APPENDICES

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2501

Noah Duncan

Plaintiff - Appellant

v.

The Curators of the University of Missouri; Julie Drury; Kelsey Forqueran; Mark Kuhnert; Lea Brandt; Seth Huber; Breanne Meyer; Evan White; John Middleton; Paula Barrett; Kyler Richard

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Jefferson City
(2:24-cv-04096-SRB)

JUDGMENT

Before BENTON, KELLY, and GRASZ, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

Appellant's motion to supplement the record is denied as moot.

September 27, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

Appendix B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

NOAH DUNCAN, Plaintiff, v. THE CURATORS OF THE UNIVERSITY OF MISSOURI, et al., Defendants.	)	Case No. 24-cv-04096-SRB

ORDER

Before the Court is Defendant The Curators of the University of Missouri (the "University"), Julie Drury ("Drury"), Kelsey Forqueran ("Forqueran"), Mark Kuhnert ("Kuhnert"), Lea Brandt ("Brandt"), Seth Huber ("Huber"), Breanne Meyer ("Meyer"), Evan White ("White"), John Middleton ("Middleton") and Paula Barrett's ("Barnett") (the individual Defendants are collectively referred to as "individual Defendants") (all moving Defendants are collectively referred to as "Defendants") Motion to Dismiss for Failure to State a Claim. (Doc. #5.)[1] For the reasons set forth below, the motion is GRANTED.

I. FACTUAL BACKGROUND

The following allegations are primarily taken from *pro se* Plaintiff Noah Duncan's ("Plaintiff") Complaint (Doc. #1-1) without further citation or attribution unless otherwise noted.[2] Because this matter comes before the Court on a motion to dismiss, any well-pled allegations are taken as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations and

[1] The individual Defendants are allegedly employees and/or faculty at the University. For purposes of clarity and consistency, this Order primarily refers to all Defendants collectively. This Order will specify when any allegations or arguments are only applicable to one or more particular Defendant(s).

[2] All page numbers refer to the pagination automatically generated by CM/ECF.

quotation marks omitted) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *Zink v. Lombardi*, 783 F.3d 1089, 1098 (8th Cir. 2015). Only those allegations necessary to resolve the pending motions are discussed below. Additional allegations relevant to the parties' arguments are discussed in Section III.

Plaintiff attended college at Belmont University ("Belmont"). In 2021, Belmont suspended Plaintiff for videos and photos he posted online. Plaintiff then applied to and was accepted by the University. Plaintiff alleges he decided to attend the University because it "made public commitments to free expression." (Doc. #1-1, ¶ 22.) Plaintiff alleges that upon his admittance, he and Defendants "entered into a contractual relationship including" the University's Collected Rules and Regulations ("CRRs"). (Doc. #1-1, ¶ 30.)

In September of 2023, Defendant Kyler Richard ("Richard") allegedly falsely reported that Plaintiff had threatened her with a knife on several occasions. Defendant Drury, a University employee, filed student disciplinary charges against Plaintiff for physical abuse, illegal or unauthorized possession or use of a weapon, and threatening behavior. On September 19, 2023, Defendants temporarily suspended Plaintiff because of a "social media video he posted online" and because of the report that he engaged in "threatening behavior with a knife." (Doc. #1-1, ¶ 31.)

Following the temporary suspension, Defendants scheduled a disciplinary hearing which occurred on December 8, 2023. On November 17, 2023, Defendants provided Plaintiff an evidentiary disclosure including witness meeting notes. Defendants Kuhnert, Brandt, Huber, Meyer and White are faculty members at the University and were panelists at Plaintiff's disciplinary hearing. Plaintiff alleges that Defendants failed to follow the CRRs and other procedures at the disciplinary hearing.

On December 14, 2023, the hearing panelists found Plaintiff guilty of physical abuse, illegal or unauthorized possession or use of a weapon, and threatening behavior. (Doc. #1-1, ¶¶ 33, 61.) Defendants allegedly did not "provide any statement of reported allegations, facts, or evidence as support." (Doc. #1-1, ¶ 33.) Defendants expelled Plaintiff from the University.

