intent which can be subtle and less overt. Ordinary people are at a significant disadvantage when challenging the misconduct of employers and institutions because of this informational inequality contained in their policies that are often inaccessible to employees. *See Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007). In the absence of discovery, it is particularly difficult for civil rights claims to survive dismissal. The Justices dissenters in *Twombly* stated that the Federal Rules' "relaxed pleading standards" were intended "not to keep litigants out of court but rather to keep them in." *Id.*

Since some courts are already allowing some discovery before a showing of plausibility, targeted discovery should be fairly and consistently applied to all the federal courts at the pleading stage when there is information asymmetry to allow Plaintiffs to meet the bar on a level playing field, for meritorious claims to proceed. In his dissent in *Twombly*, Justice Stevens stated "Experience has shown that we cannot expect the proof of the case to be made through the pleadings, and that such proof is really not their function" *See Twombly.*

CONCLUSION

Petitioner prays that this writ be issued and if remanded, to the State Court to be fully heard.

Respectfully submitted,

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August 20, 2019

Appendix A

Case No. 18-6093 Filed April 30, 2019

In the United States Court of Appeals for the Tenth Circuit

Susan Gokool, Plaintiff - *Appellant*,

v.

Oklahoma City Univ.; Oklahoma City Univ. School of Law

Defendant(s) - *Appellees*

Before PHILLIPS MCKAY and O'BRIEN, Circuit judges.

Susan Gokool, representing herself pro se, appeals from four orders of the district court issued in response to motions she filed following this court's decision affirming the dismissal of her case for failure to state a claim. We now affirm those orders. Nevertheless, we deny Oklahoma City University's request that we sanction Ms. Gokool for filing a frivolous appeal.

I

Ms. Gokool filed suit against the University in June 2016, making several allegations against the University and its law school in connection with her expulsion.[1] The University removed the case to federal court and subsequently filed a motion to dismiss Ms. Gokool's first amended complaint for failure to state a claim. The district court granted the motion and dismissed Ms. Gokool's case in December

[1] Although Ms. Gokool named the University and the law school as separate entities, the University has informed the court that the law school is operated by the University and is not its own entity.

2016, and this court affirmed that ruling on appeal. *See Gokool v. Okla. City Univ.*, 716 F. App'x 815 (10th Cir. 2017).

After the mandate issued in Ms. Gokool's first appeal, she filed a number of motions in the district court between March and May 2018: (1) a motion asking the district court judge to recuse himself on the basis that his 2016 ruling on the motion to dismiss demonstrated partiality toward the University; (2) a motion to vacate the district court's dismissal for fraud on the court; (3) a motion for reconsideration filed once the district court had denied those first two motions; (4) a second motion regarding recusal of the district court judge, this time addressed to the chief judge asking him to direct the recusal; (5) a motion to correct a typographical error in that second recusal motion, filed after the district court had already issued an order in response to it; (6) a motion for relief; and (7) a motion to suspend proceedings in the district court while Ms. Gokool filed a petition for a writ of certiorari with the U.S. Supreme Court.

The district court denied Ms. Gokool's first two motions because this court had already affirmed the dismissal of her case and she had "provided no basis for the Court's jurisdiction to consider either motion." (Appellant's App. at 369.) The court responded to Ms. Gokool's third and fourth motions by issuing an order for her to withdraw them or to "show cause why her conduct does not violate Federal Rule of Civil Procedure 11(b)." (Id. at 387.) The district court subsequently struck these motions, plus the motion to correct a typographical error, upon finding that Ms. Gokool had failed to show that her motions were not frivolous. The court also stated that it would "strike any of Plaintiff's future filings in this case, unless she

obtains a licensed attorney who certifies that the motion is non-frivolous." (Id. at 413.) The court struck Ms. Gokool's last two motions in accordance with this order. Ms. Gokool appealed.

II.

Ms. Gokool first contends that the district court erred in denying her motion for the judge to recuse himself and her motion to vacate the dismissal of her case pursuant to Federal Rule of Civil Procedure 60(b)(3) and (d)(3). Although the district court's stated reason for denying the motions was a belief that it lacked jurisdiction to consider them, the Supreme Court has held that district courts may consider Rule 60(b) motions filed even after a ruling has been affirmed on appeal. *See Standard Oil Co. of Cal. v. United States*, 429 U.S. 17, 17–18 (1976). Nevertheless, having reviewed Ms. Gokool's motions, we find that the arguments they make are substantially the same as arguments she made in her first appeal to this court, only reframed as allegations of fraud on the court and partiality on the part of the district court judge. Under these circumstances, we conclude there is no need to remand these motions for further proceedings in the district court. Accordingly, in the interest of judicial economy and efficiency, we will address the merits of Ms. Gokool's motions. Rule 60(b)(3) allows a court to relieve a party from a final judgment that resulted from fraud, and Rule 60(d)(3) recognizes the court's power to "set aside a judgment for fraud on the court." Ms. Gokool's motion invoking these provisions raises two arguments that fraud, or fraud on the court, occurred in this case: (1) the University's discussion of Gonzaga University v. Doe, 536 U.S. 273 (2002), and (2) the University's description of Ms. Gokool's fraud claim.

