UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MELISSA MILWARD, ELYSE UGALDE and ASHLEY ROSE,

Plaintiffs,

v.

them better sonogram technicians. Sec. Am. Compl. at 6—7, ¶ 25. In fall 2013, Plaintiffs expressed concern about having to undergo vaginal probes during the Program, including their concern that a male student would be performing the procedure on a female student. Sec. Am. Compl. at 8, ¶ 31. Defendant Ball told the students they could find another school if they did not want to be probed. *Id*.

In March 2014, Milward and Ugalde consented to participation in the practice of vaginal probe procedures on fellow classmates. Sec. Am. Compl. at 9, ¶ 33. Rose refused to participate and therefore was not permitted to observe while the transvaginal probes occurred. Sec. Am. Compl. at 11, ¶ 37. Milward explained her concerns to Defendant Shaheen about the painful nature of the probings and the embarrassment of the sole male student probing her. Sec. Am. Compl. at 11, ¶ 38. Shaheen ignored these complaints. *Id*. Throughout Plaintiffs' tenure in the program, Defendants threatened to reduce all Plaintiffs' grades and interfere with their future employment opportunities if Plaintiffs did not submit to the classroom vaginal probes. Sec. Am. Compl. at 11, ¶ 39.

Amodt threatened to bar Rose from clinical practice at Dr. P. Phillips Hospital if Rose did not consent to allow fellow students to vaginally probe her. Sec. Am. Compl. at 12, ¶ 42. She further asserts Amodt graded her more harshly than the program's other students

practice. *Id*. Milward and Ugalde eventually resigned from the Program. Sec. Am. Compl. at 12, ¶ 45.

II. Standards

A. Motion to Dismiss

In ruling on a motion to dismiss, the Court must view the complaint in the light most favorable to the Plaintiff, *see, e.g., Jackson v. Okaloosa County, Fla.*, 21 F.3d 1531, 1534 (11th Cir. 1994), and must limit its consideration to the pleadings and any exhibits attached thereto. Fed. R. Civ. P. 10(c); *see also GSW, Inc. v. Long County, Ga.*, 999 F.2d 1508, 1510 (11th Cir. 1993). The Court will liberally construe the complaint's allegations in the Plaintiff's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). However, "conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal." *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003).

In reviewing a complaint on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), "courts must be mindful that the Federal Rules require only that the complaint contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.' " *U.S. v. Baxter Intern., Inc.*, 345 F.3d 866, 880 (11th Cir. 2003) (citing Fed. R. Civ. P. 8(a)). This is a liberal pleading requirement, one that does not require a plaintiff to plead with particularity every element of a cause of action. *Roe v. Aware Woman Ctr.for Choice, Inc.*, 253 F.3d 678, 683 (11th Cir. 2001). However, a plaintiff's obligation to provide the grounds for his or her entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-555 (2007). The complaint's factual allegations "must be enough to raise a right to relief above the speculative

level," *Id.* at 555, and cross "the line from conceivable to plausible." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1950-1951 (2009).

B. Qualified Immunity

Qualified immunity protects municipal officers from liability in § 1983 actions as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Lewis v. City of West Palm Beach,* 561 F.3d 1288, 1291 (11th Cir.2009), cert. denied, --- U.S. ----, 130 S.Ct. 1503, 176 L.Ed.2d 109 (2010). The applicability of qualified immunity is subject to a two-part test, which asks whether the officer's conduct amounted to a constitutional violation, and whether the right violated was clearly established at the time of the violation. *Id.* The order of the inquiry is fluid, giving us the flexibility to address the two issues in either order. *Id.* (citing *Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009)).

A right may be clearly established for the purposes of qualified immunity in one of three ways: "1) case law with indistinguishable facts clearly establishing the constitutional right; 2) a broad statement of principle with the Constitution, statute, or case law that clearly establishes a constitutional right; or 3) conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law." Maddox v. Stephens, 727 F.3d 1109, 1121 (11th Cir. 2013) (quoting Lewis v. City of West Palm Beach, Fla., 561 F.3d 1288, 1291-2 (11th Cir. 2009)).

III. Analysis

A. Eleventh Amendment – Valencia College

Under the Eleventh Amendment, states are immune from money damages in suits under 42 U.S.C. § 1983. *Quern v. Jordan*, 440 U.S. 332 (1979). Moreover, the law is "well-settled that

arm of the state for Eleven

be valid." *Curry ex rel Curry v. Hensiner,* 513 F.3d 570, 579 (6th Cir. 2008). Furthermore, the "curriculum of a public educational institution is one means by which the institution itself expresses its policy, a policy with which others do not have a constitutional right to interfere." *Brown v. Li*, 308 F.3d 939, 951 (9th Cir. 2002). Where a student's speech threatens a school's pedagogical and curricular system, it is not subject to the expansive protections applied to student political speech.

Copies furnished to:

Counsel of Record
Unrepresented Party