaliation for Thompson's filing a Title VII lawsuit.

69. In continued retaliation for filing a Title VII lawsuit, the Board filed dismissal charges against Thompson in an ISBE "dismissal" hearing despite no longer employing him.

70. On December 9, 2013, the Board claimed the ISBE "dismissal" hearing was no longer a dismissal hearing but rather a hearing to determine if he would be entitled to his "back pay."

71. After Thompson filed a lawsuit in Lake County which was later dismissed on pleading standards, the Board retaliated by conspiring with Jane Doe and . Mom to continue Jane Doe's false rape claims against Thompson in the ISBE "back pay" hearing in Cook County.

72. During the "back pay" hearing, Jane Doe and MOM . provided false testimony against Thompson related to his private training with Jane Doe in support of her false rape claims.

73. During the ISBE "back pay" hearing on December 9, 2013, Jane Doe stated on direct examination by the Board's attorney Ed Wong that the rape incident had a negative impact on her emotional well-being and sought therapy with Locascio, Welke, and others.

74. Further, Jane Doe admitted at Thompson's "back pay" hearing that she previously lied to Ardell about details relating to her rape claims after telling numerous different versions.

75. Jane Doe also admitted to additional contacts with the Board that the Board never disclosed in defiance of court orders from federal judges Tharp and Cole.

76. Jane Doe also had to change her "back pay" hearing testimony after an inspection of Thompson's car made it obvious that the rape story she testified to was physically impossible.

77. Brown also admitted that no one from the Board contacted the Cook County States Attorney as required by the Inspector General statute before investigating Jane Doe's rape claim.

78. In April 2014, Thompson filed for a Right to Sue notice for the retaliatory discharge related to his "Unsatisfactory" evaluation, receiving it on May 29, 2014, and also for the dismissal hearing that continues as a "back pay" hearing after being terminated.

79. The EEOC issued Thompson another right to sue letter after the Board admitted in a U.S Court of Appeals Seventh Circuit filing they are continuing the ISBE "dismissal" hearing against Thompson under Forrest Claypool to determine whether or not Thompson abused Jane Doe when she was 17-years old in March 2010, despite no longer employing him since 2013, despite the DCFS report which the Board initiated their investigation was "unfounded," despite Jane Doe never being a student with the Board, and despite never contacting the Cook County States Attorney as required by the Inspector General statute. (Exhibit A).

COUNT I
RETALIATORY DISCHARGE IN VIOLATION OF 42 U.S.C. § 2000e *et seq.*
Against Defendant Board

80. Thompson restates paragraphs 1 through 79 as though fully stated herein.

81. The Board had employed Thompson during the relevant time period.

82. During Thompson federal lawsuit against the Board, Thompson suffered additional adverse retaliatory employment action when the Board refused to honor his PE teaching preference and issued an "Unsatisfactory" evaluation in conjunction with a subject he was unqualified to teach in violation of the Board-CTU contract, failed to initiate the remediation process in violation of the Board-CTU contract, and then illegally altered the post-conference date prior to unlawfully terminating his employment as a tenured teacher on August 16, 2013.

83. The Board acted with malice and reckless disregard for Thompson's rights when they terminated his employment using falsely altered information related to his evaluation and also after never initiating any remediation due process as required by the Board-CTU contract.

84. Thompson was damaged when the Board terminated his employment after information related to his evaluation was illegally and falsely altered, and also without remediation due process, in retaliation for Thompson's ongoing federal lawsuit 11-cv-1712.

85. Thompson has been damaged thereby and seeks reinstatement, back pay, interest, compensatory damages, emotional distress damages, attorney fees and/or costs, and any other relief the court deems appropriate.

COUNT II
VIOLATION OF 42 U.S.C. § 1983 – 14TH AMENDMENT TO U.S. CONSTITUTION
Against Defendants Evans and Krieger

86. Thompson restates paragraphs 1 through 79 as though fully stated herein.

87. The 14th Amendment to the U.S. Constitution secures certain rights, such as the right to due process for U.S. citizens.

88. 42 U.S.C. § 1983 provides a mechanism for the private enforcement of rights conferred by the U.S. Constitution and federal statutes.

89. The Board employed Thompson as a tenured teacher until August 16, 2013, after Krieger illegally ordered information related to his "Unsatisfactory" evaluation to be altered allowing the Board to subsequently terminate his employment.

90. Thompson's status as a tenured teacher was recognized as a property interest.

91. Evans and Krieger were acting under the color of law as employees of the Board and were both aware of Thompson's ongoing federal retaliation lawsuit against the Board.

92. Evans entered Thompson's "Unsatisfactory" rating on May 21, 2012 prior to his required second post-observation conference – a violation of the Board-CTU contract.

93. Evans correctly entered Thompson's required second post-observation conference date as May 23, 2012, two days after he entered Thompson's "Unsatisfactory" rating.

94. In December 2012, Evans proffered false testimony during Thompson's grievance hearing when he claimed he signed the wrong second post-observation conference date as May 23, 2012, instead of May 21, 2012.

95. No such post-observation conference occurred with Thompson on May 21, 2012; the printout date at the bottom of Thompson's evaluation reads "5/23/2012", not "5/21/2012".

96. Further, one of the statements Evans wrote on Thompson's evaluation was related to a manufactured incident outside his classroom on May 22, 2012 and would have been captured on the school's security cameras Thompson told the Board they were obligated to retain.

97. Despite Krieger having clear and undisputable evidence that Thompson's second post-observation conference was May 23, 2012, Krieger directed Thompson's DS2 file to be altered to falsely reflect his second post-observation date was May 21, 2012.

98. After Thompson's DS2 file was altered, the Board used the falsely altered "Unsatisfactory" evaluation to unlawfully terminate his employment on August 16, 2013.

99. Evans' deliberate false testimony regarding Thompson's second post-observation evaluation conference date violated his due process rights under the 14th Amendment of the U.S. Constitution when the Board subsequently used the illegally altered and false information to terminate his employment.

100. Krieger's deliberate suppression of favorable evidence towards Thompson, use of defendant Evans' false testimony, and subsequent order to falsify Thompson's DS2 file related to his second post-observation evaluation conference date, violated Thompson's due process rights under the 14th Amendment of the U.S. Constitution when the Board subsequently used the altered "Unsatisfactory" evaluation to terminate his employment.

101. Defendants acted with malice and reckless disregard for Thompson's rights related to altering dates on his evaluation so the Board could terminate Thompson for budgetary reasons.

102. Thompson was damaged when the Board terminated his employment after illegally altering and using the altered file related to Thompson's evaluation to terminate his employment.

103. Thompson has been damaged thereby and seeks rescindment of the "Unsatisfactory" evaluation, reinstatement, back pay, interest, compensatory and punitive damages, emotional distress damages, hospital expenses, attorney fees and/or costs, and any other relief the court deems appropriate including a corrected DS2 file.

COUNT III
VIOLATION OF 42 U.S.C. § 1983 – 4TH AMENDMENT TO U.S. CONSTITUTION
Against Defendant Sullivan

104. Thompson restates paragraphs 1 through 79 as though fully stated herein.

105. The 4th Amendment to the U.S. Constitution secures certain rights, such as unreasonable searches and seizures.

106. 42 U.S.C. § 1983 provides a mechanism for the private enforcement of rights conferred by the Constitution and federal statutes.

107. Sullivan was employed by the Board and acting under the color of law.

108. In July 2011, while Thompson had an ongoing federal lawsuit against the Board, Sullivan subpoenaed Thompson's privileged emails from his private AOL, Inc. ("AOL") account including "Mark A. Thompson" and "drmarkthompson@aol.com", the account he used to communicate with his federal lawsuit attorneys and CTU representatives between January 1, 2009 and December 31, 2010, without his knowledge or consent. (Exhibit B)

109. No complaint had ever been made in relation to Thompson's private email account including "Mark A. Thompson" and drmarkthompson@aol.com.

110. In a response to the Attorney Registration and Disciplinary Commission ("ARDC") on August 6, 2014, Sullivan admitted he subpoenaed Thompson's private emails based on "Thompson's prolific texting and email use that became known to the OIG..." – an excuse completely unrelated to any criminal rape investigation, staged or not.

111. Sullivan had no legal authority or statutory right to subpoena and eavesdrop on Thompson's privileged private AOL email communications to his federal lawsuit attorneys or CTU representatives without his knowledge or prior consent, criminal investigation or not.

112. Thompson had a reasonable expectation of privacy concerning his confidential communications with his federal lawsuit attorneys, CTU representatives, and any other individual he privately communicated with against the Board or with anyone else.

113. AOL responded to Sullivan's subpoena by divulging confidential information from Thompson's private AOL account that was not publicly accessible.

114. Thompson has been damaged and thereby seeks injunctive relief to fully disclose all documents received from AOL and expunge all documents from his personnel file obtained from Sullivan's unlawful search and seizure of his private AOL email account and any other relief this court finds appropriate including punitive damages.

COUNT IV
VIOLATION OF 18 U.S.C. § 2703 *et seq.* – STORED COMMUNICATIONS ACT
Against Defendants Board and Sullivan

115. Thompson restates paragraphs 1 through 79 as though fully stated herein.

116. In July 2011, while Thompson had an ongoing federal lawsuit, the Board and Sullivan subpoenaed his privileged emails from his private AOL account including "Mark A. Thompson" and "drmarkthompson@aol.com", the account he used to communicate with his federal lawsuit attorneys and CTU representatives between January 1, 2009 and December 31, 2010, without his knowledge or consent as required by the Stored Communications Act.

117. No complaint had ever been made in relation to Thompson's private AOL email account including "Mark A. Thompson" and "drmarkthompson@aol.com".

118. In a response to the ARDC on August 6, 2014, Sullivan admitted he subpoenaed Thompson's private emails based on his "prolific texting and email use that became known to the OIG..." – an excuse completely unrelated to any criminal rape investigation, staged or not.

119. Defendants had no legal authority or statutory right to subpoena and eavesdrop on Thompson's privileged private AOL email communications to his federal lawsuit attorneys or CTU representatives without his knowledge or prior consent, criminal investigation or not.

120. Thompson had a reasonable expectation of privacy concerning his confidential communications with his federal lawsuit attorneys, CTU representatives, and any other individual he privately communicated with against the Board or with anyone else.

121. AOL responded to defendants' subpoena by divulging confidential information from Thompson's private AOL account that was not publicly accessible.

122. Defendants willfully and intentionally exceeded their authorization to access Thompson's private AOL accounts to obtain electronic communications while in electronic storage.

123. Thompson has been damaged and thereby seeks punitive damages, costs, and injunctive relief to fully disclose all documents and expunge them from his personnel file obtained from defendants' unlawful search and seizure of his private AOL email account.

COUNT V
VIOLATION OF 18 U.S.C. § 2701 *et seq.* – STORED COMMUNICATIONS ACT
Against Defendants Board and Sullivan

124. Thompson restates paragraphs 1 through 79 as though fully stated herein.

125. In July 2011, while Thompson had an ongoing federal lawsuit, the Board and Sullivan subpoenaed Thompson's privileged emails from his private AOL account including "Mark A. Thompson" and "drmarkthompson@aol.com", the account he used to communicate with his federal lawsuit attorneys and CTU representatives between January 1, 2009 and December 31, 2010, without his knowledge or consent as required by the Stored Communications Act.

126. No complaint had ever been made in relation to Thompson's private AOL email account including "Mark A. Thompson" and "drmarkthompson@aol.com".

127. In a response to the ARDC on August 6, 2014, Sullivan admitted he subpoenaed Thompson's private emails based on his "prolific texting and email use that became known to the OIG..." – an excuse completely unrelated to any criminal rape investigation, staged or not.

128. Defendants had no legal authority or statutory right to subpoena and eavesdrop on Thompson's privileged private AOL email communications to his federal lawsuit attorneys or CTU representatives without his knowledge or prior consent, criminal investigation or not,

129. Thompson had a reasonable expectation of privacy concerning his confidential communications with his federal lawsuit attorneys, CTU representatives, and any other individuals he privately communicated with against the Board or with anyone else.

130. AOL responded to defendants' subpoena by divulging confidential information from Thompson's private AOL account that was not publicly accessible.

131. Defendants willfully and intentionally exceeded their authorization to access Thompson's private AOL accounts to obtain electronic communications while in electronic storage.

132. Thompson has been damaged and thereby seeks punitive damages, costs, and injunctive relief to fully disclose all documents and expunge them from his personnel file obtained from defendants' unlawful search and seizure of his private AOL email account.

COUNT VI
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
Against Defendants Board (as *respondeat superior*), Evans, and Krieger

133. Thompson restates paragraphs 1 through 79 as though fully stated herein.

134. The Board had employed Thompson during the relevant time period.

135. The Board employed Evans and Krieger during the relevant time period.

136. Evans's willful and wanton false testimony related to altering files related to Thompson's "Unsatisfactory" evaluation was extreme and outrageous intentional conduct, especially in light of Thompson's ongoing federal lawsuit against the Board and Evans.

137. Krieger's willful and wanton ignorance of indisputable and favorable evidence on Thompson's behalf and subsequent order to alter his DS2 file to falsely reflect when his second post-observation conference date occurred was extreme and outrageous intentional conduct, especially in light of Thompson's ongoing federal lawsuit against the Board and Evans.

138. The Board's subsequent use of a knowingly falsified DS2 file to terminate Thompson's employment was extreme and outrageous intentional conduct.

139. The Board's illegal discharge of Thompson's employment caused him severe emotional damage to include depression, stress, and loss of sleep from his inability to provide for himself and his family.

140. The Board, Evans, and Krieger's extreme and outrageous intentional conduct was foreseeable that it would lead to cause Thompson to suffer humiliation, mental anguish, and emotional and physical distress when the Board terminated his employment.

141. Thompson has been damaged thereby and seeks rescindment of the "Unsatisfactory" evaluation, reinstatement, back pay, interest, compensatory damages, emotional distress damages, hospital expenses, attorney fees and/or costs, and any other relief the court deems appropriate including a corrected DS2 file.

COUNT VII
NEGLIGENT SUPERVISION
Against Defendant Board

142. Thompson restates paragraphs 1 through 79 as though fully stated herein.

143. The Board had employed Thompson during the relevant time period.

144. The Board employed Krieger during the relevant time period.

145. After Thompson received an "Unsatisfactory" evaluation in May 2012, Krieger ignored indisputable and favorable evidence on Thompson's behalf before ordering a date on his evaluation to be falsified in his DS2 file in January 2013 to enable the Board to terminate his employment in August 2013 was willful and wanton outrageous conduct, especially in light of knowing Thompson had an ongoing federal lawsuit against defendant Board.

146. At all relevant times, the Board had a duty to train and supervise its employees, including but not limited to ensuring its employees do not falsify personnel file documents for any reason, especially when that employee has pending Title VII claims against them in federal court.

147. At all relevant times, the Board failed to use reasonable case in its training and supervision of their respective employees.

148. The Board's conduct was willful and wanton.

149. The Board's breach of its supervisory duty to their respective employees overseeing their conduct in falsifying his DS2 file in discharging Thompson from his employment was the proximate cause of the injuries and loss suffered by Thompson when he was unlawfully terminated from his employment.

150. Thompson has been damaged thereby and seeks reinstatement, back pay, interest, compensatory damages, emotional distress damages, hospital expenses, attorney fees and/or costs, and any other relief the court deems appropriate including a corrected DS2 file.

COUNT VIII
VIOLATIONS OF THE PERSONNEL RECORD REVIEW ACT ("PRRA")
Against Defendants Board, Claypool, and Winckler

151. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

152. On September 13, 2012, Thompson was suspended without pay until August 16, 2013.

153. In response to two federal court orders citing the PRRA on February 14 and April 2, 2013, the Board defiantly withheld investigatory records relating to Thompson's suspension without pay, and most of the records they provided were either manipulated or altered.

154. On May 16, 2013, amongst a written request in person at Board headquarters, Thompson emailed Winckler of his request to provide all investigatory records that were being withheld by the Board pursuant to the PRRA.

155. The Personnel Record Review Act pursuant to 820 ILCS 40/10(g) states:

> Sec. 10. Exceptions. The right of the employee or the employee's designated representative to inspect his or her personnel records does not apply to:
>
> (g) Investigatory or security records maintained by an employer to investigate criminal conduct by an employee or other activity by the employee which could reasonably be expected to harm the employer's property, operations, or business or could by the employee's activity cause the employer

financial liability, *unless and until the employer takes adverse personnel action based on information in such records.* [emphasis added].

156. Further, the Personnel Record Review Act pursuant to 820 ILCS 40/2 states:

> Sec. 2. Open Records. Every employer shall, upon an employee's request which the employer may require be in writing on a form supplied by the employer, permit the employee to inspect any personnel documents which are, have been or are intended to be used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action, except as provided in Section 10. The inspection right encompasses personnel documents in the possession of a person, corporation, partnership, or other association having a contractual agreement with the employer to keep or supply a personnel record. An employee may request all or any part of his or her records, except as provided in Section 10. The employer shall grant at least 2 inspection requests by an employee in a calendar year when requests are made at reasonable intervals, unless otherwise provided in a collective bargaining agreement. The employer shall provide the employee with the inspection opportunity within 7 working days after the employee makes the request or if the employer can reasonably show that such deadline cannot be met, the employer shall have an additional 7 days to comply. The inspection shall take place at a location reasonably near the employee's place of employment and during normal working hours. The employer may allow the inspection to take place at a time other than working hours or at a place other than where the records are maintained if that time or place would be more convenient for the employee. Nothing in this Act shall be construed as a requirement that an employee be permitted to remove any part of such personnel records or any part of such records from the place on the employer's premises where it is made available for inspection. Each employer shall retain the right to protect his records from loss, damage, or alteration to insure the integrity of the records. If an employee demonstrates that he or she is unable to review his or her personnel record at the employing unit, the employer shall, upon the employee's written request, mail a copy of the requested record to the employee.

157. Irrespective of pending lawsuits or ongoing litigation, the Board and Winckler were required to comply within seven working days of Thompson's PRRA request for all investigatory records related to his suspension without pay and this defiance continues today.

158. Further, 820 ILCS 40/13 states:

> An employer shall not gather or keep a record identifying an employee as the subject of an investigation by the Department of Children and Family Services if the investigation by the Department of Children and Family Services resulted in an unfounded report as specified in the Abused and Neglected Child Reporting Act.
>
> An employee upon receiving written notification from the Department of Children and Family Services that an investigation has resulted in an unfounded report shall take the written notification to his or her employer and have any record of the investigation expunged from his or her employee record.

159. A May 3, 2011 DCFS report related to Jane Doe's false sexual assault allegations against Thompson had been indicated as "unfounded" on June 10, 2011.

160. Thompson first learned of the existence of a DCFS investigation on January 24, 2012 and received a copy of the DCFS report in February 2012.

161. Thompson notified the Board's General Counsel James Bebley and several other Board attorneys *via* email on March 12, 2013, which included the complete "unfounded" DCFS report as an attachment, of the Board's legal obligation to expunge any record identifying or gathered as a result of the DCFS report.

162. Thompson had previously propounded a copy of the DCFS report in-person to two Board attorneys at Board headquarters on October 23, 2012.

163. However, the Board refused to expunge any records despite propounding copies of the "unfounded" DCFS investigation upon defendants and notifying them of their legal obligation to expunge all records identifying Thompson as the subject of a DCFS investigation, including records subsequently gathered from the DCFS report designated later as "unfounded."

164. In fact, the Board continued to investigate, gather, and maintain documents related to the "unfounded" DCFS report and later used them to suspend Thompson without pay pending the conclusion of the ISBE "dismissal" hearing, still pending despite the fact the Board has no longer employed Thompson since August 2013.

165. Further, the Board placed two hearsay statements from a student and mother without Thompson's knowledge that cast negatively on his teaching performance that the Board and Winckler refuse to remove in violation of the Board-CTU contract.

166. As required by the PRRA irrespective of ongoing litigation or potential litigation, Thompson filed a complaint with the Illinois Educational Labor Relations Board relating to the

above personnel file violations and obtained authorization to file judicial action to seek correcting the violations. (Exhibit C).

167. The Board recently admitted in the U.S. Federal Court of Appeals 7th Circuit and other legal filings that Claypool is will continue to pursue charges against Thompson in an ISBE "dismissal" hearing related to the "unfounded" rape claims, despite no longer employing Thompson.

168. Wherefore, Thompson prays for the following relief:

a. Enter a declaratory judgment that defendants violated the Personnel Record Review Act pursuant to 820 ILCS 40;

b. Enter an order that directs the defendants to permanently expunge the documents associated with paragraphs 159 through 163 from Thompson's personnel file.

c. Enter an order that requires the Board to immediately turn over all investigatory records related to his suspensions without pay.

d. Enter an order that requires the Board and Winkler to expunge all records that identifies Thompson as the subject of a DCFS investigation.

e. Enter an order that requires defendants to expunge all records subsequently gathered from stealing, unsealing, and redisclosing Thompson's confidential DCFS mail identifying him as the subject of a DCFS investigation.

f. Enter an order that requires the Board and Winkler to expunge all records related to and subsequently gathered upon knowledge the DCFS report was indicated as "unfounded."

g. Enter such other and further relief as deemed appropriate by the Court.

COUNT IX
CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS IN VIOLATION OF 42 U.S.C. § 1985(2) – DENIAL OF ACCESS
Against Defendants Ardell, Brown, and Sullivan

169. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

170. On September 13, 2012, Thompson, who is African-American or "black," was suspended without pay.

171. Ardell and Brown traveled with others the year prior from Cook County to Lake County to obtain and manipulate false evidence in conspiracy against Thompson because he was black.

172. Defendants took advantage of Jane Doe's mental health issues to conspire with her to make false claims in various legal proceedings, investigative interviews, and counseling sessions, that Thompson raped her in March 2010 when she was 17-years old because he was "black."

173. In defiant response to two federal court orders, the Board turned over only partial investigatory records from Ardell, Brown, and Sullivan, most of which were altered.

174. Sullivan failed to turn over at least 100 documents for Thompson's "dismissal" or "back pay" hearing after being served with an administrative subpoena.

175. At some point after February 2012, Ardell, Brown, and Sullivan conspired with Jane Doe to re-record a previously recorded interview in May 2011 of her rape claims against Thompson.

176. Under the color of law as employees of the Board, Ardell, Brown, Sullivan and others entered into express and/or implied agreements, understandings, or meetings of the minds among themselves for the purpose of impeding, hindering, obstructing, and defeating the due course of justice in the state of Illinois, either directly or indirectly, with the intent to deny Thompson the equal protection of the laws, by denying Thompson access to all exculpatory and accurate investigatory records in their possession relating to his suspension without pay in retaliation for filing a federal lawsuit because Thompson was black.

177. Ardell, Brown, and Sullivan's actions evidenced a reckless and callous disregard for, and deliberate indifference to, Thompson's constitutional rights because he was black and also part

of a broader scheme to eliminate black teachers from employment with the Board after a federal desegregation consent decree was scrapped in September 2009 that had afforded black teachers additional employment protections for nearly 30 years.