Regarding the first point, Ms. Gokool claimed the University had misled the district court and this court by suggesting that the Supreme Court's decision in Gonzaga had reversed the Washington Supreme Court's conclusion in the underlying case that the student had presented sufficient evidence of an implied contract, *see Doe v. Gonzaga Univ.*, 24 P.3d 390, 402–03 (Wash. 2001), reversed on other grounds by *Gonzaga*, 536 U.S. at 290–91. Ms. Gokool acknowledges that the University made the distinction between the two Gonzaga cases because she had cited to the U.S. Supreme Court's opinion as support for her implied contract claim and the University wished to clarify that "'[t]he U.S. Supreme Court reversed the Washington Supreme Court, because the University thus engaged in "a well-executed planned scheme to deceive the district court into believing that the highest court decided that there was not an implied contract between the student and the university." (Appellant's Reply Br. at 4–5.)

Ms. Gokool's claim is frivolous for numerous reasons. As an initial matter, Ms. Gokool has now filed several pages of motions and briefs haggling over the meaning of two sentences from a footnote in the University's motion to dismiss. Moreover, she has not demonstrated how any deception resulting from those sentences affected either the district court's dismissal of her case or this court's affirmance of that dismissal.

The district court noted that the Washington Supreme Court's decision in Gonzaga had been reversed on appeal to the U.S. Supreme Court, but went on to state that, regardless of the reversal, the Washington decision "seem[ed] to only undermine, not bolster, Ms. Gokool's claims." (Appellant's App.at 218.) Contrary to Ms. Gokool's contention that the

district court's observation of the reversal indicated that it was deceived, the district court merely pointed out the case's subsequent history before addressing Ms. Gokool's arguments based on it anyway. Simply put, no fraud or fraud on the court occurred because of the Gonzaga footnote.

*As for Ms. Gokool's second argument, she asserted in her Rule 60 motion that the University had committed fraud on the court by describing her complaint's fraud cause of action as "merely alleg[ing] that holds were placed on [her] student account, and, at most, [University] employees were confused or misinformed about what the holds meant, why they were placed on the account, and how to remove them."(*Id.* at 183). Ms. Gokool claims that her fraud allegation was based on the employee's intentional acts rather than any confusion or miscommunication. The University's point with regard to the fraud allegation, however, was that Ms. Gokool had not plausibly alleged that the employees had acted intentionally; rather, the evidence at most showed their confusion or misinformation. To survive a motion to dismiss, a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Alt. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Moreover, to show fraud, a plaintiff must prove that the defendant knew that his statements were false or acted with reckless disregard for their truth. *See Bowman v. Presley*, 212 P.3d 1210, 1218 (Okla 2009). Thus, it was entirely appropriate for the university to contend, both before the district court and on appeal, that Ms. Gokool had not plausibly alleged that its employees knew any information they had given her was false.

Ms. Gokool's motion asking the district court's judge to recuse himself put forward essentially the same arguments as her Rule 60 motion, only couched in terms of the district court's acceptance of the University's argument demonstrating* partiality toward the University. Just as the University committed no wrongdoing in its *Gonzaga* and fraud arguments, neither did the district court act with] partiality toward the University, or the appearance of partiality, by finding merit in those arguments. *Cf. Frates v. Weinshienk*, 882 F.2d 1502, 1504–05 (10th Cir. 1989) (finding no appearance of partiality in bankruptcy judge's approval of Chapter 11 plan and statements regarding the likely cash payout for unsecured creditors). Thus, we affirm the district court's denial of Ms. Gokool's first two motions on the alternative basis that the arguments raised in these motions fail on the merits.

After Ms. Gokool filed a motion for reconsideration and a second motion calling for the district court judge's recusal based on the same partiality and fraud arguments, the district court issued an order directing her either to withdraw the motions or to show cause that she was not in violation of Rule 11(b). Ms. Gokool's response to that order detailed the reasons she believed several documents she filed prior to her first appeal, plus her first two post-appeal motions, did not violate Rule 11(b), before finally addressing the merits of the two motions to which the order pertained. Concerning the relevant motions, Ms. Gokool contended that the district court judge knew he had jurisdiction to consider her Rule 60 motion but did not do so because of his bias toward the University, which also committed wrongdoing as she argued in her Rule 60 motion. Ms. Gokool's response

was thus premised on the same partiality and fraud arguments that she had raised in her earlier motions, which we have found to be without merit.

In accordance with its earlier order, after Ms. Gokool had responded, the district court struck her motion for reconsideration, second motion for recusal, and subsequently filed motion to correct a typographical error.[2] The court observed that after the first appeal Ms. Gokool "ha[d] repeatedly—without reliable evidence or reason—accused Defendants and the Court of committing fraud against her as a means of re-litigating meritless claims." (Appellant's App. at 412.) The court then concluded that Ms. Gokool had failed to show that she was not in violation of Rule 11(b) and stated that it would "strike any of [her] future filings in this case, unless she obtains a licensed attorney who certifies that the motion is non-frivolous." (Id. at 412–13 (citing *Evans-Carmichael v. United States*, 343 F. App'x 294, 296 (10th Cir. 2009).)

"[I]njunctions restricting further filings are appropriate where the litigant's lengthy and abusive history is set forth; the court provides guidelines as to what the litigant may do to obtain its permission to file an action; and the litigant receives notice and an opportunity to oppose the court's order before it is implemented." *Andrews v. Heaton*, 483 F.3d 1070, 1077 (10th Cir. 2007). Each of those elements was met here. As we have already observed, Ms. Gokool's first two post-appeal motions only sought to rehash

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[2]. Ms. Gokool asserts that the district court struck her response to its order to show cause, but the record reveals that is not the case.

arguments she made in her first appeal. Furthermore, as the district court noted in its order, Ms. Gokool's second two post-appeal motions again sought to rehash these same issues. The district court thus set out Ms. Gokool's history of filing frivolous motions and, having already given her an opportunity to demonstrate that she was not in violation of Rule 11(b), the court gave her clear guidelines as to how she can obtain permission to file future motions. Because we affirm the district court's imposition of a filing restriction, we likewise affirm its orders striking Ms. Gokool's motions filed after the attorney certification. The University has requested that we "enter an order awarding damages and costs against [Ms.] Gokool for taking this frivolous appeal." (Appellee's Br. at 20.) Under Rule 39(a)(2) of the Federal Rules of Appellate Procedure, costs will generally be taxed against the appellant if a judgment is affirmed.

