

EXHIBIT I

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of July, two thousand twenty-two.

Ileen Cain,

Plaintiff - Appellant,

ORDER

Docket No: 21-824

v.

Mercy College, Reenan Zeineldin, Assoc. Provost,
Faculty Affairs, Kristen Bowes, General Counsel,
Thomas McDonald, Title IX Coordinator, Nick Canzano,
Assistant Dean, Student Affairs,



Defendants - Appellees.

Appellant Ileen Cain filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of March, two thousand twenty-two.

PRESENT:

RICHARD J. SULLIVAN,
EUNICE C. LEE,
MYRNA PÉREZ,
Circuit Judges.

ILEEN CAIN,

Plaintiff-Appellant,

v.

No. 21-824

MERCY COLLEGE, REENAN ZEINELDIN, ASSOC.
PROVOST, FACULTY AFFAIRS, KRISTEN BOWES,
GENERAL COUNSEL, THOMAS McDONALD, TITLE
IX COORDINATOR, NICK CANZANO, ASSISTANT
DEAN, STUDENT AFFAIRS,

Defendants-Appellees.

FOR PLAINTIFF-APPELLANT:

ILEEN CAIN, pro se,
Queens, NY.

FOR DEFENDANTS-APPELLEES:

JEFFREY S. KRAMER, Locke
Lord LLP, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Stanton, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Appellant Ileen Cain, proceeding pro se, appeals from the district court's (Stanton, J.) judgment dismissing her claims against Mercy College and Mercy College administrators under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*, Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.*, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* (the "ADA"), the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.*, and 42 U.S.C. § 1983. Cain alleges that Mercy College violated her civil rights by calling her classmates to inquire about her mental health and by not taking seriously her allegations of stalking, cyberstalking, and sexual harassment. Pursuant to 28 U.S.C. § 1915(e)(2)(B), the district court sua sponte dismissed Cain's complaint for

failure to state a claim. We review a district court's sua sponte dismissal of a complaint for failure to state a claim de novo. *McEachin v. McGuinnis*, 357 F.3d 197, 200 (2d Cir. 2004). We "liberally construe pleadings and briefs submitted by pro se litigants, reading such submissions to raise the strongest arguments they suggest." *McLeod v. Jewish Guild for the Blind*, 864 F.3d 154, 156 (2d Cir. 2017) (internal quotation marks omitted). We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

Cain failed to state a Title VI claim because she did not plausibly allege that the defendants discriminated against her on the basis of her race, color, or national origin. *See Tolbert v. Queens Coll.*, 242 F.3d 58, 69 (2d Cir. 2001). Cain alleges that (1) the student body at Mercy College is predominantly Hispanic and Caucasian, (2) she is Black, and (3) officials at Mercy College did not take her allegations of stalking, cyberstalking, and sexual harassment seriously. But without more, these allegations are conclusory and too speculative to state a plausible claim of discrimination. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level.").

Cain likewise failed to state a Title IX discrimination claim. Title IX

provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). Cain complains that in response to her concerns that she was being stalked, cyberstalked, and sexually harassed, Mercy College’s Title IX coordinator merely offered Cain information for victims of cyberstalking. Nowhere does Cain allege facts that support an inference that male students making comparable complaints received different treatment or that she was otherwise denied the ability to participate fully at Mercy College on the basis of her sex.

Cain cannot state a claim under Title II of the ADA because Mercy College is a private college, not a public entity. *See Bartlett v. N.Y.S. Bd. of Law Examiners*, 226 F.3d 69, 78 (2d Cir. 2000).

Cain’s claim under Title III of the ADA likewise fails because, assuming Cain is disabled within the meaning of the ADA, Cain did not allege that the “defendants discriminated against her by denying her a full and equal opportunity to enjoy the services [the] defendants provide.” *Camarillo v. Carrols Corp.*, 518 F.3d

153, 156 (2d Cir. 2008). “Title III is designed to prevent a facility offering public accommodation from denying individuals with disabilities goods and services.” *Krist v. Kolombos Rest., Inc.*, 688 F.3d 89, 97 (2d Cir. 2012) (internal quotation marks omitted). But while Cain alleged that she advised college officials that she had been diagnosed with post-traumatic stress disorder (“PTSD”), she did not allege that she was prevented from attending classes at Mercy College for that reason. And Cain has never asserted that she requested, or was denied, a reasonable accommodation for her PTSD. And to the extent that Cain also brings a claim under the Rehabilitation Act, it similarly fails. *See Biondo v. Kaledia Health*, 935 F.3d 68, 73 (2d Cir. 2019) (holding that prima facie violation of the Rehabilitation Act requires showing that plaintiff “was excluded from . . . participation solely by reason of her handicap” and “was denied participation in a program that receives federal funds”).

The district court did not explicitly consider Cain’s citations to the Clery Act and the Violence Against Women Reauthorization Act, but any such claims fail, because those statutes do not authorize private rights of action. *See* 20 U.S.C. § 1092(f)(14)(A) (providing that the Clery Act may not be construed to “create a