178. Since the consent decree was vacated in 2009, the loss of black teachers in the CPS has diminished significantly by about 30% from 2008 to 2015.

179. The Board recently admitted that has been using a teacher screening process since 2012 to discriminate against black teachers from employment.

180. As a direct and foreseeable consequence of this conspiracy, Thompson was deprived of his rights under the 14th Amendment of the U.S. Constitution because he was black.

181. As a direct and foreseeable consequence of these deprivations, Thompson has suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, irreparable harm to his reputation, and denial of the opportunity to seek redress through the court system against potential defendants.

182. Thompson seeks compensatory damages, punitive damages, declaratory and injunctive relief requiring defendants turn over to all investigatory records, accurate, and anything else this court deems appropriate.

COUNT X
CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS IN VIOLATION OF 42 U.S.C. § 1985(3) – OBSTRUCTION OF JUSTICE
Against Defendants Ardell, Brown, and Sullivan

183. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

184. On September 13, 2012, Thompson, who is African-American or "black," was suspended without pay.

185. Ardell and Brown traveled with others the year prior from Cook County to Lake County to obtain and manipulate false evidence in conspiracy against Thompson because he was black.

186. Defendants took advantage of Jane Doe's mental health issues to conspire with her to make false claims in various legal proceedings, investigative interviews, and counseling sessions, that Thompson raped her in March 2010 when she was 17-years old because he was "black."

187. In defiant response to two federal court orders, the Board turned over only partial investigatory records from Ardell, Brown, and Sullivan, most of which were altered.

188. Sullivan failed to turn over at least 100 documents for Thompson's dismissal hearing after being served with an administrative subpoena.

189. At some point after February 2012, Ardell, Brown, and Sullivan conspired with Jane Doe to re-record a previously recorded interview in May 2011 of her rape claims against Thompson.

190. Under the color of law as employees of the Board, Ardell, Brown, Sullivan and others entered into express and/or implied agreements, understandings, or meetings of the minds among themselves for the purpose of impeding, hindering, obstructing, and defeating the due course of justice in the state of Illinois, either directly or indirectly, with the intent to deny Thompson the equal protection of the laws, by denying Thompson access to all exculpatory and accurate investigatory records in their possession relating to his suspension without pay in retaliation for filing a federal lawsuit because Thompson was black.

191. Ardell, Brown, and Sullivan's actions evidenced a reckless and callous disregard for, and deliberate indifference to, Thompson's constitutional rights because he was black and also part of a broader scheme to eliminate black teachers from employment with the Board after a federal desegregation consent decree was scrapped in September 2009 that had afforded black teachers additional employment protections for nearly 30 years.

192. Since the consent decree was vacated in 2009, the loss of black teachers in the CPS has diminished significantly by about 30% from 2008 to 2015.

193. As a direct and foreseeable consequence of this conspiracy, Thompson was deprived of his rights under the 14th Amendment of the U.S. Constitution because he was black.

194. The Board recently admitted that has been using a teacher screening process since 2012 to discriminate against black teachers from employment.

195. As a direct and foreseeable consequence of these deprivations, Thompson has suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, irreparable harm to his reputation, and denial of the opportunity to seek redress through the court system against potential defendants.

196. Thompson seeks compensatory damages, punitive damages, declaratory and injunctive relief requiring defendants turn over to Thompson all investigatory records, accurate, and anything else this court deems appropriate.

COUNT XI
CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS IN VIOLATION OF 42 U.S.C. § 1986 – DENIAL OF ACCESS AND OBSTRUCTION OF JUSTICE
Against Defendant Board

197. Thompson incorporates paragraphs 1-79 and 169-196 as though fully set forth herein.

198. The Board and its supervising employees acting under color of law had prior knowledge of the wrongs conspired to be committed by Ardell, Brown, and Sullivan.

199. The Board and its supervising employees acting under color of law had the power to prevent or aid in preventing the commission of the wrongs conspired to be committed by Ardell, Brown, and Sullivan, and which by reasonable diligence could have been prevented, but they neglected and/or refused to exercise such power.

200. As a direct and proximate result of the neglect and/or refusal of the Board and its supervising employees acting under color of law to prevent or to aid in preventing the

commission of the wrongs conspired to be committed by Ardell, Brown, and Sullivan. Thompson suffered injuries and damages as alleged herein.

201. The Board and its supervising employees actions evidenced a reckless and callous disregard for, and deliberate indifference to, Thompson's constitutional rights because he was black.

202. As a direct and foreseeable consequence of this conspiracy, Thompson was deprived of his rights under the 14th Amendment to the U.S. Constitution because he was black.

203. As a direct and foreseeable consequence of these deprivations, Thompson has suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, irreparable harm to his reputation, and denial of the opportunity to seek redress through the court system against potential defendants.

204. Thompson seeks compensatory damages, punitive damages, declaratory and injunctive relief requiring defendants turn over all investigatory records, and anything else this court deems appropriate.

COUNT XII
CONCEALMENT OF EVIDENCE IN VIOLATION OF 42 U.S.C. § 1983
Against Defendants Ardell, Board, Brown, and Sullivan

205. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

206. On May 4, 2011, Board employees confiscated Thompson's sealed confidential mail from DCFS intended to afford him notice of Doe's sexual assault allegations and to request an interview as part of a statutorily required investigation.

207. On September 13, 2012, Thompson, an African American, was suspended without pay.

208. In response to two federal court orders in February and April 2013, the Board defiantly turned over only partial investigatory records in the possession of Ardell, Brown, and Sullivan.

209. Sullivan failed to turn over at least 100 documents in Thompson's dismissal hearing in December 2013 as part of a personnel file record request.

210. Brown and Jane Doe admitted under oath at Thompson's dismissal hearing that there were contacts during the investigation that were not accounted for in the investigative file the Board provided in response to personnel file requests and federal court orders.

211. Under the color of law as employees of the Board, Ardell, Brown, Sullivan, and others entered into express and/or implied agreements, understandings, or meetings of the minds among themselves for the purpose of impeding, hindering, obstructing, and defeating the due course of justice in the state of Illinois, either directly or indirectly, with the intent to deny Thompson the equal protection of the laws, by denying Thompson access to all exculpatory investigatory records in its possession relating to his suspensions without pay in retaliation for filing a federal lawsuit and because Thompson was black.

212. Ardell, Brown, and Sullivan's actions evidenced a reckless and callous disregard for, and deliberate indifference to, Thompson's constitutional rights because he was black and also part of a broader scheme to eliminate black teachers from employment with defendant Board after a federal desegregation consent decree was scrapped in September 2009 that had afforded black teachers additional employment protections for nearly 30 years.

213. Since the consent decree was vacated in 2009, the loss of black teachers in the CPS has diminished significantly by about 30% from 2008 to 2015.

214. The Board recently admitted that has been using a teacher screening process since 2012 to discriminate against black teachers from employment.

215. The Board treated similarly situated white employees differently by not staging false rape complaints against them, or subsequently withholding or falsifying exculpatory evidence to

obstruct them from obtaining judicial relief, or obstructing them from defending themselves in an employment discharge hearing including stealing their personal mail.

216. The Board treated similarly situated white employees differently who had DCFS complaints filed against them by not engaging in conduct including stealing their sealed personal mail to obstruct DCFS from conducting an investigation that likely would have uncovered evidence that the Board was involved in staging the false rape allegations.

217. The Board treated employees who had not filed lawsuits against them by not staging false rape complaints against them, or subsequently withholding or falsifying exculpatory evidence to obstruct them from obtaining judicial relief, or obstructing them from defending themselves in an employment discharge hearing including stealing their personal mail.

218. As a direct and foreseeable consequence of this conspiracy, Thompson was deprived of his rights under the 14th Amendment to the U.S. Constitution because he was black.

219. As a direct and foreseeable consequence of these deprivations, Thompson has suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, irreparable harm to his reputation, and denial of the opportunity to seek redress through the court system against potential defendants.

220. Thompson seeks compensatory damages, punitive damages, declaratory and injunctive relief requiring defendants to turn over all accurate investigatory records, and anything else this court deems appropriate.

COUNT XIII
EMPLOYMENT AND POST-EMPLOYMENT RETALIATION AND HARASSEMENT, RELIGIOUS AND RACE DISCRIMINATION IN VIOLATION of 42 U.S.C. §2000e *et seq*
Against Defendant Board

221. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

222. In March 2011, a federal lawsuit by Thompson was filed in this jurisdiction (11-cv-1712).

223. The Board retaliated by soliciting JANE DOE'S MOM for her daughter Jane Doe to make false rape allegations to her therapists against Thompson as a pretext for the Board to subpoena his email records for information to terminate his employment and about his then ongoing federal lawsuit.

224. The Board had previously refused to investigate Jane Doe's stalking claims prior to Thompson filing a federal lawsuit against the Board.

225. The Board solicited Dr. Welke's to file a false DCFS report so the Board could initiate their own investigation when DCFS investigators came to the school.

226. The Board stole Thompson's DCFS mail, opened it, and admitted they initiated their investigation based on Thompson's confiscated mail.

227. Thompson's private coaching was Christian-based, was conducted during his off-duty time, conducted in Lake County, and Jane Doe was never a student with the Board – all conditions being outside the Board's jurisdiction in Cook County.

228. On June 10, 2011, a DCFS investigation found Jane Doe's rape allegations "unfounded."

229. After the Board found no evidence against Thompson for stalking Jane Doe, they continued to retaliate by soliciting Jane Doe and MOM to file a false police report to try to get Thompson arrested so the Board could terminate Thompson's employment.

230. In February 2012, a Vernon Hills PD investigation revealed nothing unprofessional about Thompson's relationship with Jane Doe and no charges were ever filed.

231. On August 16, 2013, the Board dismissed Thompson from his employment related to an "Unsatisfactory" evaluation before an ISBE dismissal hearing convened.

232. On December 9, 2013, the Board, despite no longer employing Thompson, the DCFS report being "unfounded," and no criminal charges filed, continued to retaliate by filing charges against him in an ISBE "back pay" hearing that he raped Jane Doe when she was 17-years old.

233. Jane Doe claimed during her testimony with the Board's attorney in the ISBE "back pay" hearing on December 9, 2013 that she sought therapy related to the rape incident.

234. Jane Doe claimed during her testimony that Thompson raped her because he was "black."

235. Jane Doe was solicited by the Board to claim Thompson raped her because he was "black" and because Thompson had filed a lawsuit against the Board.

236. The Board's investigative file used in the ISBE "back pay" hearing contained numerous negative references related to Christian-related comments Thompson supposedly had made, most of which were twisted, never made, or left out key information to make his comments appear Thompson was some religious fanatic who used religion as a means to gain psychological control over someone before raping them.

237. During the ISBE "back pay" hearing on December 12, 2013, the Board's attorney continually asked questions related to Thompson's religious beliefs and dreams, including those he had as a child, until he was stopped by the ISBE hearing officer Dan Nielsen, admitting he was "fascinated" as to how the Board's questions were relevant to Doe's rape allegations.

238. During the ISBE "back pay" hearing on December 12, 2013, the Board's attorney asked numerous questions related to an earlier version of a withdrawn federal complaint.

239. Thompson filed two additional lawsuits related to Title VII claims in August 2014 and during settlement negotiations related to the first federal lawsuit, the Board repeatedly offered to withdraw the ISBE "back pay" hearing charges if Thompson agreed to withdraw these lawsuits.

240. The Board is retaliating by continuing the "back pay" hearing in an effort to intimate Thompson into dropping his federal claims.

241. The Board admitted in a recent U.S. Court of Appeals Seventh Circuit filing they are continuing to pursue the false rape claims against Thompson in an ISBE "dismissal" hearing.

242. The Board continues its post-employment harassment against Thompson by continuing to withhold his back pay in retaliation for Thompson's off-duty religious beliefs, his black race, and for filing EEOC charges and related federal lawsuits against the Board.

243. Thompson received his latest Right to Sue letter from the EEOC on May 9, 2016 based on the aforementioned conduct intended to publicly humiliate Thompson as a child rapist and prevent him from obtaining meaningful employment in his career of choice. (Exhibit A).

244. Thompson has been damaged and thereby seeks his back pay, interest, attorney fees and expenses required to bring this lawsuit, injunctive relief expunging documents related to Doe's false claims from his personnel file, and any other relief as the Court deems just and equitable.

COUNT XIV
PROCEDURAL DUE PROCESS THROUGH 42 U.S.C. §1983
Against Defendants Claypool and Nielsen

245. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

246. On September 13, 2012, the Board suspended Thompson without pay pending an ISBE teacher dismissal hearing related to rape allegations by Jane Doe the Board knew were false and were staged in retaliation for Thompson filing a federal lawsuit against the Board.

247. Jane Doe was never a student with the Board and the DCFS rape claims were "unfounded."

248. Thompson's private coaching relationship with Jane Doe was Christian-based, during off-duty time, and occurred in Lake County, not Cook County where the Board is located.

249. On March 12, 2013, Thompson notified the Board's General Counsel that the DCFS report in which it initiated its investigation was "unfounded" and propounded a copy upon them.

250. The Board continued to pursue dismissal hearing charges against Thompson related to the "unfounded" DCFS report despite being provided a copy of the "unfounded" DCFS report and 820 ILCS 40/13 requiring records of the investigation expunged.

251. On August 16, 2013 the Board dismissed Thompson from his employment related to an "Unsatisfactory" evaluation.

252. Section 34-85(a)(2) of the School Code requires the Board to make an employee whole for lost earnings should an employee not be dismissed based on the charges in an ISBE dismissal hearing and Thompson was never dismissed from his employment related to any charges.

253. On December 9, 2013, the Board filed charges against Thompson in an ISBE "back pay" hearing related to the "unfounded" DCFS report he sexually abused Jane Doe, instead of giving him his back pay after dismissing him from his employment for an "unsatisfactory" evaluation.

254. The Board admitted in recent legal filings that Claypool will continue to pursue ISBE teacher dismissal charges against Thompson related to the "unfounded" DCFS report, despite no longer employing Thompson in any capacity since August 2013.

255. The Board continues to withhold Thompson's back pay of over $80,000 from when he was suspended without pay between September 13, 2012 to August 16, 2013, despite the Board terminating him for an "unsatisfactory" evaluation unrelated to the dismissal hearing charges.

256. Under the Abused and Neglected Child Reporting Act ("Child Reporting Act"), 325 ILCS 5/7.3, DCFS is the sole agency responsible for receiving and investigating reports of child abuse or neglect made under the Child Reporting Act.

257. 325 ICLS 5/1 *et seq.* does not authorize the Board, the ISBE, or its employees or hearing officers to investigate claims of child sexual abuse initiated by DCFS reports, especially based on an "unfounded" report that does not involve a Board student or Thompson's employment.

258. The Board admitted in its investigative file that its investigation was initiated by Dr. Welke's DCFS report and admitted it called DCFS to confirm the report was "unfounded."

259. The Fourteenth Amendment to the U.S. Constitution secures certain rights, such as the right to due process, for U.S. citizens.

260. 42 U.S.C. §1983 provides a mechanism for the private enforcement of rights conferred by the Constitution and federal statutes.

261. Claypool has a duty to ensure Thompson's property and liberty interests were not impeded without proper due process when it chose to illegally withhold Thompson's back pay.

262. As the Board's CEO, Claypool's decision to continue pursuing charges against Thompson in an ISBE dismissal hearing despite no longer employing him is an act under the color of law.

263. Claypool's action of continuing an ISBE dismissal hearing against someone they no longer employ as a teacher initiated by a DCFS report related to sexual abuse claims that was later indicated as "unfounded," and his continual withholding of Thompson's back pay violates his due process rights under the 14th Amendment of the U.S. Constitution.

264. Nielsen has a duty to ensure Thompson's property and liberty interests were not impeded without proper due process after learning the Board no longer employed him, that Jane Doe was not a Board student, and that the DCFS report was "unfounded."

265. Nielsen's was acting under the color of law under the authority of the ISBE as a Hearing Officer when he chose to convene a dismissal hearing against someone who is no longer employed as a teacher related to Board charges initiated by an "Unfounded" DCFS report.

266. Nielsen has no statutory authority to convene a "back pay" hearing under 105 ILCS 5/34-85 or the Child Reporting Act, 325 ILCS 5 *et seq.*, especially on behalf of the Board when the hearing is being used by the Board for retaliatory motives related to Title VII violations.

267. The ISBE, whose current General Counsel was the former Chief of Staff for the Board when the Board elected proceed with the illegal "back pay" hearing, is a willing participant in allowing

Nielsen to proceed with a "back pay" hearing without statutory authority in conjunction with the Board's efforts to violate Thompson's Title VII rights.

268. There is no individual in United States employment history that has had to face a dismissal hearing by someone who does not employ him or her.

269. There is no individual in ISBE history who has faced a "dismissal" or "back pay" hearing who is not employed as a teacher or even employed by an educational institution.

270. Thompson has been damaged thereby and seeks back pay, interest, attorney fees and expenses required to bring this lawsuit, punitive damages, injunctive relief expunging all documents related to Jane Doe's rape claims from his personnel file, an injunction enjoining Nielsen from conducting a "back pay" hearing without statutory authority, and any other relief as the Court deems just and equitable.

COUNT XV
PROSPECTIVE RELIEF RELATING TO AN EMPLOYER AND ISBE'S LACK OF STATUTORY AUTHORITY TO CONDUCT INDEPENDENT INVESTIGATIONS OF "UNFOUNDED" DCFS REPORTS OF SEXUAL ABUSE OF MINORS

Against Defendants Board, ISBE, Claypool, and Nielsen

271. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

272. In January 2012, an investigator with the Board's Office of the Inspector General admitted to Thompson that they were investigating claims of a DCFS report that he sexually assaulted Jane Doe, a then 17-year old minor residing in Lake County who was never Board student.

273. Thompson knew these claims were false and learned from DCFS in January 2012 that the report was "unfounded" in June 2011.

274. Thompson relayed information to the Board's investigator in January 2012 that the DCFS report was "unfounded" in June 2011.

275. The Board continued to conduct an independent investigation against Thompson in retaliation for him filing a federal lawsuit.

276. The Board removed Thompson from the classroom in June 2012 and then suspended him without pay on September 13, 2012 pending an ISBE dismissal hearing.

277. The Board's investigative report Thompson received in February 2013 admitted it initiated its investigation of Jane Doe's claims based solely off the DCFS report and that it knew the report was later indicated as "unfounded" in January 2012.

278. Thompson also propounded a copy of the "unfounded" DCFS report on March 12, 2013 to the Board through its former General Counsel James Bebley.

279. Three months after the Board dismissed Thompson for an "Unsatisfactory" evaluation on August 16, 2013, the Board filed charges that Thompson raped Jane Doe when she was 17-years old in an ISBE "back pay" hearing, despite DCFS indicating the report was "unfounded."

280. The Child Reporting Act under 325 ILCS 5/7.3 states that the Department [DCFS] shall be the sole agency responsible for receiving and investigating reports of child abuse or neglect made under this Act, except for those agencies in which DCFS has authority to delegate the responsibility to.

281. The Child Reporting Act does not list the Board or the ISBE as fact-finding agencies who can be delegated the authority to investigate allegations of child sexual abuse made under the Act, especially when it involves a minor with no relationship to the employer.

282. In fact, the Child Reporting Act requires school-related employers to report allegations of child sexual abuse to DCFS for them to conduct a proper investigation of the allegations, as DCFS investigators are specifically trained to make the proper determinations on whether or not a child has been sexually abused.

283. An investigator representing the Board admitted they contacted DCFS officials in January 2012 who verified that the report of sexual allegations against Thompson was "unfounded."

284. The Child Reporting Act under 325 ILCS 5/7.4(d) requires employers to expunge related documents if the DCFS report is indicated as "unfounded."

285. Further, the IPPRA prohibits employers from gathering or keeping records identifying an employee as the subject of a DCFS report if it becomes indicated as "unfounded" and is required to expunge such records upon notification. (820 ILCS 40/13).

286. The Board, ISBE, Claypool, and Nielsen are all aware that the DCFS report related to Jane Doe's rape claims were "unfounded."

287. The ISBE, whose current General Counsel was the former Chief of Staff for the Board when the Board elected proceed with the illegal "back pay" hearing, is a willing participant in allowing Nielsen to proceed with a "back pay" hearing without statutory authority in conjunction with the Board's efforts to violate Thompson's Title VII rights.

288. Wherefore, Thompson prays for the following declaratory and injunctive relief:

a. Enter a declaratory judgment that defendants lack statutory jurisdiction under the Child Reporting Act, 325 ILCS 5/1 *et seq.* and the IPRRA, 820 ILCS 40/13 to conduct an independent investigation of a DCFS report that a teacher sexually abused a minor with no relationship to the Board and allegedly occurring in another county, or in the alternative the same for someone they no longer employ;

b. Enter a declaratory judgment that defendants lack statutory jurisdiction under the Child Reporting Act, 325 ILCS 5/1 *et seq.* and the IPRRA, 820 ILCS 40/13 to continue to conduct an independent investigation of a DCFS report that a teacher sexually abused a minor with no relationship to the Board and allegedly occurring in another county once the report has been indicated as "unfounded," or in the alternative the same for someone they no longer employ;

c. Enter an injunctive relief order that requires defendants to expunge from Thompson's personnel file and cease and desist gathering or using any investigative records or testimony subsequently gathered related to the "unfounded" DCFS report;

d. An injunction enjoining Nielsen from conducting a "back pay" hearing without statutory authority relating to an "unfounded" DCFS report.

e. Enter such other and further relief as deemed appropriate by the Court.

COUNT XVI
PROSPECTIVE RELIEF RELATING TO A NON-EMPLOYER AND ISBE'S LACK OF STATUTORY AUTHORITY TO CONDUCT INDEPENDENT INVESTIGATIONS OF "UNFOUNDED" DCFS REPORTS OF SEXUAL ABUSE OF MINORS
Against Defendants Board, ISBE, Claypool, and Nielsen

289. Thompson incorporates paragraphs 1-79 and 272-287 as though fully set forth herein.

290. On August 16, 2013, the Board terminated Thompson's employment based on an "Unsatisfactory" evaluation prior to a pending ISBE dismissal hearing convening.

291. On December 9, 2013 the Board filed formal charges against Thompson in an ISBE teacher "back pay" hearing for a further fact-finding investigation initiated from the "unfounded" DCFS report that he allegedly raped then 17-year old Jane Doe when in March 2010 in Vernon Hills, Illinois while he was privately coaching her unrelated to any school function, even though they no longer employed him.

292. The Child Reporting Act under 325 ILCS 5/7.3 states that the Department [DCFS] shall be the sole agency responsible for receiving and investigating reports of child abuse or neglect made under this Act, except for those agencies in which DCFS has authority to delegate responsibility.

293. The Child Reporting Act does not list the Board or the ISBE as fact-finding agencies who can be delegated the authority to investigate allegations of child sexual abuse made under the Act, especially when it involves a minor with no relationship to the employer.