We see no reason to depart from this general rule here, and thus the University may follow the procedures set forth in Rule 39(d) in order to have costs taxed against Ms. Gokool. However, we decline to award other damages against Ms. Gokool at this time. The district court's filing restriction should provide the University with sufficient protection against frivolous motions going forward.

III.

Therefore, we AFFIRM the district court's orders, HOLD that costs may be taxed against Ms. Gokool, and DENY the University's request for other appellate damages.

Monroe G. McKay Circuit Judge

O'BRIEN, J., concurring and dissenting.

I join the Order and Judgment in all respects except for the denial of the University's request for costs and damages. Fed. R. App. P. 38 provides such a remedy for frivolous filings (for which this appeal appears to be a poster child and thereby qualifies for at least double costs and probably damages as well). Remedial provisions allowed to wither on the vine do not deter frivolous filers but do deny other parties just remedies.

Rule 38 sanctions require a separately filed motion or notice from the court giving the frivolous filer notice and a reasonable opportunity to respond. Since the University's request comes only from its brief, I would provide the required notice to Gokool and expect her response to be filed within 20 days.

Note: Page six of the original opinion was accidentally omitted in the initial brief and inserted her between the asterisks at 5a-6a.

Appendix B

In the District Court for
the Western District of Oklahoma

Case No. 5:16-cv-00807-R Filed 04/23/18

Susan R. Gokool, *Plaintiff*

v.

Oklahoma City University and Oklahoma City University School of law, *Defendants*

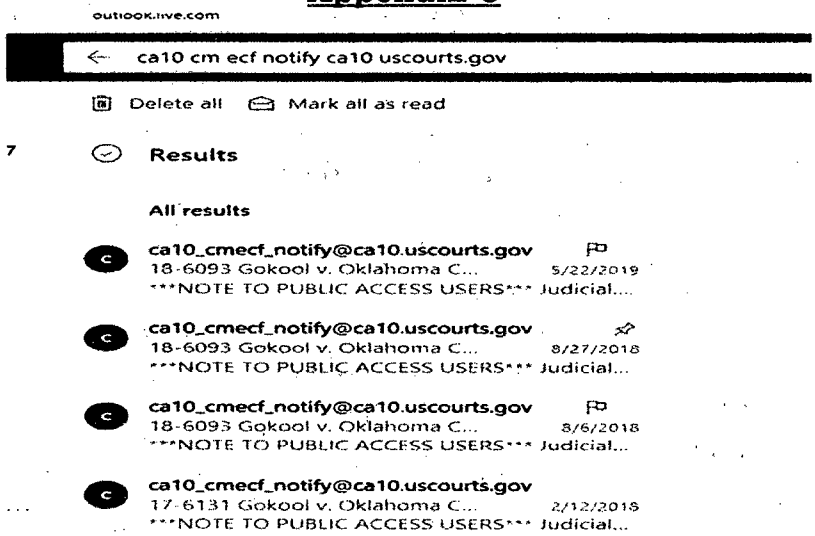
The Court hereby strikes Plaintiff's Motion for Reconsideration (Doc. 41), Motion for Recusal (Doc. 42), and Motion to Amend/ Correct (Doc. 44). This case was resolved on the merits and affirmed on appeal. See Order Granting Motion to Dismiss, Doc. 21 ; Order Denying Motion to Alter Judgment, Doc. 27; Gokool v. Oklahoma City University, et al., No. 17-6131 (10th Cir. Dec. 8, 2017). Since then, Plaintiff has repeatedly—without reliable evidence or reason—accused Defendants and the Court of committing fraud against her as a means of re-litigating meritless claims. See Docs. 38—39, 41—42. The Court granted Plaintiff an opportunity to withdraw her most recent motions, Docs. 41 and 42, or show cause why her conduct does not violate Federal Rule of Civil Procedure I I(b). See Doc.43. Plaintiff declined to withdraw the motions and failed to show that she is entitled to relief. See Doc. 45.

Accordingly, the Motions (Docs. 41, 42, 44) are hereby STRICKEN. The Court will also strike any of Plaintiff's future filings in this case, unless she obtains a licensed attorney who certifies that the motion is non-frivolous. See Evans-Carmichael v. United States, 343 F. App'x 294, 296 (10th Cir. 2009).

IT IS SO ORDERED this 23 rd day of April 2018.

/s/ David Russell
David Russell
United States District Judge

Appendix C



Appendix D

<Karen_Phillips@ca10.uscourts.gov> on behalf of CA10_Team2@ca10.uscourt
Sent: Tuesday, May 28, 2019 9:55 AM
To: susan gokool
We don't see a separately filed motion for sanctions on the docket for this case. You will have to check the docket for yourself or carefully read the appellee's response brief and the court's order and judgment. Any documents you may need from this case can be accessed through PACER. We sent the order and judgment as a courtesy copy. Below is a screen shot of the NDA you received on 4/30/19.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SUSAN R. GOKOOL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. CIV-16-807-R**
	)	
OKLAHOMA CITY UNIVERSITY,	)	
	)	
and	)	
	)	
OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW,	)	
	)	
Defendants.	)	

JUDGMENT

In accordance with the Order entered this 29th day of December, 2016, Judgment is hereby entered in favor of Defendant, Oklahoma City University.