Plaintiff appealed the decision. Defendant Middleton ("Middleton"), a University faculty member, reviewed Plaintiff's appeal. On or about February 6, 2024, Middleton upheld Plaintiff's expulsion. Plaintiff alleges his appeal identified twenty-two CRR violations, and that Middleton only responded to nine. Plaintiff also alleges that both before and after his disciplinary hearing, Defendant Barrett, the custodian of records for The University, failed to timely and fully respond to several of his open records requests.

On May 14, 2024, Plaintiff filed this lawsuit against Defendants. Plaintiff asserts the following claims: Count I—Promissory Estoppel; Count II—Breach of Contract; Count III—Negligence and Negligence Per Se; Count IV—Defamation; Count V—42 U.S.C. § 1983/ Violation of Free Speech Clause of the First Amendment; and Count VI—§ 1983/Violation of the Due Process Clause of the Fourteenth Amendment.

Defendants now move to dismiss all claims against them for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Plaintiff opposes the motion, and the parties' arguments are addressed below.

II. LEGAL STANDARD

Rule 12(b)(6) provides that a defendant may move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss [for failure to state a claim], a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*,

550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ash v. Anderson Merchs., LLC*, 799 F.3d 957, 960 (8th Cir. 2015) (quoting *Iqbal*, 556 U.S. at 678). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. A *pro se* complaint is construed "liberally, but the complaint must still allege sufficient facts to support the claims advanced." *Sandknop v. Missouri Dep't of Corr.*, 932 F.3d 739, 741 (8th Cir. 2019).

III. DISCUSSION

A. Count I—Promissory Estoppel

In Count I, Plaintiff asserts a claim for promissory estoppel. To state a promissory estoppel claim, a plaintiff must adequately allege: "(1) a promise; (2) on which a party relies to his or her detriment; (3) in a way the promisor expected or should have expected; and (4) resulting in an injustice that only enforcement of the promise could cure." *Tension Envelope Corp. v. JBM Envelope Co.*, No. 14–567–CV–W–FJG, 2015 WL 893242, at * 4 (W.D. Mo. Mar. 3, 2015) (citation and quotation marks omitted) (applying Missouri law).[3] Promissory estoppel should be applied "with caution, sparingly and only in extreme cases to avoid unjust results." *Kearney Commercial Bank v. Popejoy*, 119 S.W.3d 143, 146 (Mo. Ct. App.2003) (citation and quotation marks omitted).

Here, Plaintiff alleges that Defendants made a "promise to uphold free expression and speech on campus [which] led to his reliance on this promise in his choice to attend their university." (Doc. 1-1, ¶¶ 22, 85.) Plaintiff argues that "Defendants' commitment to protect and not infringe upon the Plaintiff's free speech is a definite, legally cognizable promise sufficient to

[3] The parties appear to agree, and the Court finds, that Missouri law applies to Plaintiff's state law claims.

support a promissory estoppel claim." (Doc. #7-1, p. 8.) Defendants contend this claim should be dismissed because an alleged commitment to free speech does not constitute the type of promise necessary to maintain a promissory estoppel claim.

Upon review, the Court agrees with Defendants. To constitute an enforceable promise for promissory estoppel, the alleged promise must "be as definite and delineated as an offer under contract law." *Freitas v. Wells Fargo Home Mort, Inc.*, 703 F.3d 436, 440 (8th Cir. 2013) (applying Missouri law). "A supposed promise that is 'wholly illusory' or a mere expression of intention, hope, desire, or opinion, which shows no real commitment, cannot be expected to induce reliance." *City of St. Joseph v. Southwestern Bell Tele.*, 439 F.3d 468, 477 (8th Cir. 2006) (citation and quotation marks omitted) (applying Missouri law).