294. In fact, the Child Reporting Act requires school-related employers to report allegations of child sexual abuse to DCFS for them to conduct a proper investigation of the allegations, as DCFS investigators are specifically trained to make the proper determinations on whether or not a child has been sexually abused.

295. An investigator representing the Board admitted they contacted DCFS officials in January 2012 who verified that the report of sexual allegations against Thompson was "unfounded."

296. The Child Reporting Act under 325 ILCS 5/7.4(d) requires employers to expunge related documents if the DCFS report is indicated as "unfounded."

297. Further, the IPPRA prohibits employers from gathering or keeping records identifying an employee as the subject of a DCFS report if it becomes indicated as "unfounded" and is required to expunge such records upon notification.

298. Furthermore, there is no legal authority of jurisdiction for the Board or ISBE to bring about or investigate charges relating to someone that is not employed as a teacher by anyone.

299. The ISBE, whose current General Counsel was the former Chief of Staff for the Board when the Board elected proceed with the illegal "back pay" hearing, is a willing participant in allowing Nielsen to proceed with a "back pay" hearing without statutory authority in conjunction with the Board's efforts to violate Thompson's Title VII rights.

300. Wherefore, Thompson prays for the following declaratory and injunctive relief:

a. Enter a declaratory judgment that defendants lack statutory jurisdiction under the Child Reporting Act, 325 ILCS 5/1 *et seq.* to conduct an independent investigation of a DCFS report that a teacher sexually abused a minor with no relationship to the Board and allegedly occurring in another county, or in the alternative the same for someone they no longer employ;

b. Enter a declaratory judgment that defendants lack statutory jurisdiction under the Child Reporting Act, 325 ILCS 5/1 *et seq.* to continue to conduct an independent investigation of a DCFS report that a teacher sexually abused a minor with no relationship to the Board and allegedly occurring in another county once the report has been indicated as "unfounded," or in the alternative the same for someone they no longer employ;

c. Enter a declaratory judgment that the Board lacks statutory authority to bring charges against someone they don't employ;

d. Enter an injunctive relief order that requires the Board and ISBE to expunge and cease and desist gathering or using any investigative records or testimony subsequently gathered related to the "unfounded" DCFS report;

e. Enter such other and further relief as deemed appropriate by the Court.

COUNT XVII
PROSPECTIVE RELIEF RELATING TO AN EMPLOYER AND ISBE'S LACK OF STATUTORY AUTHORITY TO CONDUCT INDEPENDENT INVESTIGATIONS OF "UNFOUNDED" DCFS REPORTS OF SEXUAL ABUSE OF MINORS IN A "BACK PAY" HEARING AGAINST SOMEONE NO LONGER EMPLOYED AS A TEACHER
Against Defendants Board, ISBE, Claypool, and Nielsen

301. Thompson incorporates paragraphs 1-97 as though fully set forth herein.

302. On December 9, 2013 the Board filed formal charges against Thompson in an ISBE teacher dismissal hearing for a further fact-finding investigation initiated from the "unfounded" DCFS report that he allegedly raped then 17-year old Jane Doe when in March 2010 in Vernon Hills, Illinois while he was privately coaching her unrelated to any school function, even though they no longer employed him.

303. The Board's attorney prior to the ISBE commencing the "dismissal" hearing stated that the hearing was no longer a dismissal hearing but a "back pay" hearing.

304. The statute governing dismissal hearings does not authorize dismissal hearings to be altered to "back pay" hearings but only to serve as an independent fact finding hearing to recommend whether or not a teacher will be retained for employment. 105 ILCS 5/34-85.

305. The ISBE, whose current General Counsel was the former Chief of Staff for the Board when the Board elected proceed with the illegal "back pay" hearing, is a willing participant in allowing Nielsen to proceed with a "back pay" hearing without statutory authority in conjunction with the Board's efforts to violate Thompson's Title VII rights.

306. Wherefore, Thompson prays for the following declaratory and injunctive relief:

a. Enter a declaratory judgment that defendants lack statutory jurisdiction under 105 ILCS 5/34-85 to conduct a "back pay" hearing relating to charges against someone no longer employed as a teacher;

b. Enter an injunctive relief order that requires defendants Board and ISBE to expunge all related documents and cease and desist gathering or using any investigative records or testimony subsequently gathered related to the "unfounded" DCFS report;

c. Enter such other and further relief as deemed appropriate by the Court.

COUNT XVIII
PROSPECTIVE RELIEF RELATING TO AN EMPLOYER INITIATING AN INVESTIGATION UPON OPENING A SEALED CONFIDENTIAL LETTER INTENDED TO BE DELIVERED TO AN EMPLOYEE WITHOUT THAT EMPLOYEE'S KNOWLEDGE OR PERMISSION

Against Defendants Board and Claypool

307. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

308. In May 2011, DCFS came to Harlan to conduct an investigation into a DCFS report by Dr. Welke that Thompson allegedly raped Jane Doe in 2010 when she was 17-years old.

309. Harlan school officials, upon direction from the Board's law department, were told to prevent the DCFS investigator from contacting Thompson.

310. On May 3, 2011, a Harlan school official falsely told a DCFS investigator that Thompson was unavailable for an interview because he was in a classroom teaching students.

311. After the Harlan official agreed to deliver a sealed letter from DCFS with Thompson's name on it, the official instead confiscated it to where it was later opened, read, faxed to law department officials, and then initiated an independent investigation of the sexual assault allegations by Jane Doe.

312. Thompson did not become aware until February 2012 that in May 2011 Board officials confiscated and opened a sealed letter address to him meant to inform him that Jane Doe had made sexual assault allegations against him.

313. The Board confiscated his letter so Thompson would not find out about the false rape complaint that was a pretext to the Board secretly filing a subpoena for information related to Thompson's email account records while he had an ongoing federal lawsuit against the Board.

314. 28 U.S.C §§ 1701, 1702, and 1708 prohibit an employer from deliberately obstructing, confiscating, opening, or possessing an employee's mail or correspondence without their knowledge or permission.

315. Thompson was suspended without pay from September 13, 2012 to August 16, 2013.

316. The Board continues to still possess and use Thompson's confiscated mail without his permission and continues to use investigative documents subsequently gathered from it.

317. The Board continues to withhold Thompson's back pay pending an ISBE dismissal hearing despite no longer employing him based on an investigative file initiated from confiscating and opening Thompson's confidential mail.

318. Wherefore, Thompson prays for the following declaratory and injunctive relief:

a. Enter a declaratory judgment that defendant Board lacked authority under either 28 U.S.C §§ 1701, 1702, or § 1708 to confiscate and open Thompson's sealed confidential mail that DCFS had intended to deliver to him and after a Board employee agreed to deposit the sealed letter in his school mail box;

b. Enter an injunctive relief order that requires defendants Board to expunge and cease and desist gathering or using any investigative records or testimony subsequently gathered related to the letter the Board confiscated and opened without Thompson's knowledge or permission;

c. Enter such other and further relief as deemed appropriate by the Court.

COUNT XIX
PROSPECTIVE RELIEF RELATING TO THE BOARD CONDUCTING A SECRET INVESTIGATION IN VIOLATION OF THE INSPECTOR GENERAL'S STATUTE
Against Defendant Board, Brown, and Sullivan

319. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

320. In May 2011, DCFS came to Harlan to conduct an investigation into a DCFS report by Dr. Welke that Thompson allegedly raped Jane Doe in 2010 when she was 17-years old.

321. Harlan school officials, upon direction from the Board's law department, were told to prevent the DCFS investigator from contacting Thompson.

322. On May 3, 2011, a Harlan school official falsely told a DCFS investigator that Thompson was unavailable for an interview because he was in a classroom teaching students.

323. After the Harlan official agreed to deliver a sealed letter from DCFS with Thompson's name on it, the official instead confiscated it to where it was later opened, read, faxed to law department officials, and then initiated an independent investigation of the sexual assault allegations by Jane Doe.

324. Thompson did not become aware until February 2012 that in May 2011 Board officials confiscated and opened a sealed letter address to him meant to inform him that Jane Doe had made sexual assault allegations against him.

325. At no time did the Board contact the Cook County States Attorney's office or the Chicago Police Department as required by the Inspector General Statute. 105 ILCS 5/34-13.1.

326. The Board also failed to preserve all evidence in accordance with the statute including erasing a previously recorded interview with Jane Doe.

327. Wherefore, Thompson prays for the following declaratory and injunctive relief:

a. Enter a declaratory judgment that the Board violated the Inspector General statute when it commenced an criminal investigation without contacting the Cook County States Attorney's office and the Chicago Police Department.

b. Enter an injunctive relief order that requires defendant Board to expunge and cease and desist gathering or using any investigative records or testimony subsequently gathered when in violation of the statute;

c. Enter such other and further relief as deemed appropriate by the Court.

COUNT XX
INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
Against Defendants Board and Claypool

328. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

329. Thompson filed a federal lawsuit against the Board in March 2011.

330. In retaliation, the Board solicited Jane Doe to file a false rape claim against Thompson as a pretext for the Board to file a subpoena for Thompson's email records.

331. Thompson was suspended without pay related to false rape allegations from September 13, 2012 to until the Board terminated Thompson from his employment on August 16, 2013.

332. The Board under CEO Claypool continues to withhold Thompson's back pay with the intention of proceeding with an ISBE dismissal hearing relating to allegations Thompson raped a 17-year old minor in 2010, charges the Board knows are false, and even though they no longer employ him and has no job to be dismissed from.

333. Thompson has suffered and continues to suffer extreme emotional distress including lack of sleep, stress, and even forewarned the FBI he may "snap" if they don't step in and investigate the Board's extreme and outrageous conduct of using kids to stage complaints against teachers.

334. Defendants are intentionally subjecting Thompson to egregious and abusive treatment that they knew would cause him to suffer severe emotional distress.

335. Defendants intended to cause Thompson severe emotional distress or knew there was a high probability he would suffer such distress when they subjected him to said abuse.

336. The aforementioned acts and omissions of defendants constitute intentional infliction of emotional distress, in violation of the laws of the State of Illinois.

337. Thompson has been damaged thereby and seeks reinstatement, back pay, punitive damages, interest, attorneys' fees and expenses required to bring this lawsuit.

COUNT XXI
CONSPIRACY
Against Defendants Claypool, JD Snow., Jane Doe, Claudia P. Welke, and NorthShore University HealthSystem (*respondeat superior*)

338. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

339. Thompson filed a federal lawsuit against the Board in March 2011.

340. The Board retaliated by soliciting Jane Doe, with the assistance of Jon Snow., and Claudia Welke, to make false rape claims against Thompson to Cook County DCFS in violation of the Child Reporting Act, 325 ILCS 5 *et seq.*, as part of a plan to terminate Thompson's employment.

341. JD's Mom, Jane Doe, and Claudia Welke, in an concerted effort with Board employees to retaliate against Thompson in violation of his federal Title VII rights after he filed a lawsuit and because he is black, entered into express and/or implied agreements, understandings, or meetings of the minds among themselves for the purpose of impeding, hindering, obstructing, and defeating the due course of justice in the state of Illinois, either directly or indirectly, with the intent to deny Thompson the equal protection of the laws, by making false claims that Thompson raped Jane Doe when she was 17 years old.

342. Claudia Welke, as an employee of NorthShore University HealthSystem, filed a false DCFS report on behalf of Jane Doe, Mom ., and the Board in conjunction with the surviving and continuing Title VII claim against the Board.

343. CMOM, and Jane Doe continued the conspiracy by participating in an illegal "back pay" hearing even after Thompson had filed a lawsuit in Lake County against them where state counts were later dismissed due to alleged pleading deficiencies.

344. Notably, Jane Doe's twin sister, who also trained with Jane Doe under Thompson, has never provided any testimony whatsoever supporting Jane Doe's false rape claim, despite Jane Doe testifying she informed her twin sister of the rape claim.

345. Because her twin sister refused to take part in the conspiracy with the Board against Thompson, Jane Doe recruited two friends to make false statements to Board investigators.

346. The related federal Title VII claim filed in Lake County survived and continues today.

347. The Board admitted Claypool is continuing the "back pay" hearing against Thompson in retaliation for engaging in protected activity when he filed a federal lawsuit against the Board.

348. The conduct of the defendants has damaged Thompson as he is unable to seek employment as a teacher while the "back pay" hearing is still pending.

349. The conduct of the defendants has damaged Thompson in the loss of one year of back pay.

350. Thompson has been damaged thereby and seeks expungement of all records pertaining the the "back pay" hearing, false rape charges, back pay, punitive damages, interest, attorneys' fees and expenses required to bring this lawsuit.

COUNT XXII
PROSPECTIVE RELIEF RELATING TO THE ABUSED AND NEGLECTED CHILD REPORTING ACT
Against Defendants Jane Doe and Claudia Welke

351. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

352. Thompson filed a federal lawsuit against the Board in March 2011.

353. The Board retaliated by soliciting Jane Doe, MoM, and Claudia Welke, to make false rape claims against Thompson to Cook County DCFS in violation of the Child Reporting Act, 325 ILCS 5 *et seq.*, as part of a plan to terminate Thompson's employment.

354. Claudia Welke knew that the report she was filing with DCFS was false.

355. Claudia Welke withheld information from a DCFS investigator that the report was false.

356. Jane Doe had solicited Welke's assistance to file a false rape claim on her behalf in conjunction with the Board retaliating against Thompson's Title VII rights.

357. The Title VII claim Thompson filed related to his suspension without pay was not dismissed and still continues.

358. Defendants' conduct has damaged Thompson in the loss of nearly one year of back pay.

359. Thompson seeks declaratory relief that Jane Doe and/or Claudia Welke violated the Child Reporting Act in knowingly making false rape claims directly or indirectly to DCFS.

360. Thompson has been damaged thereby and seeks injunctive relief prohibiting the Board and the ISBE from gathering any more records relating to the false rape claims and to expunge any documents already gathered from Thompson's personnel file.

COUNT XXIII
PROSPECTIVE RELIEF RELATING TO JANE DOE'S MENTAL HEALTH RECORDS
Against Defendant Jane Doe

361. Thompson incorporates paragraphs 1-79 as though fully set forth herein.

362. As part of a conspiracy with the Board to retaliate against Thompson for filing a federal lawsuit, Jane Doe made false claims to various therapists including Locascio, Dr. Welke, and Deerfield high school counselor Amy Hindson that Thompson had raped her when she was 17 years old in March 2010.

363. After a lawsuit was filed to enforce the Hearing Officer's ruling that Thompson was entitled to her mental health records that was later dismissed, Jane Doe later testified in Thompson's dismissal hearing on December 9, 2013 that she sought therapy with various therapists that Thompson had raped her when she was 17 years old, including therapists Locascio and Dr. Welke, because the rape incident allegedly had a negative impact on her emotional well-being.

364. Jane Doe testified in Thompson's dismissal hearing on December 9, 2013 that both Locascio and Dr. Welke filed complaints with DCFS related to her allegations.

365. Both Dr. Welke and Locascio willingly testified to both DCFS and Board investigators as to conversations they had with Jane Doe related to her allegations Thompson raped her when she was 17 years old.

366. The privileged quality of communication between any professional person required to report and his patient or client shall not apply to situations involving abused or neglected children * * *. 325 ILCS 5/4. (West 2014). See also *Magnus v. The Department of Professional Regulation*, 359 Ill.App.3d 773, 791 (2005); *People v. McKean*, 94 Ill. App. 3d 502 (1981); *People v. Morton*, 188 Ill. App. 3d 95 (1989); and *People v. Bradley*, 128 Ill. App.3d 372 (1984), which confirms that a therapist-patient privilege does not exist in situations involving abused or neglected children.

367. Wherefore, Thompson prays for the following declaratory and injunctive relief:

a. Enter a declaratory judgment in Thompson's favor that Jane Doe waived any right to confidentiality to her mental health records under 325 IICS 5/4 as it relates to this case when she admitted on December 9, 2013 that her therapists filed reports with DCFS that Thompson allegedly raped her when she was 17-years old as part of the Board's conspiracy to retaliate against him for filing a federal lawsuit.

b. Enter a declaratory judgment that Jane Doe waived any right to confidentiality to her mental health records under 325 IICS 5/4 as it relates to this case when she testified at Thompson's ISBE dismissal hearing on December 9, 2013 that she sought therapy for her emotional well-being after Thompson allegedly raped her, false testimony she provided as part of the Board's conspiracy to retaliate against him for filing a federal lawsuit.

c. Enter a declaratory judgment in Thompson's favor that Jane Doe waived any right to confidentiality to her mental health records under 325 IICS 5/4 as it relates to this case when she made claims to her therapists that she was raped when she was 17 years old in conspiracy with the Board to violate Thompson's Title VII rights.

d. Enter an injunctive relief order that allows Thompson to subpoena Jane Doe's mental health records and all therapist notes for a in-camera review by the Court for relevant information as it relates to Doe's allegations that Thompson raped her when she was 17-years old and as part of the Board's conspiracy to retaliate against Thompson for filing a federal lawsuit;

e. Enter such other and further relief as deemed appropriate by the Court.

FINAL PRAYER FOR RELIEF

WHEREFORE, Thompson respectfully requests this Court enter judgment against defendants in the amount of lost income and back pay, plus prejudgment interest, plus compensatory damages, plus punitive damages, plus emotional distress damages, plus hospital expenses, plus attorneys' fees and/or costs, the total of all damages to exceed $2,000,000, and for such other relief as the court deems appropriate including reinstatement, rescindment of his "Unsatisfactory" evaluation, corrected DS2 file, and injunctive relief including expungement of records in his personnel file and enjoining the Board and the ISBE from continue to investigate claims related to an "unfounded" DCFS report.

Respectfully submitted,

Jury Trial Requested

s/Mark A. Thompson
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January 10, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARK THOMPSON,

Plaintiff,

v.

BOARD OF EDUCATION CITY OF CHICAGO, ILLINOIS STATE BOARD OF EDUCATION, NORTHSHORE UNIVERSITY HEALTHSYSTEM, HAROLD ARDELL, LINDA BROWN, FORREST CLAYPOOL, REGINALD EVANS, JANE DOE, JANE DOE'S MOTHER, THOMAS KRIEGER, DAN NIELSEN, JAMES SULLIVAN, CLAUDIA P. WELKE, and ALICIA WINCKLER,

Defendants.

Case No. 14-cv-6340

(consolidated with 14-cv-6838 and 14-cv-7575)

Honorable John Z. Lee

Magistrate Judge Jeffrey T. Gilbert

Jury Trial Requested

(# 118)

PLAINTIFF'S RESPONSE IN OPPOSITION TO BOARD DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

NOW COMES the plaintiff Mark Thompson ("Thompson") for his response in opposition to Board Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint ("SAC"), states as follows:

Relevant Background

In March 2010 defendant Board initiated an investigation into false claims Thompson was distributing performance enhancing "pills" to members of his Harlan track and field team and suspended him from coaching. The complaining student later admitted both the football coach and defendant Evans coerced him to make false accusations against Thompson. When other students testified on Thompson's behalf, Thompson received an "Excellent" evaluation

stating he followed defendant Board rules and told no disciplinary action would be taken. That changed the next school year when Thompson filed an EEOC charge related to a teaching reassignment – leading to his first lawsuit against defendant Board (11-cv-1712).

Unrelated to Thompson's employment with defendant Board, Thompson had been training JANE DOE ; ("Doe") and her twin sister from August 2009 until April 19, 2010, when, without reason, defendant JANE DOE'S MOTHER , informed Thompson he could no longer have contact with her twin daughters. On May 21, 2010 or so, a police commander from Deerfield, Illinois contacted defendant Board with false claims Thompson contacted defendant Doe *via* an AOL email account "Laura Brucks" and that she became distraught when she thought she saw him in the stands at a track meet in Palatine, Illinois. Defendant Board declined to investigate the matter but that also changed after Thompson filed his first lawsuit (11-cv-1712). In retaliation, defendant Board solicited defendant Doe with defendant MOM'S ; blessing, to make false rape claims so a subsequent investigation wouldn't appear retaliatory. However, Lake County DCFS declined to investigate the false rape claim after Deerfield police counselor Stephanie Locascio allegedly made a report. Defendant Board then solicited defendant Welke to file the same false rape claim, this time through Cook County DCFS, with instructions to make it appear defendant Doe was currently attending Harlan where Thompson was employed and claim she did not know where the rape occurred, so the matter would not be referred back to Lake County DCFS.

When DCFS went to Harlan on both May 3 and 4, 2011 to notify and interview Thompson relating to the rape claims, defendant Board obstructed the DCFS investigation by making false claims Thompson was unavailable, confiscated his DCFS notification letter defendant Board agreed to place in Thompson mailbox, commenced an independent investigation without contacting police or providing Thompson notification of the rape claim,

and did not notify Thompson they were subpoenaing the email account he used to exchange confidential communications with his attorneys. Thompson did not become aware of defendant Welke's DCFS report until late January 2012 nor was he removed from teaching students for over a year until June 2012. It is unprecedented and unreasonable that school district employees would obstruct a DCFS investigation relating to allegations a teacher raped a 17-year old girl and not immediately remove that teacher from the classroom for the safety of other students pending the results of the investigation. "At the start of a formal investigation, if the subject of a report is employed in or otherwise has a position that allows access to children, DCFS notifies the employer of the investigation...While the investigation is pending, the employer must take reasonable action to restrict the employee from contact with children at work. 325 Ill. Comp. Stat. 10/4.3." *Dupuy v. Samuels*, 397 F.3d 493 (7th Cir. 2005). Furthermore, defendant Board did not contact police as required by the Inspector General statute 105 ILCS 5/34-13.1(b) before launching an independent investigation, assuming they had statutory authority. Defendant Board's failure to remove Thompson from the classroom and stealing his mail is consistent with foreknowledge defendant Doe's rape claim was false and staged secretly in conspiracy.

After Thompson requested and received a copy of defendant Welke's "unfounded" DCFS report on February 8, 2011 and notified defendant Brown the DCFS report was "unfounded," defendant Board continued to gather and create false documents before suspending him without pay in September 2012 pending an Illinois State Board of Education ("ISBE") dismissal hearing. Thompson then filed a Third Amended Complaint in 11-cv-1712 on December 4, 2012 to include claims related to the false and "unfounded" DCFS rape report. After Thompson was unable to file a reasonable lengthy Fourth Amended Complaint, both Thompson and defendant Board acquiesced to splitting the false rape claims from 11-cv-1712, leaving only the "pill"

related claims to litigate. Thompson was then alternatively terminated in August 2013 based upon a falsified evaluation (Counts I and II). Thompson then refiled the rape related claims in a separate lawsuit in Lake County, Illinois, a court of limited jurisdiction, on November 21, 2013. Thompson reserved other rape-related claims for federal court because Lake County is not a court of competent jurisdiction for employer-related injunctive relief in Cook County.