SO ORDERED this 29th day of December 2016.

David L. Russell

DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SUSAN R. GOKOOL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. CIV-16-807-R**
	)	
OKLAHOMA CITY UNIVERSITY,	)	
	)	
and	)	
	)	
OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW,	)	
	)	
Defendants.	)	

ORDER

Before the Court is Defendant Oklahoma City University's Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. (Doc. 19). For the reasons that follow, that Motion is granted in its entirety.

I. Background

Plaintiff Susan Gokool, a onetime student at the Oklahoma City University School of Law (OCU), brings suit against her former law school.[1] And though she asserts an array of claims, her causes of action all implicate a single question: what legal remedy does a student—when her expulsion for failure to maintain the minimum grade point average has

[1] As an initial matter, it appears that Oklahoma City University School of Law in an improperly named party to this action. Oklahoma City University and Oklahoma City University School of Law are not separate entities. OCU Law is merely the school of law operated by OCU. In any event, Ms. Gokool's claims against either party fail.

already been finalized—have against a school when her administrators fail to satisfy her many post-termination requests? At least under these facts, not any.

Ms. Gokool, who enrolled at OCU in August 2013, received an email around June 30, 2014, that some type of hold had been placed on her student account. Apparently there are several different holds that a University can place on a student's account. Depending on the type of hold, a student's access to things such as email, transcripts, or other school information may be limited. Whether this email included any description of the type of hold on her account is unclear, but a letter of dismissal from Associate Law School Dean Eric Laity soon followed on July 5, 2014. (Doc. 1, at 1). Ms. Gokool's dismissal was apparently the result of a failure to maintain OCU's required grade point average.

Unable to view her grades on Bluelink (OCU's student web portal), she contacted the Registrar's Office on July 7, 2014. Ms. Gokool appears to have spoken with two people in the Registrar's Office that day, Kendra Lee and Kelly Monroe. Those conversations resulted in OCU promising to remove the hold on Ms. Gokool's account for that day, July 7 (presumably so Ms. Gokool could see the grades that had resulted in her dismissal). Further, Associate Dean Laity emailed Ms. Gokool to apprise her that any appeal should be filed by 9 a.m. on July 16, 2014. (*Id.* at 2). By all accounts, Ms. Gokool timely filed her appeal. Yet one of her grievances with OCU appears to be that because OCU Law's Student Handbook stipulates that "communication is exclusively by email," her appeal was hurried and thereby hindered because she did not have access to her email until July 7, 2014. (*Id.*).

Ms. Gokool received word from Associate Dean Laity on July 23, 2014, that the University's Petition and Retention Committee had confirmed her dismissal. Still adamant about protesting her dismissal, Ms. Gokool requested a transcript from the Registrar, Shanna Pope, the next day. Pope explained that a Financial Hold prevented access to a transcript (though to who it is not clear), and directed her to the Financial Aid Department to resolve it. Financial Holds are typically placed on a student's account when a student fails to pay tuition or his or her student loans.

Not long after this, Ms. Gokool contacted OCU Law Dean Valerie Couch on July 29, 2014, to request reconsideration of the Committee's decision but received no response. Her later requests to the VP of Student Academic Affairs and the VP of Student Academic Affairs would also receive no reply. This lack of response forms the basis of much of her Complaint. Yet this is not to say that OCU entirely ignored her; Ms. Gokool met with the University Compliance Coordinator, Joey Croslin, in October 2014 to review her grievances. The meeting appears to have been fruitless, however, because Croslin's report from November 3, 2014, showed that Ms. Gokool remained dismissed from OCU.

Part of the reason Ms. Gokool insists her dismissal had not been reversed was because she continued to have trouble accessing her transcript and other student information. Some confusion persisted about the type of hold on Ms. Gokool's account. A letter from Croslin on November 3, 2014, characterized the hold as an Administrative—not a Financial—Hold. But the Registrar's Office, upon denying Gokool's request for transcript on December 1, 2014, said the roadblock was a Financial Hold on her account. After Ms. Gokool learned that a Financial Hold would have been placed by Brian Overling,

the University's Student Loan Coordinator, she left him a message. This set of Ms. Gokool's allegations is murky, but it appears that Overling called her back immediately to tell her that a Financial Hold had been mistakenly placed on her account but was now removed. Ms. Gokool alleges that Overling would later renege on this characterization; an email from him on January 7, 2015, would explain that the hold originally placed on Ms. Gokool's account on June 30, 2014, was not a Financial or Administrative Hold. Instead it was an "Other" Hold—which should not have prevented her from accessing any information on her Bluelink account. Regardless, Overlink maintained that the "Other" Hold was removed on July 23, 2014.

So Ms. Gokool's situation remained unchanged. She received another letter by the end of 2014 confirming her dismissal, this time from OCU's General Counsel. Ms. Gokool nonetheless made one more request for information around January 21, 2016. This time she asked Dean Laity and OCU Counsel Casey Petherick for a record of the holds that had been placed on her account. She received some type of response on March 8, 2016, which she says was unacceptably late under the Federal Educational Rights and Privacy Act.

Now, challenging everything from her alleged treatment while she was a student to the manner of her dismissal and the alleged lack of cooperation from OCU that followed, Ms. Gokool brings claims for (1) breach of implied contract, (2) bad faith, (3) breach of the duty of good faith and fair dealing, (4) fraud, (5) negligence, (6) conspiracy, (7) disparate treatment, and (8) unjust enrichment. (Doc. 16, First Amended Complaint). Defendant OCU has moved to dismiss all claims under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.