Based on this case law, Plaintiff has not adequately pled a promise. "[T]he freedom of speech enjoyed by citizens is not absolute." *Turning Point USA v. Rhodes*, 973 F.3d 868, 875 (8th Cir. 2020). A state university, for example, may limit free speech to "ensur[e] public safety, minimiz[e] the disruption of the educational setting, and coordinat[e] the use of limited space by multiple entities." *Bowman v. White*, 444 F.3d 967, 981 (8th Cir. 2006). Under these circumstances, the Court agrees with Defendants that a "'commitment' to free speech is not a legally cognizable promise that would support a promissory estoppel claim. It is not definite and made in a contractual sense." (Doc. #6, p. 7) (quoting *Freitas*, 703 F.3d at 440). Therefore, Count I for promissory estoppel is dismissed for failure to state a claim upon which relief may be granted.

B. Count II—Breach of Contract

In Count II, Plaintiff asserts a claim for breach of contract. A breach of contract claim requires a plaintiff to adequately plead the following: "(1) the existence and terms of a contract;

(2) that plaintiff performed or tendered performance pursuant to the contract; (3) breach of the contract by the defendant; and (4) damages suffered by the plaintiff." *Fuller v. Partee*, 540 S.W.3d 864, 871 (Mo. Ct. App. 2018) (citations and quotation marks omitted). "[I]n order to assert a breach of contract claim against a university, a student plaintiff must point to an identifiable contractual promise that the university failed to honor." *Nickel v. Stephens Coll.*, 480 S.W.3d 390, 397 (Mo. Ct. App. 2015).

Here, Plaintiff alleges that upon his admission to the University, he and Defendants "entered into a contractual agreement including a written agreement under" the University's CRR. (Doc. #1-1, ¶ 30.) Plaintiff alleges that Defendants breached this contract by "violating twenty-two aspects of section 200.020 of the CRR." (Doc. #1-1, ¶ 36.) In his opposition brief, Plaintiff specifically cites CRR 200.020.C.2 which provides "[t]he sanctions listed above shall be imposed in a manner that is reasonably proportionate to the violation in question, with consideration given to the severity of the violation, culpability of those involved, past dispositions in similar cases, and other factors as appropriate." (Doc. #7-1, p. 10.) Plaintiff argues Defendants breached this provision by failing to "consider the severity of the violation, culpability of those involved, past dispositions in similar cases, or any other factor when issuing their determination." (Doc. #7-1, p. 10.)

Upon review, the Court finds that Plaintiff has failed to state a claim for breach of contract. Missouri courts have generally found that the CRR does not "constitute specific, discrete promises sufficient to form the basis for a breach of contract claim." *Lucero v. Curators of University of Missouri*, 400 S.W.3d 1, 9 (Mo. Ct. App. 2013). The CRR provisions cited by Plaintiff are similarly deficient. In particular, whether a sanction is "reasonably proportionate to the violation," whether "similar cases" are applicable, and allowing the consideration of "any

Univ. of Mo., 73 S.W.3d 808, 811 (Mo. Ct. App. 2002) (citations and quotation marks omitted).

other facts" does not constitute a "specific, discrete promise." *Id.* The Court also agrees with Defendants that the "CBBs cited by Plaintiff as a basis of his breach of contract claim mostly deal with procedures during student conduct hearings . . . [and] disciplinary conduct regulations do not form the basis of a breach of contract claim." (Doc. 76, p. 8.) Therefore, Count II for breach of contract is dismissed for failure to state a claim upon which relief can be granted.

C. Count III – Negligence, Negligence Per Se

1. Negligence

In Count III, Plaintiff asserts a claim for negligence. "[I]n any action for negligence, a plaintiff must establish that the defendant had a duty to protect the plaintiff from injury, the defendant failed to perform that duty, and the defendant's failure proximately caused injury to the plaintiff." *L.A.C. ex rel. D.C. v. Ward Parkway Shopping Ctr. Co., L.P.*, 75 S.W.3d 247, 257 (Mo. banc 2002) (citations and quotations omitted). Plaintiff alleges in part that Defendants' negligence prevented him from being "able to [get] his degree and his reputation." (Doc. 21-1, ¶ 91.) Plaintiff requests "$250,000 in compensatory damages from the Defendants as a result of their negligence." (Doc. 21-1, ¶ 92.)