Despite the fact that defendant Board no longer employed Thompson, they continued harassing Thompson with the false rape claims by claiming the dismissal hearing was now a "back pay" hearing. Without statutory authority as alleged in Counts VIII and XIV, both defendant Board and the ISBE hearing officer, defendant Dan Nielsen, pretended as if Thompson was still employed (Exhibit A), and ignored statutory law on "unfounded" DCFS reports by continuing to seek documentation and testimony related to the "unfounded" DCFS report instead of determining how much back pay he was owed from the time he was suspended without pay on September 12, 2012 to when he was alternatively dismissed on August 16, 2013.

Without statutory authority to investigate "unfounded" DCFS reports, Nielsen unlawfully subpoenaed defendant Welke and Locascio for testimony (Exhibit B). When defendant Welke invoked mental health privileges, Thompson's union attorney filed a lawsuit in Cook County (13-CH-26625) on December 2, 2013 to enforce Nielsen's subpoenas. Thompson was never personally aware of the subpoena issues or the subsequent lawsuit until after the fact. Had Thompson been aware of the subpoena requests and subsequent lawsuit, Thompson would have referred to statutes 325 ILCS 5/10 and 735 ILCS 5/8-802/7, where a therapist cannot invoke mental health privileges in matters relating to abused and neglected children that results in any judicial or administrative hearing resulting from the DCFS report in which she was a mandated reporter. The Illinois Supreme court also created a common law exception to strictures of the

Confidentiality Act: "the interests of fundamental fairness and substantial justice outweigh the protections afforded the therapist-recipient relationship where plaintiff seeks to utilize those protections as a sword rather than a shield to prevent disclosure of relevant, probative, admissible, and not unduly prejudicial *evidence that has the potential to fully negate the claim plaintiff asserted against defendants and absolve them of liability*." (Emphasis added.) *D.C. v. S.A.*, 178 Ill. 2d 551 (1997). If defendant Nielsen had authority to investigate DCFS reports, he would have known that a therapist couldn't invoke mental health privileges. Since he did not have statutory authority, defendant Nielsen should not proceeded with the hearing.

Thompson then filed the instant case on August 18, 2014 and another federal lawsuit on September 4, 2014 that included a Title VII claim for retaliatory discharge, Stored Communications Act violations, and violations related to the Personnel Records Review Act. Thompson did not file these claims in Lake County due to a jurisdiction restriction in Lake County since Thompson's former employer, defendant Board, is located in Cook County. When Thompson attempted to file a related Title VII claim in Lake County in an amended complaint, it was for the purpose of attempting to have his case transferred to federal court to join his claims with the other federal lawsuits. On September 29, 2014, Thompson filed a lawsuit in Cook County court against defendant Board for declaratory and permanent injunctive relief related to their misuse of a continuing and unreviewed dismissal hearing but the judge and appellate judges inexplicably ignored the fact that defendant Board no longer employs Thompson to dismiss him.

Argument

A. Plaintiff's Second Amended Complaint should not be stricken

Board defendants' make frivolous and desperate claims that Thompson did not remove dismissed counts from his SAC and therefore they should be stricken (Counts VI, XV-XVIII).

However, Thompson filed the SAC as an attachment to a motion for leave of court to file before any ruling was made. The court then ruled that five counts could not go forward after Board defendants' response and Thompson's reply. The court, not Thompson, filed the SAC as docket #99. The court gave no instructions to Thompson to re-amend his SAC or file a Third Amended Complaint to exclude the five dismissed counts, which would not be appropriate in case Thompson wanted to challenge those dismissals on appeal. The court's order on March 23, 2017 (doc. #98) gives proper notice as to which counts did not move forward and Thompson included a copy of this order to all other defendants when they were served.

B. Board defendants' waived right to challenge pleading standards in Counts IX-XI

When Thompson filed his motion for leave of court to file a SAC, the SAC included pleading corrections to Counts IX – XI based on the court's memorandum and opinion (doc. #56). Thompson specifically addressed changes to these counts in his motion (doc. #93) and believes they conform to class-based animus, if not liberally. Board defendants had the opportunity to challenge whether or not Thompson re-pled these counts sufficiently in their response to Thompson's motion for leave of court but they did not (doc. #96). The court noted that defendant Board failed to challenge whether or not Thompson re-plead these counts sufficiently and the court thus granted Thompson leave of court for these counts to move forward based on pleading standards. Furthermore, the court would have struck these claims *sua sponte* had the amended claims not conformed to standards, as it did five other counts. It would be unfair at this stage to now consider Board defendants' arguments and give them a second bit at the apple to dismiss these claims with prejudice or without prejudice (forcing more unnecessary delays with a Third Amended Complaint) because defendants had the opportunity to challenge potential pleading deficiencies when Thompson filed a motion for leave of court to file his SAC.

C. 1) U.S. Supreme Court case law does not permit unreviewed state administrative proceedings to have a preclusive effect on Title VII claims no matter the state rules are, 2) prior cases that are predicated on lawful conduct cannot be used if the conduct was unlawful, and 3) Thompson's lawsuit meets the Illinois case law exceptions to *res judicata*

1. Counts I and XIII are Title VII claims and all other claims in the case related to both Title VII claims. Cook County case 14-CH-15697 (filed on September 29, 2014) was a subject matter jurisdiction interlocutory action related to an unreviewed and continuing unlawful dismissal hearing and a separate act from Count I. Both Title VII claims were already filed in courts prior to filing 14-CH-15697. Count I was filed in this case on August 18, 2014 and Count XIII was originally filed in Lake County on August 26, 2014 as 14-L-606 before it was removed to federal court as 14-cv-7575 and consolidated with this case. As such, it was not possible for Thompson to have filed these two Title VII and related claims with 14-CH-15697 because they were already filed in federal court. In *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 470 n.7 (1982), the Supreme Court stated in dictum that it is "clear that unreviewed administrative determinations by state agencies * * * should not preclude [federal court] review even if such a decision were to be afforded preclusive effect in a State's own courts." Four years later, in *University of Tennessee v. Elliott,* 478 U.S. 788, 795-96 (1986), the Supreme Court expressly held that Congress did not intend for unreviewed state administrative proceedings to have preclusive effect on Title VII claims; it concluded that a plaintiff who pursues a Title VII action in federal court following an unreviewed state administrative decision is entitled to a de novo examination of his Title VII claims. See also *Alexander v. Gardner-Denver Co.,* 415 U.S. 36, 48 (1974). Therefore, 14-CH-15697 cannot be used for *res judicata* purposes. Nor can Lake County case (13-L-879) be used for *res judicata* purposes because the related and continuing Title VII claim (Count XIII) was not given a full and fair opportunity to litigate in an amended complaint, still survives, removed to federal court as 14-cv-7575, and then consolidated here.

2. Thompson has also claimed in Count XIV that the dismissal hearing is unlawful and that claim directly relates to Count XIII. Defendant Nielsen has since defaulted as to claims the dismissal hearing violates Thompson's federal due process rights. (Exhibit C). "A federal court can deny preclusion if the state-court proceedings denied the parties a full and fair opportunity to litigate by falling below the minimum requirements of due process." *Garcia v. Village of Mount Prospect*, 360 F.3d 630 (7th Cir. 2004) citing *Kremer v. Chemical Constr. Corp.*, 456 US 461 (1982). Also, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void...[t]his distinction runs through all the cases on the subject, and it proves that the jurisdiction of any court exercising authority over a subject may be inquired into in every court when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings. *Elliot v. Piersol*, 26 U.S. 328 at 340-341 (1828). See also *Siddens v. Industrial Comm'n*, 304 Ill. App. 3d 506 (1999). "[T]he principle of finality," however, "rests on the premise that the proceeding had the sanction of law, expressed in the rules of subject matter jurisdiction." RESTATEMENT (SECOND) OF JUDGMENTS § 12 cmt. a.

3. Illinois Supreme Court outlined six scenarios where the application of *res judicata* would be inequitable:

(1) the parties have agreed in terms or in effect that plaintiff may split his claim or the defendant has acquiesced therein; (2) the court in the first action expressly reserved the plaintiff's right to maintain the second action; (3) the plaintiff was unable to obtain relief on his claim because of a restriction on the subject-matter jurisdiction of the court in the first action; (4) the judgment in the first action was plainly inconsistent with the equitable implementation of a statutory scheme; (5) the case involves a continuing or recurrent wrong; or (6) it is clearly and

convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason. *Hayes v. City of Chicago*, 670 F.3d 810 (7th Cir. 2010) (quoting *Rein v. David A. Noyes & Co.*; 665 N.E.2d 1199, 1207 (Ill. 1996).

(1) the parties have agreed in terms or in effect that plaintiff may split his claim or the defendant has acquiesced therein;

At no time did defendant Board ever raise *res judicata* claims in either case while both the Lake County case (13-L-879) and the chancery case (14-CH-26625) were going on at the same time, nor did defendant Board raise *res judicata* claims during the Lake County case after Thompson filed this case, 14-cv-6838, and 14-cv-7575.[1] Furthermore, as it relates to 14-CH-26625, at no time did defendants raise *res judicata* in their motion to stay (doc. #13), in their initial motion to dismiss (doc. #32), or in response to Thompson's motion for leave of court to file an SAC (doc. #47). Defendants only raised the Lake County case as a preclusion issue but defendants acquiesced to claim splitting the related Title VII claim in Lake County case (13-L-879) when it failed to raise *res judicata* arguments in its opposition to allowing Thompson to amend the complaint before removing the Title VII claim to federal court as 14-cv-7575. The Illinois Appellate Court in *Piagentini v. Ford Motor Co.*, 387 Ill.App.3d 887, 897, 327 Ill.Dec. 253, 901 N.E.2d 986, 996 (1st Dist.2009) observed that "the key element in determining acquiescence is the failure of the defendant to object to the claim-splitting." 387 Ill.App.3d at 897, 327 Ill.Dec. 253, 901 N.E.2d at 996. Interpreting comment a of Section 26 of the Restatement (Second) of Judgments, the Illinois Appellate Court noted that a defendant acquiesces if he "does not make known his objection in either action." 387 Ill.App.3d at 897, 327 Ill.Dec. 253, 901 N.E.2d at 996...The scenario described in the Restatement...is one in which "a

[1] 14-cv-7575 is the removed Lake County case (14-L-606) relating to a continuing Title VII claim (count XIII) that Board defendants argued should be filed separately from 13-L-879, even though they were related claims. As such, the Board acquiesced to claim-splitting when it removed the case as 14-cv-7575 and consolidated it here.

plaintiff *simultaneously* maintain[s] separate actions based upon parts of the same claim." *Piagentini,* 387 Ill. App.3d at 897, 327 Ill.Dec. 253, 901 N.E.2d at 996 (emphasis added). In this scenario, the defendant could timely object in either proceeding because the origin of the split occurred in either court, upon the plaintiff's filing of the complaints. But the Appellate Court in *Piagentini* held that "[the defendant's] failure to file a timely objection when plaintiffs refiled their suit constitutes an acquiescence." 387 Ill. App.3d at 898, 327 Ill.Dec. 253, 901 N.E.2d at 997. *In re Emerald Casino, Inc.,* 530 B.R. 44 (N.D.Ill.2014). As such, because defendants never raised any *res judicata* claims as it relates to both Title VII claims between 14-CH-26625 and 13-L-879, defendants have acquiesced to claim-splitting to both Title VII claims and related claims. Furthermore, Judge Tharp previously ruled that the investigative file at the center of nearly all counts becomes part of an employee's personnel file when disciplinary action is taken against them (Exhibit G). Defendants do not and have never made any claim that Count VIII is barred by *res judicata* from any case and that fact alone is enough for the court to bar *res judicata* to all false rape related claims regardless of the dismissals in Lake County. Counts III, IV, V, IX, X, XI, XII, XIII, XIV, XIX, and XXI all relate to Count VIII.

(2) the court in the first action expressly reserved the plaintiff's right to maintain the second action;

The Lake County court (13-L-879), by not allowing Thompson to amend his complaint to add a Title VII claim for reasons inconsistent with Thompson's Right to Sue and U.S. Supreme court case law in *Alexander* (Exhibit F)[2], in effect preserved Thompson's right to file the continuing and related Title VII claim as a separate lawsuit in Lake County (14-L-606) where defendant Board removed to federal court (14-cv-7575) and then consolidated with this case.

(3) the plaintiff was unable to obtain relief on his claim because of a restriction on the subject-matter jurisdiction of the court in the first action;

[2] The 90-day deadline for filing had not occurred yet and was filed timely the same day as a separate count.

Counts I, III, IV, V, IX, X, XI, XII, XIII, XIV, XIX, and XXI all request injunctive relief related to Thompson's former employer, defendant Board, which is located in Cook County that Lake County lacked jurisdiction to give. Counts III, IV, V, IX, X, XI, XII, XIII, XIV, XIX, and XXI also relate to personnel file violations in Count VIII, where Thompson was required by statute to file in either Cook County or federal court since Lake County is not a court of competent jurisdiction under 820 ILCS 40/12. As such, *res judicata* meets the exceptions in *Rein* on the limited court jurisdiction in Lake County and these claims were already filed before the 14-CH-26625 was filed, which relate to an unlawfully and ongoing dismissal hearing.

(5) the case involves a continuing or recurrent wrong;

The claims against defendants in III, IV, V, IX, X, XI, XII, XIII, XIV, XIX, and XXI all relate to a continuing Title VII claim (Count XIII) and personnel record violation claim (Count VIII). Thompson's dismissal hearing is still continuing as part of a Title VII retaliation violation, discovery in the dismissal hearing is still open, and thus his administrative remedies have not yet been fully adjudicated for a final review and for *res judicata* to come into play on any related count in this case. If interim actions related to discovery and jurisdiction issues were subject to *res judicata* claims in the flawed rationale defendants are asserting, then the interim actions would also bar Thompson's ability to seek a final review of the dismissal hearing once it concluded. The key word in the *res judicata* exception #5 rule is "case." As long as Thompson has an ongoing *case* with a continuing Title VII claim, *res judicata* cannot be used as a basis to dismiss any claims or defendants that relate to that continuing Title VII claim.

(6) it is clearly and convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason

If the court were to allow defendant Board to continue to harass someone they don't employ, Thompson would become the first individual in U.S. history to be terminated by someone who doesn't employ. That's not the "justice for all" judicial system America's forefathers envisioned. That's why we have a federal court system with presidential-appointed judges when the state court system allows U.S. citizens to have their federal rights violated.

D. Thompson NEVER released Board Defendants from liability in any claims in this case based on his Settlement Agreement and Limited Release

Again, defendant Board attempts to re-litigate an issue that has already been argued (docs. #32, 37, and 42) and reviewed in Thompson's favor when the court stated in its memorandum and opinion, "the settlement agreement did not extend to this case." (doc. #56). As such, defendants must use some other defense outside the Settlement Agreement and Limited Release ("SALR") to prevent Thompson's claims from moving forward. That's why the SALR includes "Limited Release" (doc. 109-1, Ex. A), because it did not extend to this case, the Cook County case, the Lake County case, nor does it apply to continuing or new claims after the fact. In addition, Count VI is directly related to Counts I and II. Since Board defendants do not claim Counts I and II were somehow released, they cannot claim related Count VI was released. Counts XIII, XIV, and XX not only relate to the claims that were not released in the SALR but they also relate to continuing claims that occurred after the SALR. Thompson signed the SALR on January 16, 2015. Defendant Board signed it on January 26, 2015. Thompson's claims in Count XIII, XIV, and XX all relate to continuing Title VII claims involving an unlawful ISBE dismissal hearing defendant Claypool is now involved in and where privity defendant Nielsen has defaulted on Count XIV. The Right to Sue notice on Count XIII was issued to Thompson by the EEOC on May 9, 2016 and was timely filed on August 8, 2016 in 16-cv-7933 while this case was stayed pending a 7th circuit court ruling, 18 months after the SALR was signed. Thompson

then merged the Title VII (Count XIII) claim with this case after he was granted leave of court. Defendant Claypool did not even become employed with Board defendants until July 17, 2015 so how could the SALR signed in January 2015 somehow release someone of misconduct who wasn't even employed by defendant Board until six months later? Furthermore, Board defendants are trying to fraud the court. Board defendants mention 14-cv-6340 in the SALR but omit the fact it was consolidated. One of those cases consolidated was 14-cv-7575 (see top of complaint). 14-cv-7575 is the Title VII claim that defendant Board removed from Lake County after the Lake County judge refused to allow Thompson to include it in an amended complaint. Count XIII is a continuation of that same claim and Counts XIV and XX relate to it as continuing claims as well. The fact that they continue to use the SALR to dismiss claims they know Thompson never agreed or intended to dismiss is evidence of how untrustworthy Board defendants are and how they try to manipulate the facts of the case to sanction harassment.

E. Thompson's SAC Complies with Rule 8

This claim is obviously frivolous and made in desperation. Thompson's *pro se* SAC isn't much different than any of his prior complaints and the Board failed to raise this argument in a prior motion to dismiss (doc. #32) and had another opportunity to raise this claim in its response to Thompson's motion for leave to amend. (doc. #37). The complaint did not prevent any of the defendants from responding to the allegations and the court would have struck the complaint *sua sponte* had it been true, so their argument is obviously without merit.

F. Court has Subject Matter Jurisdiction Over Counts II and XIV

Defendant Board is attempting to mislead the court once again over the facts of the continuing "dismissal" hearing in Count XIV in an effort to make Thompson the first person in United States history to be fired by someone that does not employ them. First, Count II directly

relates to Title VII Count I and the Board gives no argument that the court has no jurisdiction over Count I. So that argument fails. Even so, after Thompson was terminated, defendant Board and defendant Nielsen held the dismissal hearing anyway by pretending defendant Board still employed him instead of conducting a back pay hearing (Exhibit A). The dismissal hearing relates to an "unfounded" DCFS report, not his falsified evaluation, and still continues today (Exhibit E) unlawfully. Thompson has alleged in Count XIV that the dismissal hearing is unlawful because it was initiated upon an "unfounded" DCFS report (Exhibit D). Thompson does not have to participate in any dismissal hearing until it concludes if the hearing violates his federal due process rights. As alleged in Count XIV, Thompson is not a teacher nor do defendants have the authority to conduct an independent or reinvestigation of an "unfounded" DCFS report. No state court has reviewed the dismissal hearing as to whether or not it violates his federal rights under Title VII or Section 1983 and since it is continual, Thompson can do so in this court. Since Thompson is no longer employed, only a "back pay" hearing can occur, but defendant Nielsen is conducting a dismissal hearing, not a back pay hearing, and has defaulted.

G. Count VIII cannot dismiss individual defendants Winckler and Claypool

Again, another argument the Board failed to present during the original motion to dismiss (doc. #32) and again when the Board had the opportunity to oppose Thompson's motion for leave to amend (doc. #96). This argument is therefore waived. Furthermore, 820 ILCS 40/12(d) identifies both the employer and the agent as being guilty of a petty offense for a violation and also identifies willful and wanton conduct as violations as well. As such, the provisions of the statute provide a right to sue individuals as well. See also *Bogosian v. Board of Education*, No. 99-c-3656 (N.D. Ill. Feb. 22, 2001) where Board members were sue in their individual capacity and summary judgment against them was upheld.

Conclusion

As identified above, defendants raise *res judicata* and other defenses unrelated to the Lake County case that was supposed to be the purpose of this motion to dismiss that could have and should have been brought in earlier filings (docs. #13, #32, and #96). "Motion practice is not a series of trial balloons where you [submit] what you think is sufficient, [you] see how it flies, and if it does not, you go back and try again. If that is the way the system worked we would have motion practice going on forever," *Hansel 'N Gretel Brand, Inc. v. Savitsky*, 1997 WL 698179 (S.D.N.Y.1997), to the consequent disadvantage of other litigants "patiently waiting in the queue for the limited time of federal judges." *Channell v. Citicorp Nat. Services, Inc.*, 89 F.3d 379, 386 (7th Cir.1996). As such, all arguments that could have been raised earlier should be forfeited. Even so, Thompson has still stated viable claims against Board defendants in all counts and his case meets the *res judicata* exceptions for every single claim, assuming the law is followed, which hasn't been the case in state court proceedings. In fact, it is sickening to think state court judges have deliberately ignored statutes and case law in Thompson's favor to sanction defendant Board's unlawful and retaliatory conduct. But where the state courts fail, it is for the federal court to succeed. As such, Thompson respectfully requests this court deny defendants' motion to dismiss on all counts so Thompson can proceed with ending their retaliatory conduct.

Respectfully submitted,

Jury Trial Requested

s/Mark A. Thompson
Mark Thompson
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June 23, 2017

From: **Kurtis Hale** krhalejd@hotmail.com
Subject: Re: Status
Date: June 12, 2017 at 11:57 AM
To: Mark Thompson drmarkthompson@aol.com

We are still in abeyance.

Kurtis Hale

> On Jun 12, 2017, at 11:45 AM, Mark Thompson <drmarkthompson@aol.com> wrote:
>
> Can you give me the status of Nielsen and the dismissal hearing? Thanks.
>
> Sent from my iPhone

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

FILED
AUG 26 2014
CIRCUIT CLERK

Thompson)
)
vs.)
)
Bd of Ed of District 113 et al)

Case No. 13 L 879

ORDER

This matter having come before the Court on Plaintiff's motion for extension of time to file Title VII claim, all parties having been given notice and argument having been heard, the Court hereby DENIES the motion on the following grounds:

1) Motion is procedurally defective for failure to timely serve the proposed amended complaint ~~on~~ on defendants and Court;
2) Delay ~~in~~ in filing third amended complaint would engender is prejudicial to defendants, violates principles of judicial economy and is a result of plaintiff's own conduct; and
3) Court lacks authority to extend Title VII's 90 day filing requirement.

Court will issue its decision on pending motions to dismiss on Thursday, August 28, 2014 in open court.

ENTER:

Jorge L. Ortiz
JUDGE

Dated this 26 day of August, 2014.

Prepared by:
Attorney's Name: Nancy Knee
Address: 3030 S. Salt Creek Lane
City: Arlington Hts State: IL
Phone: 847 670 9000 Zip Code: 60005
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171-94 (Rev. 10/11)

A-099

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DR. MARK THOMPSON, Plaintiff,	)	Case No. 14 cv 6340 (consolidated with 14 cv 6838 and 14-7575)
BOARD OF EDUCATION CITY OF CHICAGO, *et al.*, Defendants.	)	Honorable John Z. Lee Magistrate Judge Jeffrey T. Gilbert

BOARD DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT AND SUPPORTING MEMORANDUM

Defendants Harold Ardell ("Ardell"), Linda Brown ("Brown"), Forrest Claypool ("Claypool"), Reginald Evans ("Evans"), Thomas Krieger ("Krieger"), James Sullivan ("Sullivan"), Alicia Winckler ("Winckler") and the Board of Education of the City of Chicago ("Board") (collectively "Board Defendants"), through their attorneys, move to dismiss Plaintiff's Second Amended Complaint ("SAC") (Dkt. #99) pursuant to Federal Rules of Civil Procedure 8, 10(b), 12(b)(1) and 12(b)(6), and in support submits:

I. INTRODUCTION

The instant lawsuit is a consolidation of three federal lawsuits brought against the Board Defendants. It attempts to resurrect claims Plaintiff unsuccessfully asserted in prior lawsuits filed in this jurisdiction, and others. In the SAC, Plaintiff sues the Board and seven Board employees, all of whom have been named in at least one of Plaintiff's previous complaints, based on events allegedly occurring during Plaintiff's employment as a teacher/coach at Harlan High School. In the SAC, Plaintiff rehashes, at times verbatim, the allegations dismissed in the four prior cases summarized below. Thus, the doctrine of *res judicata* bars Counts I, III, IV, V, IX, X, XI, XII, XIII, XIV, XIX and XXI, as they were, or could have been, raised in Plaintiff's previous lawsuits. Additionally, Plaintiff released and discharged the claims found in Counts VI, XIII, XIV, and XX through his execution of a settlement agreement in one of his prior lawsuits; therefore these claims must be dismissed.