II. Standard of Review

"Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a 'short and plain statement of the claim showing that the pleader is entitled to relief.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). "The pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To survive a motion to dismiss, a pleading must offer more than "labels and conclusions" and "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. There must be "sufficient factual matter, [which if] accepted as true . . . state[s] a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). A plausible claim is one that "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A plaintiff must "nudge[] [her] claims across the line from conceivable to plausible . . . ." *Twombly*, 550 U.S. at 570. Further, the Court "must accept all the well-pleaded allegations of the complaint . . . and must construe them in the light most favorable to the [non-moving party]." *Thomas v. Kaven*, 765 F.3d 1183, 1190 (10th Cir. 2014).

III. Claims for Breach of Implied Contract, Bad Faith, and Breach of Duty of Good Faith and Fair Dealing

The Court first addresses Ms. Gokool's contract-based claims. Essentially, Ms. Gokool argues that OCU breached a contract with her when it mischaracterized the type of hold on her account, inadequately responded to her requests following her dismissal, and

created less than an ideal learning environment while she was still a student. Specifically, she asserts claims for breach of implied contract, bad faith, and breach of the duty of good faith and fair dealing. As an initial matter, these latter two claims are one in the same: a claim for bad faith is simply a remedy "provided for breach of the implied duty to deal fairly and in good faith in the performance of a contract." *Hitch Enterprises, Inc. v. Cimarex Energy Co.*, 859 F.Supp.2d 1249, 1263 (W.D. Okla. 2012) (citation omitted). Further, the Court is able to take up these three claims concurrently on OCU's motion to dismiss because of the claims' one overarching feature: they all require Ms. Gokool to prove she had a contract with OCU under Oklahoma law.[2]

This she cannot do. If there was a contract between Ms. Gokool and OCU, it arose upon her enrollment in August 2013. *See Mason v. State ex rel Bd. of Regents of Univ. of Okla.*, 23 P.3d 964, 970 (Okla. Civ. App. 2000) (noting that "the implied contract [between a student and university] arises upon enrollment"). This contract then would have remained—but only until Ms. Gokool was expelled when she received a letter of dismissal from Dean Laity for failure to meet the required grade point average. *Id.* ("Once [plaintiff student] was expelled, he was no longer party to any contract with [the University]"). As a

[2] Oklahoma statute defines an implied contract as simply a contract whose "existence and terms of . . . are manifested by conduct." Tit. 15, § 15133. Further, the duty of good faith and fair dealing is an implied covenant that applies "to all *contracting* parties, that neither party, because of the purposes of the contract, will act to injure the parties' reasonable expectations nor impair the rights of interests of the other to receive the benefits *flowing from their contractual relationship.*" *First Nat'l Bank & Trust of Vinita v. Kissee*, 859 P.2d 502, 509 (Okla. 1993) (emphasis added).

Further, as a "federal court sitting in diversity, [this Court] must apply the substantive law of the forum state," in this case Oklahoma. *Otis Elevator Co. v. Midland Red Oak Realty Inc.*, 483 F.3d 1095, 1101 (10th Cir. 2007).

result, any of OCU's alleged conduct that occurred after Ms. Gokool received the dismissal letter on July 5, 2014, cannot form the basis of any claim for breach of implied contract or breach of the duty of good faith and fair dealing. In other words, as a matter of law Ms. Gokool's allegations of OCU's behavior following her dismissal cannot form the basis of her actions in contract.

Though that essentially saps most of Ms. Gokool's allegations, she nonetheless argues that many of her allegations occurred while she was still enrolled at OCU. These allegations though are sparse, and consist only of an alleged failure of Dean Laity to respond to an email requesting academic assistance in April 2014 and a professor treating her disrespectfully when she would ask questions in. (Doc. 16, ¶ 39).

Even assuming there were some authority holding a student expelled for failure to meet the required academic standards could then bring a suit rooted in contract against her former university for actions taken *after* that expulsion, Ms. Gokool would still face another hurdle: she cannot point to any specific contract on which to sue. Granted, she puts forth several candidates: her acceptance letter from OCU in which the University stated that her legal education "will be enhanced by positive interaction with the faculty and administration," the provision in the OCU Faculty Handbook stating that teachers are "to communicate knowledge with a positive impact on students . . . encouraging their questions and is considerate and fair in all dealings with students," and the fact that OCU's Title IX policy states that the compliance coordinator "will commence a thorough, fair and impartial investigation." (Doc. 16, at 5–7).

The issue then, easy to state and not much harder to answer, is whether the Faculty Handbook, acceptance letter, and Title IX policy constitute a contract. It appears not.

Granted, the Oklahoma Court of Civil Appeals has acknowledged there is "some authority which suggests that an educational institution's brochures, policy manuals and other advertisements may form the basis of a legally cognizable contractual relationship between the institution and its students." *Bittle v. Okla. City Univ.*, 6 P.3d 509, 514 (Okla. Civ. App. 2000). Yet this is not to say that a university handbook, acceptance letter, or the like constitutes a de facto contract. Rather, *Bittle* was clear in that the plaintiff, in order to prevail on a breach of contract claim, must point to "some specific, identifiable agreement for an educational institution's provision of *particular services* to its students and an arguable breach of that specific agreement." *Id.* (emphasis added).