Upon review of the record and the parties' arguments, the Court finds that Plaintiff has failed to adequately state a negligence claim against the University or the Individual Defendants. With respect to the University, Missouri Revised Statute § 537.600 provides sovereign immunity to public entities from liability for negligent acts. "The Curators of the University of Missouri is a public entity with the status of a governmental body and, as such, is immune from suit for liability in tort in the absence of an express statutory provision." *Krugh v. Curators* [illegible]

"[S]overeign immunity is not an affirmative defense and . . . the plaintiff bears the burden of pleading with specificity facts giving rise to an exception to sovereign immunity[.]" *Richardson v. City of St. Louis*, 293 S.W.3d 133, 137 (Mo. Ct. App. 2009) (citations omitted). "Accordingly, to state a cause of action sufficient to survive a motion to dismiss on the pleadings, . . . [the plaintiff] must plead facts, which if taken as true, establish an exception to the rule of sovereign immunity." *Thomas v. City of Kansas City*, 92 S.W.3d 92, 101 (Mo. Ct. App. 2002). Missouri law provides exceptions to the rule of sovereign immunity where a plaintiff suffers injuries (1) "directly resulting from . . . the operation of motor vehicles" by public employees and (2) caused by a "dangerous condition" existing on public property. Mo. Rev. Stat. § 537.600.1(1)–(2).

Here, Plaintiff's Complaint fails to address the University's sovereign immunity. Plaintiff has not pled an exception or facts that would support the applicability of an exception. Although Plaintiff's opposition brief argues that sovereign immunity does not apply, he has not pled "facts, which if taken as true, establish an exception to the rule of sovereign immunity." *Thomas*, 92 S.W.3d at 101. For these reasons, and the additional reasons stated by Defendants, Plaintiff's negligence claim against the University is barred by sovereign immunity.

With respect to Plaintiff's negligence claim against the individual Defendants, that claim is barred by official immunity. "Official immunity . . . protects public officials sued in their individual capacities from liability for alleged acts of negligence committed during the course of their official duties for the performance of discretionary acts." *Alsup v. Kanatzar*, 588 S.W.3d 187, 190 (Mo. banc 2019) (citation and quotation marks omitted). If "a public official asserts the affirmative defense of official immunity, she should be afforded such immunity so long as she was acting within the scope of her authority and without malice." *Id.* at 191.

Upon review of Plaintiff's Complaint, and the parties' arguments, the Court finds that Plaintiff's negligence claim against the individual Defendants is barred by official immunity. As explained by Defendants:

> Plaintiff's Complaint identifies the roles Defendants Drury, Forqueran, Kuhnert, Brandt, Huber, Meyer, White and Middleton played in his expulsion from The University. Drury and Forqueran decided to investigate Plaintiff's wrongdoing, filed a complaint against him and prosecuted him for student conduct violations. ¶¶ 10-11, 31, 32, 58, 60. Kuhnert, Brandt, Huber, Meyer and White were hearing panelists who served in the role of judge during Plaintiff's disciplinary hearing and decided to expel him. ¶¶ 12-16, 33. Middleton reviewed Plaintiff's disciplinary appeal and decided to uphold his expulsion. ¶¶ 17, 35. The Complaint, in other words, describes these Defendants as engaging in discretionary acts as they prosecuted or presided over Plaintiff's disciplinary matter

(Doc. #6, pp. 9-10.)

Plaintiff alleges and argues that official immunity does not apply because the individual Defendants' conduct was "willfully wrong and done with malice and corruption." (Doc. #7-1, p. 12.) However, Plaintiff's allegations are little more than "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements[.]" *Iqbal*, 556 U.S. at 678. When, as here, "a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* For these reasons, and the additional reasons stated by Defendants, Plaintiff's negligence claim against the individual Defendants is barred by official immunity.