Furthermore, this Court lacks jurisdiction for Counts II and XIV because Plaintiff failed to exhaust his administrative remedies. Finally, Plaintiff fails to state viable claims because of his shotgun approach to pleading and his failure to comply with this Court's orders. Accordingly, this consolidated lawsuit should be dismissed in its entirety.

II. PLAINTIFF'S LITIGOUS HISTORY

The SAC has 23 counts of which 21 are directed against one or more of the Board Defendants. Dkt. #99. When granting Plaintiff leave to file the SAC, the Court ruled Counts VII, XV, XVI, XVII, and XVIII were not viable claims, and Plaintiff was not granted leave to file a SAC as to these counts. Dkt. #98. Plaintiff, however, did not remove these counts when he filed the SAC (Dkt. #99) so they should be stricken. See infra, §IV.A. The 16 counts against the Board Defendants for which the Court granted leave to file an amended pleading include a variety of causes of action:

- retaliatory discharge in violation of 42 U.S.C. § 2000e against the Board[1];
- violation of 42 U.S.C. § 1983 – 14th Amendment to U.S. Constitution against Evans and Krieger;
- violation of 42 U.S.C. § 1983 – 4th Amendment to U.S. Constitution against Sullivan;
- violation of 18 U.S.C. § 2703 – Stored Communications Act against the Board and Sullivan;
- violation of 18 U.S.C. § 2701 – Stored Communications Act against the Board and Sullivan; intentional infliction of emotional distress against the Evans and Krieger;
- violations of the Personnel Record Review Act against the Board, Claypool and Winckler;
- conspiracy to interfere with civil rights in violation of 42 U.S.C. § 1985(2) and (3) – denial of access and obstruction of justice against Ardell, Brown and Sullivan;
- conspiracy to interfere with civil rights in violation of 42 U.S.C. § 1986 – denial of access and obstruction of justice against the Board;
- concealment of evidence in violation of 42 U.S.C. § 1983 against Ardell, Board, Brown and Sullivan;
- employment and post-employment retaliation and harassment, religious and race discrimination in violation of 42 U.S.C. § 2000e against the Board;
- procedural due process through 42. U.S.C. § 1983 against Claypool and non-Board Defendant;
- prospective relief relating to the Board conducting a secret investigation in violation of the Inspector General statute against the Board, Brown and Sullivan;

[1] Retaliatory discharge is not a claim under 42 U.S.C. § 2000e.

- intentional infliction of emotional distress against the Board and Claypool; and
- conspiracy against Claypool and four non-Board Defendants. Dkt. #99.

In addition to the three lawsuits compromising the instant matter, the Plaintiff filed three prior lawsuits against the Board and its employees and another one involving the non-Board Defendants.

A. 2011 Federal Case

The first lawsuit Plaintiff filed against the Board, Evans, and other Board employees[2] was *Thompson v. Board of Education et al.*, Case No. 11-cv-1712, filed in the United States District Court for the Northern District of Illinois, Eastern Division, in front of the Honorable Ronald A. Guzman ("the 2011 Federal Case"). The operative complaint in the 2011 Federal Case is Plaintiff's Fifth Amended Complaint filed in May 2013, which the Board Defendants answered on September 13, 2013. *See* 11-cv-1712 at Dkt. #178. In granting summary judgment on eleven of the twelve remaining counts, Judge Guzman held that the Board and Evans did not retaliate against Plaintiff for filing a discrimination charge when he was given an "Unsatisfactory" performance evaluation. *See* 11-cv-1712 at Dkt. #269; Dkt. #290. The remaining count was settled between Plaintiff and the Board defendants on January 26, 2015. *See* 11-cv-1712 Settlement Agreement attached hereto as Exhibit A. The settlement agreement includes the following release language:

> Thompson, upon advice of counsel, understands and agrees that in consideration of the settlement entered into pursuant to this Agreement, Thompson does hereby release and forever discharge on behalf of himself and his heirs, executors, administrators and assigns, all claims, actions, disputes, and suits that he had or has or may have in the future against the Board and any of the Board's future, current or former members, officers, agents and employees, under local, state, or federal law, which are known as of the date the Agreement is executed except for the following claims contained in Thompson's other legal matters currently pending against the Board: 1) Thompson v. Board, et al., 14 C 6340, consolidated matter, pending in the U.S. District Court for the Northern District of Illinois, Eastern Division; 2) Thompson v. Board, et al., 13 C 879, pending in the Circuit Court of Lake County; and 3) Thompson v. Board, 14 CH 15697, pending in the Circuit Court of Cook County. Ex. A ¶ 9.

[2] Plaintiff's Fourth Amended Complaint in the 2011 Federal Case named Harold Ardell, Linda Brown and James Sullivan, among other Board employees, and included claims related to the investigation of the alleged sexual assault involving the [redacted] defendants. Plaintiff voluntarily dismissed those claims and Defendants when he filed his Fifth Amended Complaint. *See* 11-cv-1712, Dkt. ##160 and 178.

B. Lake County Case

Plaintiff's second lawsuit against the Board, Ardell, Brown, Evans, Sullivan and other Board employees was *Thompson v. Board of Education Township High School District 113, et al.*, Case No. 13 L 879[3], filed in the Circuit Court of the Nineteenth Judicial District, Lake County, Illinois ("the Lake County Case"). The operative complaint in the Lake County Case is Plaintiff's Verified Second Amended Complaint at Law filed on January 29, 2014. *See* Second Amended Complaint in the Lake County Case, attached hereto as Exhibit B. Multiple motions to dismiss were granted, and a full and final order of dismissal was entered on February 5, 2015, which Plaintiff appealed. On March 15, 2016, the Illinois Appellate Court, Second District, affirmed the Circuit Court's dismissal with prejudice. *See* Appellate Court of Illinois, March 15, 2016 Order Filed No. 2-15-0226, attached hereto as Exhibit C. Plaintiff's Petition for Appeal to the Illinois Supreme Court was denied. *See* Petition for Appeal Denial, attached hereto as Exhibit D.

C. Chancery Cases

Plaintiff's third lawsuit against the Board and its Chief Executive Officer ("CEO")[4] was *Thompson v. Board of Education City of Chicago and Dr. Barbara Byrd-Bennett,* 14-CH-15697. The Verified Complaint for Declaratory Judgment and Injunctive Relief alleged the Board was misusing the Illinois State Board of Education ("ISBE") dismissal hearing to resolve "back pay" issues of a prior dismissed employee. *See* Verified Complaint, attached hereto as Exhibit E. The Circuit Court dismissed Plaintiff's complaint, and the dismissal was affirmed on appeal on June 10, 2016. *See* 2016 IL App (1st) 150680 dated June 10, 2016, attached hereto as Exhibit F.

The Plaintiff also filed a claim against [redacted], Claudia Welke, Northshore University Healthsystem and one other individual in *Thompson v. N.J., et al.,* 13-CH-26625, in which he sought

[3] [redacted] were also defendants in the Lake County case.

[4] At the time the lawsuit was filed Barbara Byrd-Bennett was CEO of Chicago Public Schools. The current CEO is Forrest Claypool who is a newly named defendant in the SAC.

access to Ms. [redacted]' mental health records. The Circuit Court dismissed Plaintiff's claim, and the Illinois Appellate Court affirmed Plaintiff was not entitled to Ms. [redacted]' mental health records. *See* 2016 IL App (1st) 142918 dated April 29, 2016, attached hereto as Exhibit G.

III. STANDARD OF REVIEW

The standards governing a 12(b)(6) motion to dismiss and 12(b)(1) motion to dismiss for lack of standing are the same. *See Sanner v. Board of Trade of City of Chicago,* 62 F.3d 918, 925 (7th Cir. 1995). To survive a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint should be dismissed if it is clear that "no relief could be granted under any set of facts that could be proved consistent with the allegations." *Ledford v. Sullivan*, 105 F.3d 354, 357 (7th Cir. 1997). In deciding a motion to dismiss, the court must treat all well-pleaded factual allegations in the complaint as true and must draw all reasonable inferences from those allegations in the Plaintiff's favor.

The Court need not strain to find inferences favorable to Plaintiff which are not apparent on the face of the complaint nor accept legal conclusions alleged or inferred from the pleaded facts. *Nelson v. Monroe Reg. Med. Ctr.*, 925 F.2d 1555, 1599 (7th Cir. 1991). Further, the Court is not required to ignore facts set forth in a complaint that undermine Plaintiff's claim. *Hamilton v. O'Leary*, 976 F.2d 341, 343 (7th Cir. 1992). While the Rules require only notice pleading, a plaintiff may "plead himself out of court" by alleging facts establishing a defendant is entitled to prevail on a motion to dismiss. *McCormick v. City of Chi.*, 230 F.3d 319, 325 (7th Cir. 2000).

IV. ARGUMENT

A. Claims Previously Dismissed by this Court Should be Stricken.

On January 29, 2016, this Court issued a detailed ruling on the Board Defendant's Motion to Dismiss. Dkt. #56. Plaintiff sought leave to replead the deficient claims, and the Court granted

that request in part and denied it in part. More specifically, the Court denied Plaintiff leave to re-plead Counts VII and XV-XVIII. Dkt. #98. Hence, the Court should strike those counts and enter an order dismissing them with prejudice.

B. Despite the Opportunity to Re-Plead, Plaintiff Failed to Plead Facts Sufficient to Plausibly Suggest a Viable Cause of Action with Respect to Counts IX-XI.

In its order of January 29, 2016, the Court held that Plaintiff's allegations of conspiracy, made pursuant to 42 U.S.C. §§1985(2)-(3) and 42 U.S.C. §1986, failed to state a claim by virtue of his failure to allege "class-based animus." Dkt. #56, p. 23. Plaintiff attempted to remedy this deficiency by including allegations about discrimination allegedly experienced by African American teachers employed by the Board; however, his allegations of discrimination bear no relationship to the so-called conspiracy described by Counts IX through XI. Moreover, there is no indication that the individual defendants who are the subjects of Counts IX-XI participated in the alleged discriminatory practices. Plaintiff's most recent pleading runs afoul of the Court's January 29, 2016 order in that it continues to rely upon discovery disputes occurring during the course of his 2011 federal case. *See, e.g.*, Dkt. #99 ¶¶ 173, 176. Finally, the Section 1986 claims asserted in Count XI is subject to dismissal because Plaintiff failed to assert a viable claim under §1985(2). Dkt. #56, p. 24.

C. Counts I, III, IV, V, IX, X, XI, XII, XIII, XIV, XIX, and XXI Should be Dismissed Based on the Doctrine of *Res Judicata*.

In the SAC, Plaintiff rehashes, at times verbatim, the allegations dismissed in the four prior lawsuits summarized above. For example, paragraphs 21-23, 32, 34-50, and 63 of the SAC are contained in the Lake County Case, paragraphs 24-31, 51-62, 67-69 of the SAC are part of the 2011 case, and paragraphs 70-78 of the SAC are part of Chancery Case 14-CH-15697. The final judgments entered in connection with these prior complaints foreclose further litigation regarding Plaintiff's employment with, and termination from, the Board.

Pursuant to 28 U.S.C. §1738, federal courts give preclusive effect to state court judgments whenever the court of the state from which the judgments emerged would do so. *Allen v. McCurry*, 449 U.S. 90, 96, 101 S.Ct. 411 (1980). In Illinois, the "doctrine of *res judicata* [claim preclusion] provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties, or their privies, on the same cause of action. *Res judicata* bars not only what was actually decided in the first action but also whatever could have been decided." *Hudson v. City of Chicago*, 889 N.E.2d 210, 213 (Ill. 2008) (citation omitted). Thus, for *res judicata* to apply to an Illinois judgment, there are three basic requirements: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of the causes of action; and (3) an identity of parties or their privies. *Dookeran v. County of Cook*, 719 F.3d 570, 575 (7th Cir. 2013).

1. Final Judgment on the Merits

There can be little doubt that the Illinois Appellate Courts have now entered final judgments with respect to the Lake County case and both Chancery cases. The appellate court affirmed the dismissal with prejudice entered by the Circuit Court of Lake County, and the petition to appeal to the Illinois Supreme Court was denied. *See* Ex. C and Ex. D. Likewise, in Chancery Case 14-CH-15697, the Illinois Appellate Court affirmed the Circuit Court's dismissal for failing to exhaust administrative remedies. *See* Ex. F. Consequently, the judgments entered in the Illinois courts are final for purposes of *res judicata.*

2. Identity of Parties

The state court judgments also satisfy the "identity of parties" requirement of *res judicata.* The Board and all of its employees acting in their official capacity qualify as "parties in privity" for purpose of *res judicata*, thereby satisfying the second element of *res judicata. Garcia v. Village of Mount Prospect*, 360 F.3d at 636; *Licari v. City of Chicago*, 298 F.3d at 667. Moreover, the Lake County Case names the Board, Ardell (a Board investigator), Brown (a Board investigator), and Sullivan (the Board's former

Inspector General). *See* Ex. B. A review of the SAC in the instant matter reveals that the Board is a defendant in Count I while Sullivan is a defendant in Count III. Counts IV and V are alleged against the Board and Sullivan. Counts IX and X is alleged against Ardell, Brown, and Sullivan. Count XI is alleged against the Board. Count XII is alleged against the Board, Ardell, Brown, and Sullivan. Count XIII is alleged against the Board. Count XIX is alleged against the Board, Brown, and Sullivan. Finally, Count XXI is alleged against Claypool in his official capacity as CEO. Dkt. #99.

Chancery Case 14-CH-15697 was filed against the Board and its CEO. *See* Ex. E. At the time the case was filed, Barbara Byrd-Bennett was the Board's CEO. Currently, the CEO is Forrest Claypool, who Plaintiff is suing in his capacity as CEO. *See* Dkt. #99 ¶ 12. Thus, identity of parties exists for Counts I, III, IV, V, IX, X, XI, XII, XIII, XIV, XIX and XXI.

3. Identity of Claims

The doctrine of *res judicata* bars litigants from raising claims that were, or could have been, decided during an earlier proceeding. Illinois adheres to the "transactional" test for determining identity of causes of action, which provides "the assertion of different kinds of theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief." *Hayes v. City of Chicago*, 670 F.3d 810, 813 (7th Cir. 2012); *River Park, Inc. v. City of Highland Park*, 184 Ill.2d 290, 299, 703 N.E.2d 883 (1998). The operative complaint in the Lake County case was filed on January 29, 2014 and stems from a sexual abuse investigation conducted by the Board and the resultant consequences to Plaintiff's employment with the Board. *See* Ex. B. Accordingly, issues surrounding Plaintiff's August 2013 termination and the Board's December 2013 decision to continue the dismissal hearing based on the alleged sexual assault as a "back pay" hearing could have, and in fact should have, been raised in the January 2014 Verified Second Amended Complaint filed in the Lake County Case. *See; Hayes,* 670 F.3d at 813; *Garcia v. Village of Mount Prospect*, 360 F.3d 630, 637-8 (7th Cir. 2004).

The first 155 paragraphs of Plaintiff's January 2014 Lake County complaint summarized his version of the alleged sexual assault investigation (*See* Ex. B ¶¶ 55-156) and his on-going termination hearing. *Id.* ¶¶ 157-165. Plaintiff alleged various Board employees conspired against him in various ways during the investigation of the alleged sexual assault (*See Id.*, Count I) and committed "fraudulent concealment," "intent to deceive," and violated the Inspector General Statute related to the investigation of the alleged sexual assault. *See Id.*, Counts V, VI and VII. Plaintiff also alleged a "Violation of Right to Privacy" against the Board and its employees alleging his privacy was violated under Illinois law when Sullivan and another Board employee issued a subpoena for Plaintiff's private AOL electronic mail account information. *See Id.*, Count X.

In the instant consolidated lawsuit, Plaintiff alleges three claims stemming from the same subpoena sent to AOL that he complained about in the Lake County Case – Count III alleging a Fourth Amendment claim for unreasonable search and seizure; Count IV alleging a violation of Stored Communications Act, 18 U.S.C. §2709; and Count V alleging a violation of the Stored Communications Act, 18 U.S.C. §2701. The Circuit Court's jurisdiction is not limited to state law causes of action, but rather, they "'have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States.'" *Haywood v. Drown*, 556 U.S. 729, 735 (2009) (quoting *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990)). Therefore, Plaintiff could have, and should have, brought his related federal claims with his previously filed Lake County Case. Plaintiff is now barred under the doctrine of *res judicata* from bringing forth these claims in the instant case. *See Muhammad v. Oliver*, 547 F.3d 874, 876 (7th Cir. 2008) (The Seventh Circuit affirmed the dismissal of the federal case based on the doctrine of *res judicata* where the plaintiff voluntarily dismissed his state court action and later refilled in federal court alleging federal claims from the same facts as the state case.). Hence counts III, IV and V should be barred based on the doctrine of *res judicata.*

Several of the claims contained in the January 29, 2014 Lake County operative complaint stem from Board employees' investigation of the alleged sexual assault and Plaintiff's on-going termination hearing. In the SAC, Plaintiff alleges seven claims stemming from the same operative facts as the alleged conspiracy, fraud and violation of 105 ILCS 5/34-13.1 counts alleged in the Lake County Case even though in the SAC he gives his claims different headers. Specifically, Plaintiff labels his claims in the SAC as retaliatory discharge (Count I), conspiracy to interfere with civil rights (Count IX), conspiracy to obstruct justice (Count X), conspiracy to deny access and obstruct justice (Count XI), concealment of evidence (Count XII), religious and race discrimination, harassment and retaliation (Count XIII) and civil conspiracy (Count XXI). Woven throughout these claims are allegations concerning Plaintiff's termination from the Board in August 2013 based on the "Unsatisfactory" evaluation and the Board's December 9, 2013 announcement to continue the ISBE dismissal hearing as a "back pay" hearing based on the alleged sexual assault. *See* Dkt. #99 ¶¶ 69, 70-76, 169, 174, 176, 183, 188, 190, 197, 205, 209-11, 221-242, 338, 340, 343, 347-349.

In the Lake County complaint, Plaintiff titled his claims "CPS Board of Education OIG Furthers Conspiracy" and "Plaintiff Suspended Without Pay Pending Termination Hearing; Defendant Brown and Other CPS Employees Manipulate and Conceal Investigative File Documents" highlighting the alleged inappropriate, fraudulent, discriminatory, conspiratorial and/or illegal actions taken by Board employees. *See* Ex. B, ¶¶ 87-102; 137-166. Regardless that the Plaintiff gave his claims different names in the SAC, the claims in the SAC are essentially identical to those dismissed with prejudice in the Lake County Case; therefore, Counts I, IX, X, XI, XII, XIII and XXI should be barred.

Finally, Count XIX of the SAC alleges violations of the Inspector General Statute against the Board, Brown and Sullivan and mirrors Count VII of the Lake County case. *See* Ex. B ¶ 233-252; Dkt. #99 ¶¶ 319-327. Therefore, it should be barred on the basis of *res judicata.*

Chancery Case 14-CH-15697 sought injunctive relief for the Board's and CEO's alleged misuse of ISBE's teacher dismissal process delineated in 105 ILCS 5/34-85 when the Board and CEO decided to change Plaintiff's dismissal hearing into one for "back pay." *See* Ex. E. These allegations are indistinguishable from the allegations contained in Count XIV of the SAC. Dkt. #99 ¶¶ 245-70. Accordingly, Count XIV should be barred on the basis of *res judicata.*

D. Plaintiff Previously Released Board Defendants from Liability for the Claims in Counts VI, XIII[5], XIV, and XX.

As previously noted above, Plaintiff signed a settlement agreement in the 2011 federal case before Judge Guzman. Because a settlement agreement is a contract, it is governed by principles of contract law, and the intent of the parties to that settlement is determined by the language of the settlement itself. *M.H. Detrick Co. v Century Inden. Co.,* 299 Ill.App.3d 620, 623, 701 N.E.2d 156 (1st Dist. 1998). If both parties are "aware of an additional claim at the time of signing the release, ... the general release language of the agreement will be given effect to release that claim as well." *Gavery v. McMahon & Elliott,* 283 Ill.App.3d 484, 670 N.E.2d 822, 825 (1996). However, when parties use specific language in addition to words of general release in a release, courts limit the more general words to the particular claim arising out of the more specific reference. *See Carona v. Illinois Central Gulf R.R. Co.,* 203 Ill.App.3d 947, 561 N.E.2d 239, 242 (1990).

Relevant here is the language of the 2011 federal case settlement agreement, in which Plaintiff "release[d] and forever discharge[d] .... all claims, actions, disputes, and suits that he had or has or may have in the future against the Board and any of the Board's future, current or former members, officers, agents and employees, under local, state, or federal law, which are known as of the date the Agreement is executed except for the following claims contained in Thompson's other legal matters *currently pending* against the Board: ... 14 C 6340, ... 13 C 879, ... and ... 14 CH 15697, ..." Ex. A ¶

[5] Board Defendants believe Count XIII alleging religious and race discrimination is barred by *res judicata,* but if the Court disagrees, Count XIII has been released by Plaintiff through his settlement in the 2011 Federal Case.

9 (emphasis added). The two phrases at issue here are "which are known as of the date of the Agreement is executed" and "currently pending" in one of the three suits referenced. Plaintiff clearly knew on January 26, 2015 that he had been terminated as a result of the "Unsatisfactory" rating and the Board was continuing with the dismissal hearing based on the alleged sexual assault. Consequently, based on the release included in the 2011 federal case settlement agreement any claims based on those sets of facts which were not currently pending in the three cited lawsuits were discharged by Plaintiff and cannot be raised in the instant matter.

Counts VI[6] (against Evans and Krieger) and Count XX (against the Board and Claypool) allege intentional infliction of emotional distress based on the issuance of the "Unsatisfactory" evaluation rating and the continued termination hearing based on the investigation into the alleged sexual assault. On January 26, 2015, none of the three pending lawsuits contained a claim for intentional infliction of emotional distress. Accordingly, Counts VI and XX should be dismissed.