And that is precisely why Ms. Gokool's contract claims fail: she can identify no specific service that OCU agreed to provide her but failed to. Instead, she relies only on broad, policy-driven statements representing the University's expectations of its staff and its commitment to complying with federal civil rights legislation. Courts consistently hold those type of University declarations and announcements are not contratcts. *See, e.g., Tibbetts v. Yale Corp.*, 47 Fed.Appx. 648, 656 (4th Cir. 2002) (finding that student handbook provision—stating that Yale had an "overriding commitment to free expression"—did not create a contract but was "merely a university policy promoting free expression"); *see also Gerald v. Locksley*, 785 F.Supp. 2d 1074, 1142 (D.N.M. 2011) ("Even though the Student Handbook sets out a general framework of policies, we are not persuaded that the language contractually obligates [the University] to conduct any specific

type of investigation, to provide support services, or to impose specific discipline."); *see also Sanchez v. The New Mexican,* 738 P.2d 1321, 1324 (N.M. 1987) (affirming the dismissal of an implied contract claim on grounds that "the handbook lacked specific contractual terms which might evidence the intent to form a contract ... [insofar as the] language is of a non-promissory nature and merely a declaration of defendant's general approach); *see also Goodman v. President & Trustees of Bowdoin Coll.,* 135 F.Supp.2d 40, 56 (D. Me. 2001) (holding that handbook language that "[d]iscrimination ... has no place in an intellectual community ... [and] [s]uch practices violate both the ideals of the College and its Social Code and are subject to appropriate disciplinary sanctions" does not indicate a contractual obligation by the college to refrain from discrimination).

Simply put, the fact that Ms. Gokool does not believe OCU provided the type of ideal learning environment promised does not confer upon her some action in contract. To hold otherwise would seem to undermine the Oklahoma Court of Civil Appeal's reminder in *Bittle* that—if at the very least for purposes of granting "educational institutions broad discretion in matters purely academic"—Oklahoma law "recognizes no cause of action for educational malpractice, either in tort or contract, by a student against a private educational institution asserting inadequate or improper instruction." 6 P.3d at 514. And to the extent that Ms. Gokool seeks to assert such a claim under the guise of implied contract or the like, that maneuver fails to help her survive a motion to dismiss. *Ross v. Creighton Univ.,* 957 F.2d 410, 416 (7th Cir. 1992) (noting that a student is "bar[red] [from] any attempt to repackage an educational malpractice claim as a contract claim").

Nonetheless, relying on a case applying foreign law, Ms. Gokool urges the Court to find a contract in light of the Washington Supreme Court's observation in *Doe v. Gonzaga Univ.* that, in a suit by a student against the university for breach of implied contract, the jury was instructed that "you may find implied contract by inference or implication from circumstances which, according to the ordinary course of dealing and people's common understanding, shows a mutual intent on the part of the parties to contract with each other." 24 P.3d 390, 402 (Wash. 2001). Aside from the fact that the Washington Supreme Court's judgment was reversed on appeal to the U.S. Supreme Court,[3] *Gonzaga* seems to only undermine, not bolster, Ms. Gokool's claims. If the Washington Supreme Court's *Gonzaga* opinion suggests that an implied contract is founded upon the *mutual intent* of the parties to contract, the exact opposite is true here. The OCU Staff Handbook and OCU Student handbook expressly state that nothing contained within the documents is or constitutes a contract.[4]

Given the fact that Ms. Gokool lost her ability to sue on contract when she was expelled, not to mention that she can point to no specific contract that OCU breached, the Court must dismiss her claims for breach of implied contract and the duty of good faith and fair dealing for failure to state a claim.

IV. The Fraud Claim

[3] *See Gonzaga Univ. v. Doe,* 536 U.S. 273, 292 (2002).

[4] Courts are permitted to rely on exhibits such as these, and attachment of these exhibits does not convert a Motion to Dismiss into one for summary judgment. *See GFF Corp. v. Associated Wholesale Grocers, Inc.,* 130 F.3d 1381, 1384 (10th Cir. 1997) ("[I]f a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff's claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss.")

Ms. Gokool also asserts a claim for fraud based on OCU administrators' "mischaracterization" of the type of hold on her account. This was all done intentionally, she insists, with the purpose of delaying her appeal over her dismissal. To prevail, she must prove: "(1) That defendant made a material misrepresentation; (2) that it was false; (3) that [the defendant] made it when he knew it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that [the defendant] made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that [s]he thereby suffered injury." *State ex rel. Southwestern Bell Tel. Co. v. Brown*, 519 P.2d 491, 495 (Okla. 1974) (internal quotes omitted). Further, at this stage, a "[f]ailure to adequately allege any one of the [four] elements is fatal to the fraud claim." *Tal v. Hogan*, 453 F.3d 1244, 1263 (10th Cir. 2006). And as *Iqbal* instructs lower courts, conclusory allegations will not suffice, meaning Ms. Gokool must plead "sufficient factual matter, [which if] accepted as true . . . state[s] a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678. Further, that pleading standard is only heightened for allegations of fraud under Federal Rule of Civil Procedure 9(b) ("In alleging fraud . . . a party must state with particularity the circumstances constituting fraud or mistake."). According to the Tenth Circuit, this means "set[ting] forth the time, place and contents of the false representation, the identity of the party making the false statements and the consequences thereof." *Koch v. Koch Indus.*, 203 F.3d 1202, 1236 (10th Cir. 2000) (internal quotations omitted).