2. Negligence Per Se

In Count III, Plaintiff also asserts a negligence per se claim. A negligence per se claim contains four elements: "(1) the defendant violated a statute or regulation; (2) the injured plaintiff was a member of the class of persons intended to be protected by the statute or regulation; (3) the injury complained of was of the kind the statute or regulation was designed to

prevent; and (4) the violation of the statute or regulation was the proximate cause of the injury." *Dibrill v. Normandy Assoc., Inc.*, 383 S.W.3d 77, 84-85 (Mo. App. E.D 2012). Here, Plaintiff's negligence per se claim appears to be based on various statutes, including Mo. Rev. Stat. §§ 109.260 (records retention), 173.1550 (Campus Free Expression Act), 610.011 (Sunshine Law), 610.023 (Sunshine Law), and 20 U.S.C. § 1232g (Family Educational and Privacy Rights Act).

Upon review of these statutes, the Complaint, and the parties' arguments, the Court finds that Plaintiff has not adequately pled a claim for negligence per se. In particular, the Court agrees with Defendants that the statutes alleged by Plaintiff do not create a private cause of action (Mo. Rev. Stat. §§ 109.030, 109.260, 20 U.S.C. § 1232g), and that Plaintiff has failed to adequately allege a statutory violation (Mo. Rev. Stat. §§ 173.1550, 610.011, 610.023). (*See* Doc. #9, pp. 3-4, 6-7.) Consequently, Plaintiff's negligence per se claim is dismissed for failure to state a claim upon which relief may be granted.

D. Count IV—Defamation

In Count IV, Plaintiff asserts a claim for defamation. "The elements of defamation in Missouri are: 1) publication, 2) of a defamatory statement, 3) that identifies the plaintiff, 4) that is false, 5) that is published with the requisite degree of fault, and 6) damages the plaintiff's reputation." *Overcast v. Billings Mut. Ins. Co.*, 11 S.W.3d 62, 70 (Mo. banc 2000). The publication requirement means "the communication of defamatory matter to a third person." *Dean v. Wissmann*, 996 S.W.2d 631, 633 (Mo. Ct. App. 1999). Under the doctrine of intra-corporate immunity, "communications between officers of the same corporation in the due and regular course of the corporate business . . . are not publications to third persons" because the corporation "is but communicating with itself." *Id.* at 633-34. This doctrine applies to a state university. *Id.* at 635.

In support of this claim, Plaintiff alleges in part that another student—Defendant Kyler Richard—falsely accused him of various things, including threatening her with a knife. Plaintiff alleges Richard reported these threats to University employee Defendant Forqueran. Forqueran then notified the University of Richard's accusations. Plaintiff alleges that Defendant Drury found Plaintiff "guilty" of "physical abuse, illegal or unauthorized possession or use of a weapon and threatening behavior." (Doc. #1-1, ¶ 60.) Defendants Kuhnert, Brandt, Huber, Meyer and White were panelists on Plaintiff's student conduct hearing, and found Plaintiff violated student conduct regulations. Defendant Middleton reviewed Plaintiff's appeal and affirmed the punishment.

Defendants argue the defamation claim should be dismissed for lack of the publication element and rely on intra-corporate immunity. In his opposition brief, Plaintiff contends that Defendants made the statements to outside individuals, including "other students," and his "former significant other[.]" (Doc. #7-1, p. 16.) Plaintiff further contends that he "cannot allege its extent without proper discovery." (Doc. #7-1, p. 16.)

Upon review, the Court finds Plaintiff has failed to adequately plead the publication requirement. The Court agrees with Defendants that:

> Even assuming Richard's allegations that Plaintiff committed violence are false and defamatory, Plaintiff's Complaint does not allege these Defendants, including The University, 'published' any statement about Plaintiff's conduct to anyone but Plaintiff and the other Defendants in the scope of Plaintiff's disciplinary proceedings. ¶¶ 31, 58-62. These communications are not a publication but are a corporation 'communicating with itself' and are protected by law. *Hellisen v. Knaus Truck Lines, Inc.*, 370 S.W.2d 341, 344 (Mo. 1963).

(Doc. #6, p. 14.) Plaintiff has not adequately pled that Defendants published false statements to anyone outside of the University, and his conclusory arguments "do[] not unlock the doors of discovery." *Iqbal*, 556 U.S. at 678-69.[4]

For these reasons, and the additional reasons stated by Defendants, Count IV is dismissed for failure to state a claim.

E. Count V—§ 1983/Violation of Free Speech

In Count V, Plaintiff asserts a claim under 42 U.S.C. § 1983 for violation of his rights to free speech. Plaintiff asserts this claim against the University and the individual Defendants, and seeks $50,000,000 in compensatory damages. (Doc. #1-1, ¶ 98.)[5] "To state a claim under 42 U.S.C. § 1983, a plaintiff must show [1] that he was deprived of a right secured by the Constitution and the laws of the United States and [2] that the deprivation was committed by a person acting under color of state law." *Alexander v. Hedback*, 718 F.3d 762, 765 (8th Cir. 2013).

"[A] State is not a 'person' within the meaning of § 1983[.]" *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989). Although § 1983 "provides a federal forum to remedy many deprivations of civil liberties . . . it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties." *Id.* at 66. Courts have similarly held that a state university is not a "person" subject to suit under § 1983. *Ajiwoju v. Univ. of Missouri-Kansas City*, 2007 WL 670982, at * 1 (W.D. Mo. Feb. 28, 2007). Because the

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[4] Even if Plaintiff had adequately alleged all elements of a defamation claim, it would be dismissed based on sovereign immunity. *Smith v. Curators of the Univ. of Missouri*, No. 17-4016-CV-C-WJE, 2017 WL 11492763, at *4 (W.D. Mo. Dec. 20, 2017).

[5] Plaintiff also seeks injunctive relief "from the Defendant to create an unambiguous, absolute policy protecting free speech in its code of regulations." (Doc. #1-1, ¶ 99.) Plaintiff's requests for injunctive, declaratory, and/or other equitable relief is addressed at the conclusion of this Order. *Monroe v. Ark. State Univ.*, 495 F.3d 591, 594 (8th Cir. 2007) (recognizing that the Eleventh Amendment does not bar a suit against state officials in their official capacity for prospective, non-monetary relief.)

University is not a person under § 1983, Count V is dismissed against the University for failure to state a claim upon which relief may be granted.

Second, the individual Defendants move to dismiss this claim based on qualified immunity. In particular, the individual Defendants argue that Plaintiff has not adequately alleged a First Amendment violation of his right to free speech. Plaintiff argues he engaged in—and was punished—for "protected speech." (Doc. #7-1, p. 18.) Plaintiff alleges his speech was made through online posts/videos and text messages, but does not provide further details on the content of the speech.

"Qualified immunity protects a government official from liability in a section 1983 action unless the official's conduct violated a clearly established constitutional or statutory right of which a reasonable person would have known." *Henderson v. Munn*, 439 F.3d 497, 501 (8th Cir. 2006). "To overcome the defense of qualified immunity, a plaintiff must show: (1) the facts, viewed in the light most favorable to the plaintiff, demonstrate the deprivation of a constitutional or statutory right; and (2) the right was clearly established at the time of the deprivation." *Howard v. Kansas City Police Dep't*, 570 F.3d 984, 988 (8th Cir. 2009).

Upon review, the Court finds Plaintiff has failed to adequately state a First Amendment violation. As explained by Defendants:

> Plaintiff's Complaint contains zero factual detail to support that his speech at issue enjoyed First Amendment protection. He simply asserts, in the most conclusory fashion, that all his speech was 'protected.' Plaintiff claims that his 'online posts' from his time at Belmont University are 'protected speech under the First Amendment.' ¶ 21. Plaintiff does not allege what this speech was or why it would be protected. Plaintiff claims that an online video he posted was 'protected speech' but does not indicate what that video was or why it was protected. ¶ 23. Plaintiff claims that his 'text messages' were 'protected speech' but does not identify what the text messages said or why they were protected. ¶ 26.