Counts XIII and XIV again are based on the same set of facts surrounding the investigation of the alleged sexual assault and the continuation of the termination hearing as a "back pay" hearing, which were known to Plaintiff at the time he executed the 2011 federal case settlement agreement. At the time of execution of the settlement agreement, neither the instant matter, the Lake County Case nor Chancery Case 14-CH-15697 specifically alleged a religious or racial discrimination, retaliation or harassment claim (Count XIII of SAC) or a due process claim (Count XIV of SAC). Plaintiff released these claims when he executed the 2011 federal case settlement agreement and is barred from raising them here.

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[6] At the time the 2011 federal case settlement agreement was executed, the pending Count VI in the instant matter alleged negligent infliction of emotional distress against Evans and Krieger and was subsequently dismissed by the Court.

E. SAC Does Not Comply with Rule 8, Thus, Does Not State Viable Causes of Action and Should be Dismissed.

Complaints must provide more than labels and conclusions, formulaic recitations of the elements of causes of action, and facts that do not raise a right to relief above the speculative level. *Bell Atl. Corp.*, 550 U.S. at 555. In considering the plaintiff's factual allegations, courts should not accept as adequate abstract recitations of the elements of a cause of action or conclusory legal statements. *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009). "Courts have discouraged this type of shotgun pleading where each count incorporate[s] by reference all preceding paragraphs and counts of the complaint notwithstanding that many of the facts alleged [are] not material to the claim, or cause of action, appearing in a count's heading." *CustomGuide v. CareerBuilder, LLC*, 813 F. Supp. 2d 990, 1002 (N.D. Ill. 2011) (quoting *Thompson v. RelationServe Media, Inc.,* 610 F.3d 628, 650 n.22 (11th Cir. 2010)); *see also, e.g., Stanard v. Nygen*, 658 F.3d 792, 800 (7th Cir. 2011) (A federal court is not obligated to sift through a complaint to extract some merit when the attorney who drafted it has failed to do so himself.) Plaintiff's "shotgun" pleading makes it virtually impossible to know which allegations of fact are intended to support which claims for relief.

Plaintiff asserts a barrage of facts in his first 79 paragraphs which are realleged in each of the 23 subsequent counts. Many of the facts in these paragraphs are taken verbatim from claims which are barred by *res judicata* and irrelevant to any of the claims that might survive a motion to dismiss. Additionally, Plaintiff continues to include several paragraphs referencing the issuance of the "Unsatisfactory rating" (e.g. Dkt. #99 ¶¶82, 89, 92-97, 96, 136-37, and 141) which this Court has ruled is precluded by the 2011 federal case. Dkt. #56 at 13. Moreover, these paragraphs are irrelevant to the counts in which they are included. Hence, the SAC should be dismissed in its entirety for failing to comply with Rule 8.

F. The Court Lacks Subject Matter Jurisdiction Because the Plaintiff Failed to Exhaust Administrative Remedies so Counts II and XIV Should be Dismissed.

Counts II and XIV are in essence due process claims. In dismissing Plaintiff's Chancery Case 14-CH-15697, which mirrors Count XIV, the Illinois Appellate Court held that Plaintiff needed to exhaust his administrative remedies through the ISBE hearing process before coming to court. *See* Ex. F. This Court also noted that "if Thompson does have an ongoing termination hearing, his due process claim is likely premature." Dkt. # 56 at 11; *See also, Carmody v. Bd. of Trs. of Univ. of Ill.*, 747 F.3d 470, 479 (7th Cir. 2014). The Court, however, noted that Plaintiff had not alleged in his previous complaint that he has an ongoing termination hearing so did not dismiss the counts at that time. Dkt. # 56 at 11. In the SAC, Plaintiff repeatedly alleges that the Board is continuing his termination hearing as a "back pay" hearing. Dkt. #99 at ¶¶ 167, 240, 241, 250, 254, 262, 263, and 347. Consequently, Counts II and XIV are premature and cannot be pursued until the dismissal hearing before the ISBE hearing officer concludes.

G. Count VIII Should be Dismissed as to Claypool and Winckler.

Count VIII is asserted against the Board, Claypool as CEO and Winckler as Chief Talent Officer seeking declaratory and injunction relief regarding materials in Plaintiff's personnel file. Dkt. #99 ¶¶ 151-68. Count VIII against Claypool and Winckler is redundant of the same claim against the Board, and therefore, should be dismissed as to Claypool and Winckler. *See Kiser v. Naperville Cmty. Unit*, 227 F.Supp.2d 954, 960 (N.D.Ill.2002) (dismissing claims against defendants sued in their official capacity; holding that when the entity itself is sued, naming individual defendants in their official capacities "serves no legitimate purpose"); *Admiral Theatre v. City of Chi.*, 832 F.Supp. 1195, 1200 (N.D.Ill.1993) (holding that "[w]here the unit of local government is sued as well, the suit against the officials is redundant and should therefore be dismissed"); *see also Jungels v. Pierce*, 825 F.2d 1127,

1129 (7th Cir.1987) (citing Graham and stating that where plaintiff also sued the city, "nothing was added by suing the mayor in his official capacity").

IV. CONCLUSION

For the reasons stated above, Board Defendants respectfully request the Court dismiss Plaintiff's Second Amended Complaint in its entirety.

Respectfully submitted,

RONALD L. MARMER
BOARD OF EDUCATION OF CITY OF CHICAGO

By: *s/ Kathleen M. Gibbons*
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CERTIFICATE OF SERVICE

I, Kathleen M. Gibbons, an attorney do hereby certify that I caused the attached **Board Defendants' Motion to Dismiss Plaintiff Second Amended Complaint and Supporting Memorandum** to be served upon *pro-se* Plaintiff *via* CM-ECF E-Filing pursuant to General Order on Electronic Case Filing, Section X(C) on this 26th day of May 2017.

s/ Kathleen M. Gibbons
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DR. MARK THOMPSON, Plaintiff,	)	Case No. 14 cv 6340 (consolidated with 14 cv 6838 and 14-7575)
BOARD OF EDUCATION CITY OF CHICAGO, *et al.*, Defendants.	)	Honorable John Z. Lee Magistrate Judge Jeffrey T. Gilbert

BOARD DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Defendants Harold Ardell ("Ardell"), Linda Brown ("Brown"), Reginald Evans ("Evans"), Thomas Krieger ("Krieger"), James Sullivan ("Sullivan"), Alicia Winckler ("Winckler") and the Board of Education of the City of Chicago ("Board") (collectively "Board Defendants"), through one of their attorneys, Kathleen M. Gibbons, in response to Plaintiff's Motion for Leave to File a Second Amended Complaint ("SAC") (Dkt. #93), states as follows:

I. INTRODUCTION

In his proposed SAC, Plaintiff has named seven new defendants – Forrest Claypool, Claudia P. Welke, [redacted], [redacted], Dan Nielsen, the Illinois State Board of Education ("ISBE") and Northshore University Healthsystem. (Dkt. # 93-1 at 1) Plaintiff has also added 11 new claims. *Id.*

A. Previously Filed Lawsuits

In addition to the three lawsuits compromising the instant matter, the Plaintiff filed three other lawsuits against the Board and its employees.

i. 2011 Federal Case

The first lawsuit Plaintiff filed against the Board, Evans, and other Board employees[1] was *Thompson v. Board of Education et al.*, Case No. 11-cv-1712, filed in the United States District Court for the Northern District of Illinois, Eastern Division, in front of the Honorable Ronald A. Guzman ("the 2011 Federal Case"). The operative complaint in the 2011 Federal Case is Plaintiff's Fifth Amended Complaint filed in May 2013, which the Board Defendants answered on September 13, 2013. *See* Fifth Amended Complaint in the 2011 Federal Case, Dkt. # 32-1, Exh. A. In granting summary judgment, Judge Guzman held that the Board and Evans did not retaliate against Plaintiff by giving him an "Unsatisfactory" evaluation for filing a discrimination charge. *See* Guzman Memorandum Opinion and Order, Dkt. #32-2, Exh. B.

ii. Lake County Case

Plaintiff's second lawsuit against the Board, Ardell, Brown, Evans, Sullivan and other Board employees was *Thompson v. Board of Education Township High School District 113, et al.*, Case No. 13 L 879[2], filed in the Circuit Court of the Nineteenth Judicial District, Lake County, Illinois, in front of the Honorable Jorge L. Ortiz ("the Lake County Case"). The operative complaint in the Lake County Case is Plaintiff's Verified Second Amended Complaint at Law. *See* Second Amended Complaint in the Lake County Case, attached hereto as Dkt. # 32-4, Exh. D. Multiple motions to dismiss were granted, and a full and

[1] Although Plaintiff's Fourth Amended Complaint in the 2011 Federal Case named Harold Ardell, Linda Brown and James Sullivan, among other Board employees and included claims related to the investigation of alleged sexual assault. Plaintiff voluntarily dismissed those claims when he filed his Fifth Amended Complaint. *See* 2011 Federal Case, Dkt. # 160 and 178.

[2] [redacted] were also defendants in the Lake County case.

final order of dismissal was entered on February 5, 2015, which Plaintiff appealed. On March 15, 2016, the Illinois Appellate Court, Second District, affirmed the Circuit Court's dismissal with prejudice. *See* Appellate Court of Illinois, March 15, 2016 Order Filed No. 2-15-0226, attached hereto as Exh. A. Plaintiff's Petition for Appeal to the Illinois Supreme Court was denied. *See* Petition for Appeal Denial, attached hereto as Exh. B.

iii. Chancery Cases

Plaintiff's third lawsuit against the Board and its Chief Executive Officer ("CEO")[3] was *Thompson v. Board of Education City of Chicago and Dr. Barbara Byrd-Bennett,* 14-CH-15697. The Verified Complaint for Declaratory Judgment and Injunctive Relief alleges the Board is misusing the ISBE dismissal hearing to resolve "back pay" issues of a prior dismissed employee. *See* Verified Complaint, attached hereto as Exh. C. The Circuit Court dismissed Plaintiff's complaint, and the dismissal was affirmed on appeal on June 10, 2016. *See* 2016 IL App (1st) 150680 dated June 10, 2016, attached hereto as Exh. D.

The Plaintiff also filed a claim against [redacted], Claudia Welke, Northshore University Healthsystem and one other individual in *Thompson v. N.J., et al.,* 13-CH-26625, in which he sought access to [redacted]' mental health records. The Circuit Court dismissed Plaintiff's claim, and the Illinois Appellate Court affirmed Plaintiff is not entitled to [redacted]' mental health records. *See* 2016 IL App (1st) 142918 dated April 29, 2016, attached hereto as Exh. E.

[3] At the time the lawsuit was filed Barbara Byrd-Bennett was CEO of Chicago Public Schools. The current CEO is Forrest Claypool who is a newly named defendant in his proposed SAC in the instant case.

B. The Instant Consolidated Lawsuit

Plaintiff filed three additional federal lawsuits against the Board Defendants which have been consolidated into the instant matter. Board Defendant's Motion to Dismiss Plaintiff's 12 count Verified Amended Complaint ("VAC") was granted in part and denied in part. (Dkt. # 56) In its order, the Court noted that the Board Defendants' preclusion argument regarding the Lake County case was premature because the case was still on appeal. *Id.* at 4-6. The Court granted Board Defendants' motion as to the following counts: VI - negligent infliction of emotional distress against the Board, Evans and Krieger; VII - negligent supervision against the Board; VIII - violations of the Personnel Record Review Act against the Board and Winckler; IX - conspiracy to interfere with civil rights in violation of 42 U.S.C. § 1985(2)(3) – denial of access and obstruction of justice against Ardell, Brown and Sullivan; X - conspiracy to interfere with civil rights in violation of 42 U.S.C. § 1986 – denial of access and obstruction of justice against the Board; and XI - concealment of evidence in violation of 42 U.S.C. § 1983 against Ardell, Board, Brown and Sullivan. *Id.* at 17-24.

II. LEAVE TO FILE SECOND AMENDED COMPLAINT SHOULD BE DENIED

Plaintiff is attempting to resurrect claims he raised in the various lawsuits filed in other jurisdictions in his proposed SAC and to circumvent final orders in those cases. In fact, Plaintiff rehashes, at times verbatim, many of the allegations dismissed in these four prior lawsuits. For example, paragraphs 21-23, 32, 34-50, and 63 are contained in the Lake County Case, paragraphs 24-31, 51-62, 67-69 are part of the 2011 case, and paragraphs 70-

78 are part of Chancery Case 14-CH-15697. Accordingly, Plaintiff should be denied leave to file his proposed SAC.

A. Standard of Review

Federal Rule of Civil Procedure 15(a) provides that if a party is not entitled to amend a pleading as a matter of course, it may amend "with the opposing party's written consent or the court's leave." The court "should freely give leave when justice so requires." Fed.R.Civ.P. 15(a)(2). "Although the rule reflects a liberal attitude towards the amendment of pleadings, courts in their sound discretion may deny a proposed amendment if the moving party has unduly delayed in filing the motion, if the opposing party would suffer undue prejudice, or if the pleading is futile." *Campania Mgmt. Co. v. Rooks, Pitts & Poust,* 290 F.3d 843, 848-49 (7th Cir. 2002). "[T]he decision to grant or deny a motion to file an amended pleading is a matter purely within the sound discretion of the district court." *Brunt v. Serv. Employees Int'l Union,* 284 F.3d 715, 720 (7th Cir. 2002). The Seventh Circuit will overturn a denial of a motion for leave to amend a complaint *only if* the district court "abused its discretion by refusing to grant the leave without any justifying reason." *Id.*; see also *Int'l Inc. v. also J.D. Marshall Redstart, Inc.,* 935 F.2d 815, 819 (7th Cir. 1991).

B. Argument

I. Counts III, IV, V, VII, IX, X, XI, XII, XIX, XXII and XXIII Should be Dismissed Based on the Doctrines of *Res Judicata* and Collateral Estoppel.

Count VII of the Verified Amended Complaint - negligent supervision brought against the Board - was dismissed by this Court on the basis of claim preclusion because

Plaintiff should have brought it in his 2011 Federal Case. (Dkt. # 56 at 19-20). In the proposed SAC, Plaintiff repleads this claim. (Dkt. # 93-1 at ¶142-150). Plaintiff is precluded from bringing a negligent supervision claim against the Board concerning his "Unsatisfactory" evaluation and any alleged falsification of his "DS2" file. Therefore, Count VII should not be included in a SAC.

This Court addressed the fact the Lake County Case would have a preclusive effect on many of the Plaintiff's claims if the Appellate Court affirmed the Circuit Court's dismissal with prejudice. (Dkt. # 56 at 4-6) Because the Appellate Court affirmed the Circuit Court's dismissal of prejudice and the petition to appeal to the Illinois Supreme Court has been denied (Exh. A and B), Plaintiff is precluded from bringing counts III, IV, V, IX, X, XI, XII, XIX and XXII.

Res judicata is often referred to as "claim preclusion" and collateral estoppel as "issue preclusion." A party asserting *res judicata* must establish: "(1) identity of the claim, (2) identity of parties, which includes those in 'privity' with the original parties, and (3) a final judgment on the merits." *Ross ex re. Ross v. Bd. of Educ. of Twp. High Sch. Dist. 211*, 486 F.3d 279, 283 (7th Cir. 2007). "In order to decide whether the two cases involve the same claim, we ask whether they arise out of the same transaction. If they did, whether or not they were actually raised in the earlier lawsuit, they may not be asserted in the second or subsequent proceeding." *Id.* "Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a difference cause of action involving a party to the first case." *Allen v. McCurry*, 449 U.S. 90, 94 (1980).

A. Lake County Case

1. *Counts III, IV, V, IX, X and XII are Barred by the Doctrine of* Res Judicata.

a. *Final judgment on the merits*

The Lake County case stems from accusations made in 2011 that Plaintiff sexually assaulted a teenaged girl. (*See* Dkt. # 32-4, Exh. D). Plaintiff alleged a "Violation of Right to Privacy" against the Board and its employees alleging his privacy was violated under Illinois law when Sullivan (former Board Inspector General) and another Board employee issued a subpoena for Plaintiff's private AOL electronic mail account information. (*See Id.*, Count X). Plaintiff further alleges various Board employees conspired against Plaintiff in various ways during the investigation of the alleged sexual assault (*See Id.*, Count I) and committed "fraudulent concealment," "intent to deceive," and violated the Inspector General Statute related to the investigation of the alleged sexual assault. (*See Id.*, Counts V, VI and VII).

b. *Identity of parties*

Plaintiff filed both the Lake County Case and the instant consolidated lawsuit against the Board and various Board employees. The Lake County Case names the Board, Ardell (a Board law department investigator), Brown (a Board Office of Inspector General investigator), and Sullivan. (*See* Dkt. # 32-4, Exh. D). Count III of the SAC is alleged against Sullivan. Counts IV and V of the SAC is alleged against the Board and Sullivan. Count IX and X of the SAC is alleged against Ardell, Brown, and Sullivan. Count XI is alleged against the Board. Count XII is alleged against the Board, Ardell, Brown, and

Sullivan. Count XIX is alleged against the Board, Brown, and Sullivan. Thus, there exists identity of parties for Counts III, IV, V, IX, X, XI, XII, and XIX.

c. Identity of Claims

a. Counts III, IV and V of the SAC

In the instant consolidated lawsuit, Plaintiff alleges three claims stemming from the same subpoena sent to AOL that he complained about in the Lake County Case - Count III alleging a Fourth Amendment claim for unreasonable search and seizure; Count IV alleging a violation of Stored Communications Act, 18 U.S.C. § 2709; and Count V alleging a violation of the Stored Communications Act, 18 U.S.C. § 2701. The Circuit Courts' jurisdiction is not limited to state law causes of action, but rather, they "'have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States.'" *Haywood v. Drown*, 556 U.S. 729, 735 (2009) (quoting *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990)). Plaintiff could have, and should have, brought his related federal claims with his previously filed Lake County Case. Plaintiff is now barred under the doctrine of *res judicata* from bringing forth these claims in the instant case. *See Muhammad v. Oliver*, 547 F.3d 874, 876 (7th Cir. 2008) (The Seventh Circuit affirmed the dismissal of the federal case based on the doctrine of *res judicata* where the plaintiff voluntarily dismissed his state court action and later refilled in federal court alleging federal claims from the same facts as the state case.). Hence counts III, IV and V should be barred based on the doctrine of *res judicata*.

b. Counts IX, X, XI and XII

Plaintiff also alleges four claims stemming from the same operative facts as the alleged conspiracy, fraud and violation of 105 ILCS 5/34-13.1 claims alleged in the Lake County Case - Count IX alleging 42 U.S.C. § 1985(2) conspiracy to interfere with civil rights; Count X alleging 42 U.S.C. § 1985(3) conspiracy to obstruct justice; Count XI alleging 42 U.S.C. § 1986 conspiracy to deny access and obstruct justice; and Count XII alleging 42 U.S.C. § 1983 concealment of evidence.

Several of the claims contained in the Lake County Case stem from Board employees' investigation of the alleged sexual assault. Plaintiff includes several assertions under the headings titled "CPS Board of Education OIG Furthers Conspiracy" and "Plaintiff Suspended Without Pay Pending Termination Hearing; Defendant Brown and Other CPS Employees Manipulate and Conceal Investigative File Documents" highlighting the alleged inappropriate, fraudulent, conspiratorial and/or illegal actions taken by Board employees. (Dkt. # 32-4, Exh. D, ¶¶ 87-102; 137-166). Because the claims in the proposed SAC are essentially identical to those dismissed with prejudice in the Lake County Case, the Counts IX, X, XI and XII should be barred.

c. Count XIX

Count XIX alleges violations of the Inspector General Statute against the Board, Brown and Sullivan and mirrors Count VII of the Lake County case. (Dkt. # 32-4, Exh. D, ¶233-252). Therefore, it should be barred on the basis of *res judicata*.

Plaintiff now seeks a second bite at the apple by recasting the same claims as federal causes of action. Plaintiff could have, and should have, brought these related

claims with his previously filed Lake County Case. The Illinois Appellate Court affirmed the dismissal with prejudice of the Lake County Case. (*See* Exh. A). Accordingly, Plaintiff is now barred under the doctrine of *res judicata* from bringing forth these claims in the instant case. *See Muhammad*, 547 F.3d at 876.

B. Chancery Case #13-CH-26625

Count XXIII of the instant matter seeks disclosure of "Jane Doe's" mental health records. (Dkt. # 93-1 at ¶361-367). Plaintiff filed Chancery case #13-CH-26625 in an attempt to get "Jane Doe's" mental health records. (*See* Exh. E). Defendants in that case were [redacted], Claudia Welke, and Northshore University Healthsystem, all named defendants in Plaintiff's proposed SAC. The Illinois Appellate Court affirmed the Circuit Court's dismissal of Plaintiff's complaint and held he is not entitled to "Jane Doe's" mental health records. (*See* Exh. E at 27). Plaintiff is attempting an end-run around the Appellate Court's final decision that Plaintiff is not entitled to "Jane Doe's" confidential mental health records. Therefore, this count is barred under the doctrine of *res judicata*.

II. Plaintiff Fails to State Causes of Action in Counts II, XII, XV, XVI, XVII, XVIII, XXI and XXII.

If Plaintiff is allowed to file his proposed SAC, Board Defendants will file a Motion to Dismiss pursuant to Rule 12(b)(6). To survive a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint should be dismissed if it appears clear that "no relief could be granted under any set of facts that could be proved consistent

with the allegations." *Ledford v. Sullivan*, 105 F.3d 354, 357 (7th Cir. 1997). In deciding a motion to dismiss, the court must treat all well-pleaded factual allegations in the complaint as true and must draw all reasonable inferences from those allegations in the plaintiff's favor. *Thompson v. Illinois Dep't of Prof'l Regulation*, 300 F.3d 750, 753 (7th Cir. 2002).

A. Plaintiff Failed to Exhaust Administrative Remedies (Counts II, XII, and XXI).

Exhaustion of administrative remedies is a basic tenet of Illinois law. The law is clear that "[w]hen an employee's claim is based upon breach of the collective bargaining agreement, that employee is bound by the terms of that agreement which governs the manner in which contractual rights may be enforced. 'For this reason, it is settled that the employee must at least attempt to exhaust exclusive grievance and arbitration procedure established by the bargaining agreement.' An employee must afford the union the opportunity to act on his behalf." *Zelenka v. City of Chicago*, 152 Ill. App. 3d 706, 713 (1st Dist. 1987) (affirming dismissal of complaint) (citing *Vaca v. Sipes*, 386 U.S. 171, 184 (1967) and *Republic Steel v. Maddox*, 379 U.S. 650, 653 (1965)). Further where a grievant has filed a grievance, he must allege that his union breached its duty of fair representation, another predicate to successfully alleging that an employer breached a collective bargaining agreement. *Cosentino v. Price*, 136 Ill. App. 3d 490, 495 (1st Dist. 1985) (affirming dismissal of complaint).