Ms. Gokool's fraud claim fails because she has failed to "nudge[] [her] claims across the line from conceivable to plausible . . . ." *Twombly*, 550 U.S. at 570. Much of this

is due to the fact that her fraud claim is at odds with itself. As best the Court can tell, the gist of Ms. Gokool's fraud claim is that several OCU administrators all characterized the type of hold on Ms. Gokool's account differently. By describing it at various times as a Financial Hold, Administrative Hold, or "Other" type of hold, Gokool alleges these administrators sought to delay her appeal and see her dismissal from OCU affirmed. That theory, though, does not make a lot of sense. Gokool says she had 14 days to appeal her dismissal from OCU, and that the appeal-window started on July 1, 2014. She appears to have been given until July 16, 2014 to file an appeal, which she did. If her appeal-window closed on July 16, 2014, then it is unclear how any statements made by OCU administrators *after that* could have been made with the intention to delay her appeal—specifically in light of the fact that Associate Dean Laity informed her on July 23, 2014 that the Petition and Retention Committee had already confirmed her dismissal.

So at least for purposes of her fraud claim, that leaves only those statements made before her dismissal was confirmed. First, there was the June 30, 2014, email from OCU that a hold that been placed on her account. Then there was a July 5, 2014, letter of dismissal from Dean Laity. By all accounts, these were true statements; nothing about them rises to the level of fraudulent. And as for Monroe's statement to Gokool on July 7, 2014, that her hold would be removed but only through the day (presumably to allow Ms. Gokool to access her account to obtain her desired information), that in fact happened. Again, not false. That leaves one more alleged "statement" by OCU: her student account's display on July 7, 2014, that there was an Administrative Hold in place on her account. Once more, this hardly states a claim for fraud. Aside from failing to identify who was responsible for

allegedly misidentifying the hold as an administrative hold and how she relied upon that statement to her detriment, her claim for fraud is merely cloaked with conclusory allegations. According to Ms. Gokool, Defendants "intentionally delayed" her appeal, acted "in a manner to conceal and deceive," were "untruthful," and "intentionally sabotaged [her] appeal process." For one, "broad claims against numerous defendants without identifying specific actions of specific individuals at specific times" will not suffice to survive a motion to dismiss. *U.S. ex rel. Hebert v. Dizney*, 295 F. App'x 717, 722 (5th Cir. 2008). Further, these are the types of conclusory allegations which *Iqbal* holds will not give rise to a claim for relief. Ms. Gokool has provided absolutely nothing in her Complaint that suggests how or why any OCU administrators would lie about the type of hold on her account. Nor does she show how their alleged mischaracterization of the type of hold on her account would somehow lead the Petition and Review Committee to renege on the University's decision to dismiss her for failure to maintain the required grade point average. "Although [Ms. Gokool's] filings provide several cursory allegations, [s]he offers no facts demonstrating that [OCU administrators] knew [their] statements were false, or that [they] acted with the intent to deceive. *Valente v. Univ. of Dayton*, 438 F. App'x 381, 388 (6th Cir. 2011). Her fraud claim is therefore dismissed.

V. The Negligence Claim

Ms. Gokool also asserts a claim for negligence against OCU, pointing to the University's alleged FERPA violations, alteration of her grades, and placement of unwarranted holds on her account. Her claim ends, however, with her inability to point to any specific duty on the part of OCU towards her, as "[t]he threshold question in any action

for negligence is the existence of a duty." *Trinity Baptist Church v. Brotherhood Mutual Ins. Servs., LLC*, 341 P.3d 75, 82 (Okla. 2014). Further, "[t]he existence of a legal duty is a question of law for the court." *Id.*

The question Ms. Gokool is unable to satisfactorily answer is what duty was owed by OCU, if any, and how it was breached. Citing no authority, she contends that OCU offered her a duty of ordinary care in handling and maintaining her school records. Once more, without acknowledging as much, Ms. Gokool is essentially arguing that a University owes a former student, who was properly expelled for failure to achieve the minimum grade point average, the duty to maintain academic records and to promptly respond to student inquiries seeking to review those records.

As the basis for her FERPA claim, Ms. Gokool appears to be relying on 20 U.S.C. § 1232g(b)(2), which "requires educational institutions receiving federal funds to allow students access to their 'educational records' within 45 days of such a request." *Mostaghim v. Fashion Inst. of Tech.*, 2001 WL 1537545, at *3 (S.D.N.Y. Dec. 3, 2001) Yet even assuming that OCU failed to follow FERPA by promptly returning an expelled student's inquiries about being readmitted into the program, that still would not be sufficient to state a claim for negligence: "FERPA does not support a claim of negligence per se because it does not define a standard of care." *Atria v. Vanderbilt Univ.*, 142 F. App'x 246, 253 (6th Cir. 2005). The Supreme Court itself has acknowledged that FERPA is more concerned with how institutions operate on a broad policy level rather than if the individual requests of a particular plaintiff have been met. *See Gonzaga University v. Doe*, 536 U.S. 273, 288, 122 S.Ct. 2268, 2278 (2002) ("FERPA's nondisclosure provisions ... speak only in terms

of institutional policy and practice, not individual instances of disclosure.... [The nondisclosure requirements] are not concerned with whether the needs of any particular person have been satisfied...."). In other words, "FERPA does not create an implied private right of action." *Frazier v. Fairhaven School Committee*, 276 F.3d 52, 69 (1st Cir. 2002).

And in a similar vein, Ms. Gokool can point to no statute obligating a private university such as OCU to diligently maintain her records and field an expelled student's requests in a timely manner. *Cf. Porche v. Oden*, 2009 WL 500622, at *6 (N.D. Ill. Feb. 27, 2009) ("A duty to preserve documents can also arise by statute. Under the Illinois State Records Act, a state university is not only required to maintain records and documents but also to have in place a records management program which explains the systematic management of all records from their creation to their disposition.").