(Doc. #6, p. 16.) Consequently, Plaintiff has failed to adequately "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ash*, 799 F.3d at 960.

For these reasons, and the additional reasons stated by Defendants, Count V is dismissed for failure to state a claim upon which relief may be granted.

F. Count VI—§ 1983/Violation of Due Process Clause

In Count VI, Plaintiff asserts a § 1983 claim for violation of his due process rights under the Fourteenth Amendment. Plaintiff alleges in part that his disciplinary hearing "was not fair or prompt by any standard." (Doc. #1-1, ¶ 66.) Plaintiff further alleges that Defendants did not provide him proper notice of the charges and evidence against him, that his punishment was not made by an impartial decision maker, and that Defendants' "actions led to several procedural and evidentiary deficiencies and the Plaintiff's unjustified expulsion from the University." (Doc. #1-1, ¶ 82.) Plaintiff requests $250,000,000 in compensatory damages.

The University moves to dismiss this claim because it is not a person subject to liability under § 1983. For the reasons set forth above, the Court agrees. Count VI is dismissed against the University for failure to state a claim upon which relief may be granted.

The individual Defendants argue they are entitled to qualified immunity because Plaintiff fails to adequately allege a procedural due process violation. Under the Fourteenth Amendment of the United States Constitution, "[n]o state . . . shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. "To establish a procedural due process claim pursuant to § 1983, plaintiffs must establish three elements: (1) that they have a life, liberty, or property interest protected by the Due Process Clause of the Fourteenth Amendment

to the United States Constitution, (2) that they were deprived of this protected interest within the meaning of the Due Process Clause, and (3) that the state did not afford them adequate procedural rights prior to depriving them of their protected interest." *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir.1999) (cited with approval in *Vaughn v. Ruoff*, 304 F.3d 793, 796 (8th Cir.2002)). The Eighth Circuit has "indicated that procedural due process must be afforded a student on the college campus by way of adequate notice, definite charge, and a hearing with opportunity to present one's own side of the case and with all necessary protective measures." *Jones v. Snead*, 431 F.2d 1115, 1117 (8th Cir.1970) (quotation omitted).

Upon review of the Plaintiff's Complaint and the parties' arguments, the Court finds that Plaintiff has not adequately stated a procedural due process claim. Plaintiff alleges that prior to the disciplinary hearing, Defendants charged him with threatening conduct with a knife in the Spring of 2022. (Doc. #1-1, ¶¶ 67-68.) Defendants also allegedly initiated a disciplinary case involving Plaintiff's online post(s). (Doc. #1-1, ¶ 31.)

However, Plaintiff alleges he received a hearing. (Doc. #1-1, ¶¶ 12-16, 26, 59, 66.) Plaintiff disagrees with how the hearing was conducted, but does not allege he was unable to present evidence at the hearing. Plaintiff summarily alleges the hearing was not "impartial," but does not offer facts or plausible allegations in support. (Doc. #1-1, ¶ 81.) Plaintiff also identifies "several procedural and evidentiary deficiencies" but does not offer facts or plausible allegations in support. (Doc. #1-1, ¶ 82.) Finally, Plaintiff argues portions of his appeal were ignored, but acknowledges he had an opportunity to appeal the ruling following the disciplinary hearing.

Based on the foregoing, the Court finds the "[C]omplaint demonstrates that Plaintiff was provided sufficient due process prior to being permanently expelled from the University. Plaintiff was afforded adequate procedural rights by Defendants by way of notice of the charges,

Here, and for many of the reasons discussed above, Plaintiff has failed to adequately plead a substantive due process claim. In addition, "a right to public college education is not . . . deemed a fundamental right for purposes of substantive due process." *Salau*, 139 F. Supp. 3d at 1004-1005 (citation and quotation marks omitted). Because Plaintiff has failed to adequately allege the violation of a fundamental right, any alleged substantive due process claim is dismissed for failure to state a claim.

G. Injunctive/Declaratory Relief

As noted above, Plaintiff requests injunctive and declaratory relief. However, for the reasons stated above, and for the reasons stated by Defendants, Plaintiff has failed to plead a plausible cause of action. Consequently, Plaintiff's request for injunctive and declaratory relief necessarily fails and is dismissed. *See Salau*, 139 F. Supp. 3d at 1012-13 ("A successful claim for declaratory judgment requires a viable underlying cause of action." and "Plaintiff's request for a permanent injunction is similarly barred because all of Plaintiff's claims have been dismissed, which necessarily means he cannot [illegible] succeed on the merits.")

H. Remaining Defendant

Plaintiff also named non-moving party Kyler Richard ("Richard") as a defendant. Plaintiff appears to assert one claim against Richard for defamation. It does not appear that Richard has been served in this case, nor has he appeared. Upon review, the Court finds this claim should be dismissed for lack of subject matter jurisdiction.

Federal courts are courts of limited jurisdiction. [illegible] v. McCord, 533 F.3d [illegible], 927 (8th Cir. 2008). In general, a federal court has jurisdiction over a case if it (1) arises under the United States Constitution, a federal law, or a federal treaty; or (2) involves citizens of different

states and the amount in controversy exceeds $75,000. *See* 28 U.S.C. § 1331 (providing for federal question jurisdiction); 28 U.S.C. § 1332(a) (providing for diversity jurisdiction).

Here, Plaintiff alleges that he and Richard reside in the State of Missouri. (Doc. #1-1, pp. 4-5.) There is nothing in the record to suggest that Plaintiff and Richard are citizens of a State other than Missouri for purposes of diversity jurisdiction. Consequently, the Court lacks diversity jurisdiction over Plaintiff's claim against Richard. 28 U.S.C. § 1332(a).

The Court also lacks federal question jurisdiction. Plaintiff only asserts a state law claim for defamation against Richard. This claim arises under state law and does not create federal question jurisdiction. 28 U.S.C. § 1331.

Finally, the Court could—but declines—to exercise supplemental jurisdiction over the state law claim. Under 28 U.S.C. § 1367(c)(3), once a district court has dismissed all claims over which it had original jurisdiction, the district court may decline to exercise supplemental jurisdiction. "A district court's decision whether to exercise [supplemental] jurisdiction after dismissing every claim over which it had original jurisdiction is purely discretionary." *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009). "[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988).

As discussed above, Plaintiff's federal claims have been dismissed. Supplemental jurisdiction is not warranted here because a state court should resolve Plaintiff's state law claim involving citizens of Missouri. The general rule "point[ing] toward declining" supplemental jurisdiction applies here. *Id.*

IV. CONCLUSION

Accordingly, it is hereby ORDERED that:

(1) Defendants' Motion to Dismiss for Failure to State a Claim (Doc. #5) is GRANTED. Plaintiff's claims against Defendants The Curators of the University of Missouri, Julie Drury, Kelsey Forqueran, Mark Kuhnert, Lea Brandt, Seth Huber, Breanne Meyer, Evan White, John Middleton, and Paula Barrett are DISMISSED for failure to state a claim upon which relief may be granted;

(2) Plaintiff's claim against Defendant Kyler Richard is DISMISSED for lack of federal jurisdiction;

(3) Plaintiff's Application for Leave to File Action Without Payment of Fees (Doc. #8) is DENIED AS MOOT;

(4) Because all claims against all Defendants have been dismissed, the Clerk of Court is directed to mark this case as CLOSED; and

(5) The Clerk of Court is directed to mail a copy of this Order to Plaintiff at his last known address.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: July 22, 2024

Appendix D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2501

Noah Duncan

Appellant

v.

The Curators of the University of Missouri, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Jefferson City
(2:24-cv-04096-SRB)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

November 01, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

Additional material from this filing is available in the Clerk's Office.