Counts II, XIV and XXI are in essence due process claims. This Court noted that "if Thompson does have an ongoing termination hearing, his due process claim is likely

premature." (Dkt. # 56 at 11). However, the Court noted, Plaintiff had not alleged that he has an ongoing termination hearing. *Id.* In the proposed SAC, Plaintiff has corrected this "error" and repeatedly alleges that the Board is continuing his termination hearing. (Dkt. # 93-1 at ¶¶ 167, 240, 241, 250, 254, 262, 263, and 347). Consequently, Counts II, XIV, and XXI are premature and cannot be pursued until the dismissal hearing before the ISBE hearing officer concludes.

B. Plaintiff Fails to State a Recognizable Cause of Action in Counts XV, XVI, XVII, and XVIII.

Counts XV, XVI, XVII, and XVIII involve allegations surrounding the Department of Child and Family Services' ("DCFS") investigation into the alleged sexual assault and its respective report of that investigation. (Dkt. # 93-1 at ¶ 271-318). Plaintiff appears to be relying upon the Illinois Child Reporting Act, 325 ILCS 5/1 *et seq.* to bring these claims. First, the Illinois Abused and Neglected Child Reporting Act does not apply to Plaintiff. 325 ILCS 5/2. Moreover, the Act does not allow for a private right of action for the alleged types of violations cited by Plaintiff. *Id.* Accordingly, Counts XV through XVIII should not be permitted in a SAC.

III. CONCLUSION

For the reasons stated above, Board Defendants respectfully request the Court deny Plaintiff leave to file his proposed Second Amended Complaint.

Respectfully submitted,

RONALD L. MARMER
BOARD OF EDUCATION OF CITY OF CHICAGO

By: *s/ Kathleen M. Gibbons*

Kathleen M. Gibbons
Senior Assistant General Counsel
Sarah K. Quinn
Assistant General Counsel
Board of Education for the City of Chicago
1 North Dearborn Street, Suite 900
Chicago, Illinois 60602
(773) 553-1700

CERTIFICATE OF SERVICE

I, Kathleen M. Gibbons, an attorney do hereby certify that I caused the attached **Board Defendants' Response in Opposition to Plaintiff Filing a Second Amended Complaint** to be served upon *pro-se* Plaintiff *via* CM-ECF E-Filing pursuant to General Order on Electronic Case Filing, Section X(C) on this 14th day of February 2017.

s/ Kathleen M. Gibbons
Kathleen M. Gibbons
Senior Assistant General Counsel
Board of Education for the City of Chicago
1 North Dearborn Street, Suite 900
Chicago, Illinois 60602
(773) 553-1700

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

DR. MARK THOMPSON, Plaintiff, vs. BOARD OF EDUCATION TOWNSHIP HIGH SCHOOL DISTRICT 113, BOARD OF EDUCATION CITY OF CHICAGO, VILLAGE OF DEERFIELD, HAROLD ARDELL, LINDA BROWN, REGINALD EVANS, AUDRIS GRIFFITH, STEPHANIE LOCASCIO, JAMES SULLIVAN, and ED WONG III, Defendants.	Case No. 13 L 879 Honorable Jorge L. Ortiz **Jury Trial Demanded**

PLAINTIFF'S SECOND AMENDED MOTION FOR LEAVE OF COURT TO EXTEND TIME TO FILE TITLE VII RIGHT TO SUE COUNT

NOW COMES the Plaintiff, Dr. Mark Thompson, for his Second Amended Motion for Leave of Court to Extend Time to File Title VII Right to Sue Count.

After Plaintiff was terminated in his employment on August 16, 2013 from Defendant CPS, his suspension without pay relating to the issues in this case no longer remained in effect. Plaintiff filed an EEOC complaint within 300 days in April 2014 and received a Right to Sue letter on May 29, 2014, with the final day to file a complaint on August 26, 2014. It is Plaintiff's understanding that this particular civil rights count must be filed with this state court since a related complaint has already been filed in this court and there was a previous agreement with Defendant CPS to separate this case from Plaintiff's current federal case.

Due to numerous delays in this case, and the fact that pending motions to dismiss will not be addressed until August 28, 2014, Plaintiff has no choice but to file for leave of court to extend

the time to file his related Title VII count to the time that the Court will instruct his Third Amended Complaint to be filed. Otherwise, Plaintiff would have to amend the complaint immediately or file a completely new lawsuit involving the same subject matter.

Unquestionably, state courts are allowed to hear Title VII complaints (Yellow Freight System, Inc. v. Donnelly, 494 U.S. 820 (1990), No. 89-431) (Exhibit A). Thus, it is in the jurisdiction of this Honorable court to grant Plaintiff's motion for an extension of time. Further, prior to this case becoming a spin-off of Plaintiff's federal case 11-cv-01712, scheduled for trial on November 17, 2014, the case was originally filed in Cook County Circuit Court based on Plaintiff's first Right to Sue letter and amended in Cook County Circuit Court based on a second Right to Sue letter before the case was removed to federal court. Previously in federal court, Plaintiff filed a motion for an extension of time past the Right to Sue deadline (Exhibit B) that was granted by the Court without argument despite far less persuasive reasons (Exhibit C).

WHEREFORE, Plaintiff respectfully requests that this Court grants Plaintiff leave of Court to file his related Title VII count after the August 26, 2014 deadline to the date his Third Amended Complaint must be filed. Alternatively, Plaintiff seeks to file Third Amended Complaint immediately.

Respectfully submitted,

Mark Thompson
Plaintiff, *Pro Se*
P.O. Box 8878
Champaign, IL 61874
217-480-6256
drmarkthompson@aol.com
Dated: August 15, 2014

IN THE CIRCUIT COURT OF THE NINETEETH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

Dr. Mark Thompson	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**No. 13 L 879**
	)	
BOARD OF EDUCATION OF THE CITY OF CHICAGO, a Body Politic and Corporate, Linda Brown, James Sullivan et al.	)	
	)	
Defendants	)	

BOARD DEFENDANTS' RESPONSE TO PLAINTIFF'S SECOND AMENDED MOTION FOR LEAVE OF COURT TO EXTEND TIME TO FILE TITLE VII RIGHT TO SUE COUNT

Defendants Board of Education of the City of Chicago ("the Board"), Harold Ardell, Linda Brown, Reginald Evans, James Sullivan and Edward Wong III (collectively referred to as "Board Defendants"), through their counsel, respond as follows to Plaintiff's Second Amended Motion for Leave of Court to Extend Time to File Title VII Right to Sue Count ("Plaintiff's motion"):

INTRODUCTION

Plaintiff's motion asks this Honorable Court to extend the statutory period of time to file his Title VII claim following the issuance of an Equal Employment Opportunity Commission ("EEOC") Notice of Right to Sue letter. Plaintiff's motion is moot. On August 18, 2014, Plaintiff filed a Complaint in the Northern District of Illinois where he alleges that the Board and certain Board employees violated Title VII of the Civil Rights Act of 1966. A copy of his Complaint is attached as Exhibit 1. Plaintiff's motion must be denied because this Court does not

have the authority to extend the statutory period of limitations, and Plaintiff cannot establish that the doctrine of equitable tolling would excuse tardy filing of his Title VII claim.

ARGUMENT

I. This Court does not have authority to extend the filing deadline.

Plaintiff indicates that he wishes to further amend his complaint to add a Title VII claim against the Board stemming from a Charge of Discrimination he filed in the EEOC on April 4, 2014 ("the EEOC Charge"). The EEOC Charge states in its entirety:

> I began my employment with Respondent [Board of Education of the City of Chicago] in or around January 2008 as a Physical Education Teacher. I was transferred to U.S. History, and I filed a charge of discrimination. Subsequently, after filing other charges of discrimination and a lawsuit[1], I was discharged.
>
> I believe that I have been discriminated against in retaliation for engaging in protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.

See EEOC Charge, attached hereto as Exhibit 2. Plaintiff represents that he received a Notice of Right to Sue letter (dated May 15, 2014) on May 29, 2014. *See* Notice of Right to Sue letter, attached nereto as Exhibit 3.

Title VII requires that a plaintiff file a charge of discrimination with the EEOC before filing a lawsuit. 42 U.S.C. § 2000e-5(e)(1). If the EEOC dismisses the charge, it informs the claimant by certified mail that a civil action may be brought against the employer within 90 days of receipt of the letter. 42 U.S.C. § 200e-5(f)(1). Like a statute of limitations, compliance with the 90-day time limit is a "condition precedent" to filing suit, and is subject to equitable modifications. *Perkins v. Silverstein*, 939 F.2d 463, 470 (7th Cir. 1991).

[1] The lawsuit Plaintiff references in the EEOC Charge is *Thompson v. Board of Education, et al*, 11 C 1712, pending in the U.S. District Court for the Northern District of Illinois. Plaintiff is not referencing the instant litigation, which was not filed as of the date Plaintiff was laid off on August 16, 2013.

District judges lack authority to extend statutory periods of limitations, including the 90-day period codified in 42 U.S.C. § 200e-5(f)(1). *Lee v. Cook County*, 635 F.3d 969, 972 (7th Cir. 2011), *see also Ammons v. Cook County*, 2012 WL 2368320, * (N.D. Ill. June 20, 2012) (same). "A statute of limitations confers rights on putative defendants; judges cannot deprive those persons of entitlements under a statute." *Lee*, 635 F.3d at 792. Thus, this Court cannot extend the 90-day filing requirement for Plaintiff's Title VII claim.

II. The doctrine of equitable tolling is inapplicable.

Plaintiff's motion hints that the doctrine of equitable tolling should apply to save his Title VII claim even if filed past the 90-day limit. A litigant is entitled to equitable tolling if he shows "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way" and prevented timely filing. *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). In his motion, Plaintiff argues that because the pending motions to dismiss in the instant case will not be addressed until August 28, 2014, he is prevented from timely filing a Title VII claim based on the EEOC Charge. This, however, is untrue.

In Illinois, "plaintiffs **may** join any causes of action, against any defendants." 735 ILCS 5/2-614(a) (emphasis supplied). The objective of joinder is the economy of actions and trial convenience. The determining factors are that the claims arise out of closely related "transactions" and that there is in the case a significant question of law or fact that is common to the parties. *City of Nokomis v. Sullivan*, 14 Ill.2d 417, 420 (1958). "[A] court may, in its discretion, order separate trial of any causes of action...if it cannot be conveniently disposed of with the other issues in the case." 735 ILCS 5/2-614(b). Joinder of claims against a single defendant is permissive, not compulsory.

There is nothing stopping Plaintiff from filing a separate lawsuit in the U.S. District Court for the Northern District of Illinois alleging Title VII retaliation based on the EEOC Charge. In fact, he has already done so on August 18, 2014 (Ex. 1). Plaintiff is simply incorrect in his statement that he "has no choice but to file for leave of court to extend the time to file his related Title VII count..."[2] (Pl. Mtn. at 1-2).

There are no extraordinary circumstances preventing Plaintiff from filing his Title VII claim against the Board. The doctrine of equitable tolling is inapplicable to Plaintiff's plight.

III. Prior extension of time granted in Plaintiff's federal litigation is irrelevant.[3]

Plaintiff argues that he was allowed to file a Title VII claim based on an EEOC Notice of Right to Sue Letter past the 90-day deadline in his federal litigation, *Thompson v. Board of Education, et al*, 11 C 1712, pending in the U.S. District Court for the Northern District of Illinois. Plaintiff represents that he was able to file a fourth amended complaint in his federal litigation adding a Title VII retaliation claim past the 90-day deadline following the issuance of a second EEOC Notice of Right to Sue letter. Substantively, he alleged that he was retaliated against for filing his first EEOC charge when he was not granted his teaching preference at Harlan High School. Thus, his second EEOC charge alleging retaliation was based on the filing of his first EEOC charge alleging discrimination.

The Board did not make a specific objection to the court related to the timeliness of the amendment based on the 90-day deadline. Likewise, the court did not specifically address the

[2] A simple reading of the EEOC Charge makes clear that it is factually unrelated to the claims contained in Plaintiff's Verified Second Amended Complaint, save the fact that it is against a named defendant.

[3] Plaintiff's statement that "there was a previous agreement with Defendant CPS to separate this case from Plaintiff's current federal case" is a complete misrepresentation. Plaintiff's strategic decisions regarding filing of his various claims were made by Plaintiff and Defendant Board made no representations to Plaintiff regarding the viability of any future claims.

issue of filing the retaliation claim past the 90-day deadline. The Board was cognizant of case law in the Seventh Circuit that states that seemingly untimely retaliation claims relate back to the underlying timely EEOC charge alleging discrimination. *See Steffen v. Meridian Life Ins. Co.*, 859 F.2d 534, 545 n.2 (7th Cir. 1988) (citing cases). Thus, the Board knew that an objection would likely have been futile.

Discussion of the procedural history of the federal litigation is completely irrelevant, a red herring, and should be disregarded.

IV. Plaintiff's Alternative Request to File a Third Amended Complaint should be denied

As noted above, Plaintiff's entire motion is moot now that he has filed his most recent federal Complaint. However, not only should Plaintiff not receive an extension of his statute of limitations, he should not be allowed to file a third amended complaint at this time.

Parties do not have an absolute right to amend their pleadings and should obtain permission from the court to file proposed amendments. *First Robinson Sav. & Loan v. Ledo Const. Co., Inc.*, 210 Ill. App. 3d 889, 892 (5th Dist. 1991). Case law requires that Plaintiff "state the reason for the amendment that is being proposed, show the materiality and propriety of the proposed amendment, explain why the proposed additional matter was omitted from earlier pleadings, and be supported by an affidavit." *First Robinson* at 892. In this case, other than Plaintiff's general indication that he wants to include allegations under Title VII, neither the Court nor any parties know what his proposed amendment entails. As noted above, the alleged claim is, at best, tangentially connected to this lawsuit, and is not material to this case. In short, Plaintiff has failed to comply with the requirements for amending pleadings, and his request should be denied

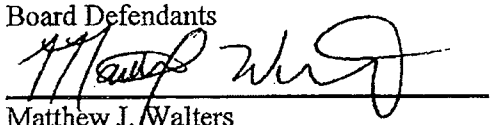
Moreover, Plaintiff cannot explain his delay in filing or requesting the amendment. He acknowledges receiving the Right to Sue letter on May 29, 2014. Since that day, the parties have been before this Court and the predecessor court multiple times, but Plaintiff never requested this amendment until the ruling on Defendants' motions to dismiss was drawing near. He is attempting to avoid this Court ruling on Defendants' pending motions by waiting until the last minute to amend his pleadings. Courts must take into account "the timeliness of the amendment and whether other parties have been prejudiced or surprised by the proposed amendment." *Scentura Creations, Inc. v. Long*, 325 Ill. App. 3d 62, 72 (2d Dist. 2001). The defendants are being prejudiced here through Plaintiff's lack of timeliness. Plaintiff has already managed to delay the ruling on the motions to dismiss by asking for a substitution of judge and is now asking that those motions be delayed even further, if not mooted entirely, by allowing him to file a new complaint.

If this Court is inclined to grant Plaintiff leave to file a third amended complaint, the Board Defendants request that it be limited in scope, that he only be allowed to add this new cause of action, and he not be allowed to change any of the facts or causes of action previously filed. The Code of Civil Procedure states that amendments are to be allowed "on just and reasonable terms." 735 ILCS 5/2-616. If Plaintiff is allowed to file this amendment, it would be both just and reasonable to limit it so that the Defendants' motions to dismiss can still be heard and ruled upon.

CONCLUSION

For the forgoing reasons, Board Defendants respectfully request that the Court deny Plaintiff's Amended Motion for Leave of Court to Extend Time to File Title VII Right to Sue Count or For Leave to File a Third Amended Complaint.

Respectfully submitted,
Board Defendants

By: 

Matthew J. Walters
Board of Education of the City of Chicago

James L. Bebley, General Counsel
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DR. MARK THOMPSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	14 CH 15697
	)	
BOARD OF EDUCATION OF THE CITY OF CHICAGO, et al.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Defendants Dr. Barbara Byrd-Bennett and the Board of Education of the City of Chicago have filed a Motion to Dismiss pursuant to 735 ILCS 5/2-619.1.

I. Background

Plaintiff Dr. Mark Thompson was employed as a teacher by Defendant the Board of Education of the City of Chicago ("Board"). Dr. Barbara Byrd-Bennett is the Chief Executive Officer of the Board. Plaintiff has filed a Verified Complaint for Declaratory Judgment and Permanent Injunctive Relief ("Complaint") alleging that Defendants have convened an Illinois State Board of Education ("ISBE") teacher dismissal hearing for improper purposes.

Plaintiff alleges that on September 13, 2012, he was suspended without pay pending an ISBE dismissal hearing. (Compl. ¶14). Plaintiff alleges that employees of the Chicago Public Schools ("CPS") conspired with a recipient of mental services to have her falsely state that Plaintiff had assaulted her during private coaching. (Id.). Plaintiff asserts that this was an effort to sabotage Plaintiff's pending federal lawsuits against CPS. (Id.).

On August 16, 2013, Plaintiff was dismissed from his employment for budgetary reasons. (Id. at ¶19). Plaintiff alleges that Defendants improperly proceeded with the ISBE hearing to determine Plaintiff's entitlement to back pay. (Id. at ¶¶20-21). That hearing has been stayed indefinitely pending Plaintiff's appeal of the dismissal of his lawsuit seeking the mental health records of his alleged victim. (Id. at ¶28).

Count I of the Complaint asserts a violation of the Equal Protection Clause of the Illinois Constitution. Count II asserts a claim for abuse of process. Count III seeks a declaration that Defendants are using the ISBE hearing for an improper purpose. Count IV seeks a permanent injunction prohibiting Defendants from using the ISBE hearing for improper purposes.

II. Motion to Dismiss

Defendants are moving to dismiss the Complaint pursuant to 735 ILCS 5/2-619.1.

A §2-615 motion to dismiss "challenges the legal sufficiency of the complaint." Chicago City Day School v. Wade, 297 Ill. App. 3d 465, 469 (1st Dist. 1998). The relevant inquiry is whether sufficient facts are contained in the pleadings which, if proved, would entitle a plaintiff to relief. Id. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "A section 2-615 motion admits as true all well-pleaded facts and reasonable inferences that can be drawn from those facts, but not conclusions of law or conclusions of fact unsupported by allegations of specific facts." Talbert v. Home Savings of America, 265 Ill. App. 3d 376, 379-80 (1st Dist. 1994). A section 2-615 motion will not be granted "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." Baird & Warner Res. Sales, Inc. v. Mazzone, 384 Ill. App. 3d 586, 590 (1st Dist. 2008).

A §2-619 motion to dismiss "admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action." Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits "the disposal of issues of law or easily proved facts early in the litigation process." Id.

A. *Procedural Matters*

Initially, this court notes that its consideration of Defendants' motion to dismiss is based solely on the allegations actually set forth in the Complaint. Assertions made by Plaintiff in his Response which are not pled in the Complaint will not be considered.

Next, to the extent that Plaintiff is asserting that Defendants' motion is deficient because it is not verified, a motion to dismiss is not a pleading. There is no requirement that motions be verified.

Finally, Plaintiff suggests that pleading standards should be relaxed because he is representing himself *pro se*. "In Illinois, parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standards as licensed attorneys. Illinois courts have strictly adhered to this principle, noting a '*pro se* litigant must comply with the rules of procedure required of attorneys, and a court will not apply a more lenient standard to *pro se* litigants.'" Holzrichter v. Yorath, 2013 IL App (1st) 110287, ¶78.

B. *Count I (Equal Protection)(§2-615)*

Count I asserts an equal protection claim. "The equal protection clause requires that the government treat similarly situated individuals in a similar fashion, unless the government can demonstrate an appropriate reason to treat them differently." People v. Masterson, 2011 IL 110072, ¶25. "An equal protection claim requires a threshold allegation that the plaintiff was

treated differently from similarly situated individuals." In re C.E., 406 Ill. App. 3d 97, 112 (1st Dist. 2010).

Plaintiff alleges that he belongs to a class of "already dismissed" or "former employees." (Compl. ¶39). Plaintiff fails, however, to allege any facts showing how he has been treated differently from other "already dismissed" or "former employees." Illinois is a fact-pleading jurisdiction. Simpkins v. Csx Transp., 2012 IL 110662, ¶26. "A plaintiff may not rely on conclusions of law or fact unsupported by specific factual allegations." Id.

In his Response, Plaintiff cites to Geinosky v. City of Chicago, 675 F.3d 743 (7th Cir. 2012), in which the court acknowledged the possibility of the existence of a "class-of-one." However, such a claim can only be maintained if the plaintiff is part of a protected class. Id. at 747-48. Plaintiff does not allege that he is a member of any protected class.

Count I does not state a claim and is dismissed.

C. ***Count II (Abuse of Process)(§2-615)***

Count II asserts a claim for abuse of process against Defendants. Illinois, however, does not recognize any such claim in the context of administrative proceedings. Kirchner v. Greene, 294 Ill. App. 3d 672, 684 (1st Dist. 1998). Count II is dismissed with prejudice.

D. ***Count III (Declaratory Judgment)(§2-615)***

Defendants contend that Count III, seeking declaratory judgment, fails to state a claim. "A declaratory judgment action requires (1) a plaintiff with a tangible, legal interest; (2) a defendant with an opposing interest; and (3) an actual controversy between the parties concerning such an interest." Adkins Energy, LLC v. Delta-T Corp., 347 Ill. App. 3d 373, 376 (2d Dist. 2004); 527 S. Clinton, LLC v. Westloop Equities, LLC, 932 N.E.2d 1127, 1137 (1st Dist. 2010). A complaint that alleges sufficient facts to show an actual controversy between the parties and prays for a declaration of rights states a cause of action. Alderman Drugs, Inc. v. Metropolitan Life Ins. Co., 79 Ill. App. 3d 799, 803 (1st Dist. 1979).

The pleading of Count III is contradictory and confusing. It is not clear what Plaintiff believes constitutes the actual controversy between the parties. Therefore, Count III does not state a claim.

E. ***Count IV (Permanent Injunction)(§2-615)***

Count IV seeks to permanently enjoin Defendants from "improperly" using the ISBE hearing. To establish its entitlement to a permanent injunction, Plaintiff must show: (1) it has a clear and ascertainable legal right in need of protection; (2) the existence of irreparable harm; and (3) lack of an adequate legal remedy. Kopchar v. City of Chicago, 395 Ill. App. 3d 762, 772 (1st Dist. 2009).

Plaintiff has not alleged any facts showing the existence of irreparable harm in the absence of a permanent injunction. Nor has Plaintiff alleged any facts showing lack of an adequate legal remedy. Count IV does not state a claim.

F. ***Exhaustion of Remedies (§2-619)***

Defendants contend that the entire Complaint should be dismissed because Plaintiff has failed to exhaust his administrative remedies. Defendants are correct.

A party is required to exhaust its administrative remedies before seeking judicial review. County of Knox v. The Highlands, LLC, 188 Ill. 2d 546, 551 (1999). The ISBE hearing has not been completed. Plaintiff may not seek judicial relief prior to the completion of that hearing. Beahringer v. Page, 204 Ill. 2d 363, 375 (2003).

III. Conclusion

Defendants' Motion to Dismiss pursuant to §2-619.1 is granted. The status date of March 5, 2015 is stricken.

Enter: _____

Judge Neil H. Cohen

ENTERED
Judge Neil H. Cohen-2021
FEB 25 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK _____

2016 IL App (1st) 150689-U

FIFTH DIVISION
June 10, 2016

No. 1-15-0689

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARK THOMPSON, Plaintiff-Appellant, v. THE BOARD OF EDUCATION OF THE CITY OF CHICAGO, and BARBARA BYRD-BENNETT, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 14 CH 15697 Honorable Neil H. Cohen, Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in dismissing the plaintiff's declaratory judgment action where he failed to exhaust all of his administrative remedies prior to filing the instant cause of action.

¶ 2 Plaintiff Mark Thompson filed a complaint against the Board of Education of the City of Chicago and Barbara Byrd-Bennett (defendants) for a declaratory judgment and permanent injunctive relief in the circuit court of Cook County. Plaintiff's complaint requested the circuit

court dismiss an administrative action brought by the Illinois State Board of Education (ISBE) to terminate his employment as a tenured teacher with Chicago public schools (CPS).[1] The circuit court dismissed plaintiff's action, finding he failed to exhaust his administrative remedies before the ISBE and failed to state a claim. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On September 29, 2014, plaintiff filed a *pro se*, four-count complaint seeking a declaratory judgment and permanent injunctive relief. Plaintiff alleged that on August 16, 2013, he was dismissed from his position pursuant to section 34-85 of the Illinois School Code (School Code) (105 ILCS 5/34-85 (West 2012)) for budgetary reasons. According to plaintiff's allegations, on December 9, 2013, defendants then proceeded to a dismissal hearing despite knowing that plaintiff had already been dismissed. Plaintiff alleged that based on this fact, "[d]efendants declared the ISBE hearing was no longer a dismissal hearing but rather a hearing to determine [p]laintiff's entitlement to 'back pay.' " Therefore, plaintiff maintains the ISBE lacked subject matter jurisdiction over the dismissal hearing and, thus, should be enjoined from continuing the dismissal proceedings against him.

¶ 5 In count one, plaintiff asserted that the misuse of the dismissal hearing by defendants was a violation of the equal protection clause of the Illinois Constitution. In count two, plaintiff alleged that the misuse of the dismissal hearing by defendants was an abuse of process. In count three, plaintiff sought a declaratory judgment because defendants' use of the dismissal hearing was being utilized for another reason other than for its intended purpose. In count four, plaintiff further sought a permanent injunction enjoining defendants from using the dismissal hearing

[1] The dismissal hearing was stayed as of December 12, 2013, pending a ruling from this court in a separate but related case. We subsequently issued an opinion in that matter, *Thompson v. N.J.*, 2016 IL App (1st) 142918.

process for an improper purpose.

¶ 6 On December 12, 2014, defendants filed a motion to dismiss pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)) on the grounds that plaintiff failed to exhaust his administrative remedies and could not succeed on the merits of his pleading. On February 25, 2015, after the matter was fully briefed, the circuit court issued a written order setting forth the basis for dismissing plaintiff's complaint. First, the circuit court found plaintiff failed to exhaust all of his administrative remedies and, thus, dismissed the complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2014)).[2] Second, the circuit court determined that none of the counts contained within the complaint sufficiently stated a cause of action and dismissed the complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)).[3] This appeal was timely filed on March 5, 2015.

¶ 7 ANALYSIS

¶ 8 Standard of Review

¶ 9 In this case, the circuit court dismissed plaintiff's complaint pursuant to both sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2014)). We, however, may affirm on any basis that appears in the record. *Gunthorp v. Golan*, 184 Ill. 2d 432, 438 (1998). Under either section 2-615 or 2-619, our review is *de novo*. *Mauvais-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶ 64. *De novo* consideration means we perform the same analysis that a trial court would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 10 Subject Matter Jurisdiction

¶ 11 On appeal, plaintiff has withdrawn count two of the complaint which alleged abuse of

[2] The circuit court did not specify under which subsection of section 2-619 of the Code it relied on when dismissing the complaint.

[3] Only count two was dismissed with prejudice.

process. Plaintiff now argues that the remaining three counts "were adequately pled, assuming defendants lack subject matter jurisdiction or statutory authority to convene an ISBE dismissal hearing or alter its statutory scope against someone they do not employ." Plaintiff maintains that as of August 16, 2013, he was no longer employed by defendants, but despite that fact defendants convened a dismissal hearing against him on December 9, 2013. Plaintiff, however, does not dispute that he was employed by CPS when the dismissal charges were initially filed and that he had been suspended without pay pending the ISBE dismissal hearing on September 13, 2012. We further observe that plaintiff failed to provide this court with the record from the dismissal hearing. With this in mind, we first turn to examine whether the ISBE had subject matter jurisdiction over the charges against plaintiff.

¶ 12 "Subject matter jurisdiction" is a court's power "to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). "The absence or presence of jurisdiction is a purely legal question, and our review therefore is *de novo*." *In re Luis R.*, 239 Ill. 2d 295, 299 (2010). Under the Illinois Constitution of 1970, the circuit courts have original jurisdiction of all justiciable matters. Ill. Const. 1970, art. VI, § 9; *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2015 IL 117443, ¶ 15. The legislature, however, "may divest the circuit courts of their original jurisdiction through a comprehensive statutory administrative scheme, but it must do so explicitly." *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 27. In an administrative proceeding, jurisdiction of the administrative body is conferred by statute. See *Alvarado v. Industrial Comm'n*, 216 Ill. 2d 547, 553 (2005) (An administrative agency's powers are limited to those granted by the legislature and any action taken by an agency must be authorized specifically by statute). "When an agency acts outside its specific statutory authority,

it is said to have acted without 'jurisdiction.' " *Ferris, Thompson & Zweig, Ltd.*, 2015 IL 117443, ¶ 16.

¶ 13 Plaintiff contends that the circuit court erred when it dismissed his complaint without considering whether the ISBE had subject matter jurisdiction. In response, defendants assert plaintiff failed to raise this jurisdictional question in the administrative hearing and improperly waited to file this suit before raising the issue. In reply, plaintiff maintains that he may raise the issue of subject matter jurisdiction at any time.

¶ 14 Section 34-85 of the School Code grants the ISBE the authority and jurisdiction to remove a permanently appointed teacher from his or her employment. 105 ILCS 5/34-85 (West 2012). No permanently appointed teacher in the CPS system is to be removed except for cause. *Id.* The local board must first approve a motion containing written charges presented by the general superintendent of schools, and written notice of the approved charges is to be served on the teacher. *Id.* If requested by the teacher, a hearing is then to be held before a disinterested hearing officer paid by the board and selected by the parties from a list furnished by the board. *Id.* At the dismissal hearing, the teacher may appear with counsel, cross-examine witnesses, and present evidence and defenses. *Id.* Afterward, the hearing officer is to make a final decision on whether the teacher is to be dismissed. *Id.* The hearing officer's decision is subject to the Administrative Review Law (735 ILCS 5/3-301 *et seq.* (West 2012)). *Id.*

¶ 15 We find the ISBE has subject matter jurisdiction. While we agree with plaintiff that arguments concerning subject matter jurisdiction may be raised at any time (see *Fredman Brothers Furniture Co. v. Department of Revenue*, 109 Ill. 2d 202, 215 (1985)), we find that the remainder of plaintiff's argument is flawed. Plaintiff's argument is essentially that defendants' failure to sufficiently allege that he is an employee deprives the ISBE of jurisdiction to hear the

matter. Our supreme court has previously stated, however, that subject matter jurisdiction does not depend on the legal sufficiency of a complaint. *Dubin v. Personnel Board of City of Chicago*, 128 Ill. 2d 490, 496-97 (1989) (collecting cases). "To hold otherwise would create the paradoxical situation that a court, by deciding that the allegations in a complaint were insufficient to state a cause of action, would divest itself of having had jurisdiction to make the decision that the complaint was insufficient." *Id.* At the time the charges against plaintiff were filed, plaintiff was a tenured teacher employed by CPS. Accordingly, pursuant to section 34-85 of the School Code (105 ILCS 5/34-85 (West 2012)), once plaintiff elected to proceed with a discharge hearing, the ISBE had subject matter jurisdiction over the matter. See *Newkirk v. Bigard*, 109 Ill. 2d 28, 36-7 (1985) (finding the mining board had subject matter jurisdiction where the matter fell within the "general class of cases to which the particular case belongs"); 105 ILCS 5/34-85(a)(2) (West 2012) (no hearing upon the charges unless requested by the teacher). Therefore, plaintiff's claim that the ISBE lacked subject matter jurisdiction fails.

¶ 16 Exhaustion

¶ 17 Although plaintiff concedes in his brief that if there is subject matter jurisdiction over him the complaint must be dismissed, we decline to uphold the dismissal of his complaint solely on that basis. While we have determined that the ISBE has subject matter jurisdiction over plaintiff's dismissal hearing, we have yet to determine whether the circuit court's determination to dismiss plaintiff's complaint was appropriate. In this regard, we find application of the exhaustion doctrine to be dispositive.

¶ 18 The doctrine of exhaustion helps establish a proper relationship between the court system and administrative bodies. *Northern Trust Co. v. County of Lake*, 353 Ill. App. 3d 268, 276 (2004). The exhaustion doctrine generally provides "that a party that disagrees with an agency's

administrative action cannot seek judicial review, including through actions for injunctive and declaratory relief, without first pursuing all of the administrative remedies available to him or her." *Gallaher v. Hasbrouk*, 2013 IL App (1st) 122969, ¶ 18. The purpose of the exhaustion doctrine is to allow administrative bodies to develop a factual record and to permit them to apply the special expertise they possess. *Canel v. Topinka*, 212 Ill. 2d 311, 320-21 (2004). Exhaustion also minimizes interruption of the administrative process. *Village of South Elgin v. Waste Management of Illinois, Inc.*, 348 Ill. App. 3d 929, 935 (2004). Moreover, the aggrieved party might succeed before the administrative body, obviating the need for judicial involvement, thereby conserving judicial resources. *Canel*, 212 Ill. 2d at 320-21. If a challenging party alleges that a facially valid statute has been applied in an arbitrary or discriminatory manner, " 'the rule generally prevails that recourse must be had in the first instance to the appropriate administrative board.' " *Beahringer v. Page*, 204 Ill. 2d 363, 374 (2003) (quoting *Bank of Lyons v. County of Cook*, 13 Ill. 2d 493, 495 (1958). It is in this way that the exhaustion doctrine is similar to the ripeness doctrine, in that it "prevents courts from entangling themselves in abstract disagreements over administrative policies and protect[s] the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." (Internal quotation marks omitted.) *Poindexter v. State, ex rel. Dept. of Human Services*, 229 Ill. 2d 194, 208-9 (2008). In addition, our supreme court has held that "where a final agency decision has been rendered and the circuit court may grant the relief which a party seeks within the context of reviewing that decision, a circuit court has no authority to entertain independent actions regarding the actions of an administrative agency." *Dubin*, 128 Ill. 2d at 499. The court reasoned that, "[a]ny other conclusion would enable a party to litigate separately every alleged error committed by an agency in the course of the administrative

proceedings." *Id.*

¶ 19 We conclude plaintiff has not exhausted his administrative remedies. Plaintiff's argument that his current employment status prohibits defendants from proceeding with the dismissal charges against him is a matter best left to the ISBE. See *id.* While there is an exception to the exhaustion doctrine where a party challenges the agency's authority to proceed under a statute or administrative rule (see *Gallaher*, 2013 IL App (1st) 122969, ¶ 19), as previously discussed, we find plaintiff's argument in this regard to be without merit as the ISBE has subject matter jurisdiction over the dismissal charges (see 105 ILCS 5/34-85 (West 2012)). Plaintiff's failure to exhaust his administrative remedies is an affirmative matter (see *Village of South Elgin*, 348 Ill. App. 3d at 934), and we conclude that it was a proper basis for dismissing the complaint with prejudice pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2014)). Accordingly, we affirm the judgment of circuit court dismissing plaintiff's complaint.

¶ 20 CONCLUSION

¶ 21 For the reasons stated, we affirm the judgment of the circuit court.

¶ 22 Affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARK THOMPSON, Plaintiff, vs. BOARD OF EDUCATION OF THE CITY OF CHICAGO, et al., Defendants.	No. 14 C 6340 Chicago, Illinois March 23, 2017 9:00 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. JOHN Z. LEE

APPEARANCES:

For the Plaintiff: MR. MARK THOMPSON, Pro Se

For Defendant Chicago Board of Education: MS. KATHLEEN M. GIBBONS
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PATRICK J. MULLEN
Official Court Reporter
United States District Court
219 South Dearborn Street, Room 1412
Chicago, Illinois 60604

THE CLERK: 14 C 6340, Thompson versus Board of Education of the City of Chicago.

MS. QUINN: Good morning, Your Honor. Sarah Quinn and Kathleen Gibbons on behalf of the Board of Education.

THE PLAINTIFF: Good morning, Your Honor. Mark Thompson, plaintiff.

THE COURT: Good morning. So plaintiff has filed a motion for leave to file a second amended complaint. The parties have submitted their briefs. I reviewed the briefs, and I'll go ahead and state my ruling with regard to the motion today on the record.

As the parties know, whether to grant leave to amend is a discretionary matter. On the one hand, Rule 15(a) says that leave to amend should be freely granted when justice so requires. On the other hand, the Seventh Circuit has made clear that district courts have broad discretion to deny leave to amend where there is undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice, or where the amendment would be futile. I have kept these principles in mind in reviewing plaintiff's motion.

First, there are a number of counts, so I'm just going to go through all of them. Okay?

Counts 6 through 12 of the proposed second amended complaint contain amended versions of Counts 6 through 11 from the first amended complaint. I'll start with those proposed

amendments first. In Count 6, plaintiff previously brought a claim for negligent infliction of emotional distress. Count 6 of the proposed complaint has been amended to bring a claim for intentional infliction of emotional distress. Defendants have not opposed this motion and so, therefore, plaintiff's motion for leave to amend is granted as to Count 6.

THE PLAINTIFF: Thank you.

THE COURT: In Count 7, plaintiff previously brought a claim for negligent supervision. The claim was based on the board's failure to prevent defendants Krieger and Evans from giving false information regarding plaintiff's employment rating as being, quote-unquote, unsatisfactory.

In a prior order, I dismissed this claim as being precluded by plaintiff's 2011 federal case. I explained that because the claim was based on plaintiff's rating as being unsatisfactory there was no reason why he could not have included the claim in the 2011 case which also involved claims based on this rating.

In the proposed second amended complaint, plaintiff has repled Count 7 to specify that defendant Krieger falsified information, quote, in January 2013 to enable the board to terminate his employment in August 2013, end quote. As noted in my prior order, the operative complaint in the 2011 case was filed on May 6th, 2013. Because the proposed amended allegations for Count 7 state that Krieger falsified

information back in January 2013, it still appears to the Court that plaintiff could have brought this claim in the 2011 case. As such, the amended allegations do not provide a reason for me to alter my prior ruling that this claim is precluded by the 2011 case and, therefore, it would be futile to amend Count 7 in the manner proposed. Therefore, plaintiff's motion for leave to amend Count 7 is denied.

In Count 8, plaintiff previously brought a claim for violation of the Illinois Personnel Records Review Act. I previously dismissed part of that claim because plaintiff had not alleged that he provided the board with a copy of the notice he received from the Department of Children and Family Services. In the proposed complaint, Count 8 now includes allegations regarding notice. Furthermore, defendants have not objected to the amendment of Count 8. For these reasons, plaintiff's motion for leave to amend Count 8 is granted.

Turning now to Counts 9, 10, and 11, plaintiff previously brought claims under 42 U.S.C. 1985 and 1986 for conspiracy to violate civil rights. Earlier I dismissed those claims as failing to state a claim for relief because they did not include allegations of class-based animus. In Counts 9, 10, and 11 of the proposed complaint, however, plaintiff has included such allegations. Accordingly, plaintiff's motion for leave to amend with regard to Counts 9, 10, and 11 of the proposed second amended complaint is granted.

In Count 12, plaintiff repleads an equal protection claim. I previously dismissed this claim because it did not include allegations that defendants treated plaintiff differently from any other individuals. Plaintiff proposed to amend this count to include such allegations. Accordingly, plaintiff's motion for leave to amend Count 12 is granted as well.

Now, that takes care of the proposed amendments to claims that plaintiff has previously alleged in his first amended complaint. I know that defendants have objected to some of those amendments on grounds of preclusion and failure to exhaust administrative remedies, and I know that defendants have also objected on similar grounds to some claims in Counts 1 through 5 which plaintiff did not seek to amend. In my view, those objections speak to merits issues that are more properly addressed on a motion to dismiss, and I'll entertain those arguments at that time. Defendants are free to raise them when it files its dispositive motions and its responsive pleading.

In addition to the claims I've just discussed, plaintiff's proposed second amended complaint brings 11 new claims in Counts 13 through 23. I'll just discuss them briefly below. So first Counts 13 and 14 bring a new Title VII claim against the board as well as a procedural due process claim against two of the defendants, Nielsen and Claypool. Defendants have not opposed the addition of those claims, so

plaintiff's motion for leave to amend is granted as to Counts 13 and 14.

Next, Counts 15 through 18 allege that various defendants exceeded the statutory authority in taking certain actions. Counts 15 and 16 challenge defendants' authority to conduct independent investigations of unfounded DCFS reports of sexual abuse of minors under the Illinois Abused and Neglected Child Report Act. Count 17 challenges defendants' authority to conduct backpay hearings under 105 Illinois Compiled Statutes 5/34-85. Count 18 challenges defendants' authority to initiate an investigation upon opening plaintiff's e-mail without his permission under 18 U.S.C. 1701, 1702, and 1708. Plaintiff seeks declaratory and injunctive relief as to each of those claims.

Defendants, for their part, argue that these claims fail to state a cognizable cause of action. Having reviewed those claims and having considered the parties' submissions, I conclude the defendants are correct in that regard. As to Counts 15 and 16, plaintiff has not cited nor have I been able to find any authority indicating the Child Report Act provides a private cause of action or that it places any limits at all on defendants' authority to conduct independent investigations.

As to Count 17, plaintiff again has not cited and I have not been able to find any authority indicating that 105 Illinois Compiled Statutes 5/34-85 provides a private cause of

action or, again, that it places any limits at all on defendants' authority to conduct backpay hearings.

Plaintiff also has not stated a cognizable cause of action in Count 18. 18 U.S.C. 1701, 1702, and 1708 impose federal criminal penalties. They do not give rise to private causes of action in civil litigation.

For those reasons, because Counts 15 through 18 do not state cognizable causes of action, their inclusion in a second amended complaint would be futile. Therefore, plaintiff's motion for leave to amend is denied as to Counts 15 through 18.

Finally, Counts 19 through 23 bring various additional claims and name several additional defendants, including defendants Brown, Sullivan, Claypool, Wilke, , a Jane Doe, and Lakeshore University Health Systems. In their response to plaintiff's motion, defendants have objected to the addition of these claims on grounds of preclusion as well as failure to exhaust administrative remedies. Again, those kinds of arguments speak to merit issues that are more properly raised on a motion to dismiss. Therefore, plaintiff's motion to amend is granted as to Counts 19 through 23.

In summary, plaintiff's motion for leave to file a second amended complaint is granted in part and denied in part. The motion is granted as to Counts 1 through 6, Counts 8 through 14, and Counts 19 through 23 of the proposed second amended complaint. The motion is denied as to Count 7 and

Counts 15 through 18.

All right. So where does this leave us? This leaves us, Mr. Thompson, with the fact that you have added additional defendants as part of those counts, and so you need to effectuate service with regard to those defendants.

THE PLAINTIFF: Yes.

THE COURT: How much time do you need to effectuate service?

THE PLAINTIFF: It depends on if you can allow me to use the U.S. Marshal. There's a couple of individuals that are going to be very difficult to serve. One of them tried to evade -- or evaded service last time. At my expense, I'd like to use the U.S. Marshal on those. I think they're going to be difficult, if that's possible. But I can do it, you know, as soon as possible. I can get, you know, the ball rolling.

THE COURT: All right. So with regard to the new defendants, I do not think that it's proper or appropriate, even if you bear the cost of having the U.S. Marshal try to serve the complaint upon the newly named defendants. That's not really their job. That's kind of outside the purview of their authority.

THE PLAINTIFF: I understand.

THE COURT: Given that, how much time do you need to effectuate service? I want this done sooner rather than later.

THE PLAINTIFF: Me too, Your Honor.

THE COURT: You're the one who wants to add these defendants.

THE PLAINTIFF: Yeah. I don't know. 45 days?

THE COURT: All right. That's fine. So I want all of the newly named defendants served no later than the end of April, April 28th. Okay?

THE PLAINTIFF: Okay.

THE COURT: So after that, would 21 days be sufficient after that for an answer or responsive pleading?

MS. GIBBONS: Your Honor, we actually have a huge response in another case that's going to be due. Could we do 28 days then to give us an extra week to get past that?

THE COURT: That's fine. So that would be May 26th?

MS. GIBBONS: Yeah.

THE COURT: So the defendants' answer or responsive pleading will be due by May 26th. To the extent that any of the new defendants are served before that time, that will be the answer date for them as well.

Then, Mr. Thompson, would four weeks beyond that be sufficient for a response?

THE PLAINTIFF: Oh, definitely.

THE COURT: So that would be June 23rd, and then 14 days for the reply which bring us to July 7th. Actually, I'll give you until the 10th, given the fact that we have July 4th in there, for the reply. Then once everything is filed, I'll

take a look at the motions.

Again, in light of the preclusion issues, discovery is stayed until I resolve those issues. So let's go ahead and set this case for a further status. You know, I want to do this sooner rather than later, so let's set it for the week of August 28th.

THE CLERK: August 29th at 9:00 o'clock.

THE PLAINTIFF: What day is that on?

THE CLERK: Tuesday.

THE PLAINTIFF: Okay.

THE COURT: Mr. Thompson, if for some reason you cannot serve the newly named defendants by the deadline that I gave you, you can move for additional time for service; although at this point, given where we are, if those defendants aren't served by that date and there's no motion filed to extend that date, I'm going to dismiss them without prejudice.

Okay. Thank you.

MS. QUINN: Thank you, Your Honor.

THE PLAINTIFF: Thank you, Your Honor.

(Proceedings concluded.)

C E R T I F I C A T E

I, Patrick J. Mullen, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable JOHN Z. LEE, one of the judges of said Court, at Chicago, Illinois, on March 23, 2017.

/s/ Patrick J. Mullen
Official Court Reporter