As for her allegation that the University was somehow negligent in changing one of her grades from a C+ to a C, awarding her too low of a grade in another class, and placing a hold on her student account, these seem to be precisely the types of allegations that both the Oklahoma and Supreme Court have construed as educational malpractice claims. The claims are not far off the mark from one for "inadequate or improper instruction." *Bittle*, 6 P.3d at 514. To hold OCU liable for these types of actions would miss the larger point: "established public policy . . . accords educational institutions broad discretion in matters purely academic, particularly in the evaluation of student performance, and directs judicial non-interference in decisions within that discretion." *Id.* In fact, the Supreme Court has specifically noted that a "determination to dismiss a student for academic reasons" and the "decision of an individual professor as to the proper grade for a student in course" are the

very types of questions that do not lend themselves to "the procedural tools of judicial or administrative decision-making." *Bd. of Curators of the Univ. of Mo. V. Horowitz,* 435 U.S. 78, 90 (1978).

In short, Ms. Gokool has pointed to no legal duty owed by OCU which would support a negligence claim. Because she has failed to state a claim, dismissal is proper.

VI. Disparate Treatment Claim

With her third to last claim, Ms. Gokool asserts a claim for disparate treatment under Title VI of the Civil Rights Act of 1964. To prevail, she "must allege allege (1) that there is racial or national origin discrimination and (2) the entity engaging in discrimination is receiving federal financial assistance." *Quarrie v. N.M. Inst. of Mining & Tech.*, 2014 WL 11456597 at *2 (D.N.M. Feb. 25, 2014) (relying on 42 U.S.C. § 2000d). While OCU receives federal financial assistance, Ms. Gokool has not alleged facts which give rise to a plausible claim to relief for racial or national origin discrimination under Title VI.

"A motion to dismiss a Title VI claim is appropriate where a plaintiff fails to allege any evidence to indicate racial bias motivated a defendant's action and the allegations made support a finding that alleged bias was not racial in nature." *Joseph v. Boise State Univ.*, 998 F.Supp. 2d 928, 944 (D. Idaho 2014). Gokool pleads that she is an older, female, minority student. Stripping the complaint of its legal conclusions, there is nothing that suggests that OCU was acting on the basis of some protected trait in its alleged treatment of Gokool. Nowhere in her Complaint does she allege that OCU referenced her race at any point while the hold was on her student account. Nor does Plaintiff recite any facts from which discriminatory intent or motivation could be inferred. And as for her complaints

about administrators failing to promptly respond to phone and email messages, "[t]he court simply cannot infer that failure to respond to her questions promptly was due to anything other than a misunderstanding." *Joseph*, 998 F.Supp.2d at 945. If anything, her alleged communications with OCU, devoid as they are of details suggesting racial bias, "convince the court that race was not a motivating factor behind the actions or inactions of . . . administrators." *Id.* Ms. Gokool's disparate treatment claim is therefore dismissed for failure to state a claim.

VII. Unjust Enrichment Claim

Ms. Gokool also asserts a claim for unjust enrichment based on OCU's "enjoy[ing] the benefits of . . . Gokool's tuition while Gokool had to accept a financial loss due to an improper dismissal when Defendants placed Gokool at a disadvantage by delaying her appeal with an unwarranted HOLD." (Doc. 16, at 14). It too fails.

Unjust enrichment is defined as "(1) the unjust (2) retention of (3) a benefit received (4) at the expense of another." *Okla. Dept. of Securities ex rel. Faught v. Blair*, 231 P.3d 645, 648 (Okla. 2010). For Ms. Gokool to recover on a theory of unjust enrichment, she must prove that there was some enrichment to another coupled with a resulting injustice. *N.C. Corff P'ship, Ltd. V. OXY USA, Inc.*, 929 P.2d 288, 295 (Okla. Civ. App. 1996).

While it is not clear how OCU was unjustly enriched by her dismissal, Ms. Gokool appears to be arguing that OCU should not be permitted to retain the tuition paid by her given the fact she was improperly dismissed. She has not plead any facts however showing that OCU retained her tuition payments for semesters after she had been expelled. Allegations that her expulsion was improper, without any facts suggesting why, will not

satisfy the federal pleading requirements. Nothing in her Complaint to "nudge[s] [her] claims across the line from conceivable to plausible . . . ." *Twombly*, 550 U.S. at 570. Her claim is therefore dismissed.

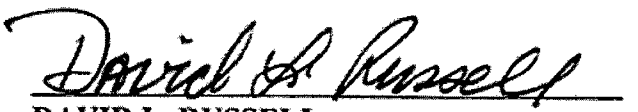
VIII. Conspiracy

Finally, Ms. Gokool's conspiracy claim is easily disposed of. She alleges that OCU administrators conspired to mislead her about the hold on her account, deny her clarification on her grades, and fail to maintain records about what sort of holds had been placed on her account. These allegations alone will not suffice to survive a motion to dismiss, since mere allegations of a "[a] conspiracy between two or more persons to injure another is not enough." *Tanique, Inc. v. State ex rel. Oklahoma Bureau of Narcotics & Dangerous Drugs,* 99 P.3d 1209, 1218 (Okla. Civ. App. 2004). Rather, Ms. Gokool needs to state a claim that the conspiracy was founded on an "an underlying unlawful act." *Id.* Because there has been no underlying unlawful act, her allegations of conspiracy call for dismissal.

Conclusion

In sum, Ms. Gokool has failed to state any claim upon which relief can be granted. Pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court dismisses her Complaint.

IT IS SO ORDERED this 29th day of December 2016.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE