IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

RICHARD M. WANDA, Plaintiff, vs. UAA OFFICE OF FINANCIAL AID, et al., Defendants.	Case No. 3:08-cv-00116-TMB ORDER GRANTING UAA's MOTION TO DISMISS

I. MOTION PRESENTED

On May 16, 2008, Richard M. Wanda, representing himself, filed a complaint claiming that the defendants violated his civil rights.[1] Defendants, University of Alaska Anchorage Office of Student Financial Aid and University of Alaska Anchorage Accounting Services (collectively "UAA"), moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), Mr. Wanda has filed an opposition, and UAA has filed a reply.[2] Oral argument was not requested and would not assist the court.

II. STANDARD OF REVIEW

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[1] *See* Docket No. 1.

[2] *See* Docket Nos. 16, 17, 26, 28.

Under Federal Rule of Civil Procedure 12(b)(6), "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts [pled] is improbable, and 'that a recovery is very remote and unlikely.'"[3] However, the complaint must allege at least "enough facts to state a claim to relief that is plausible on its face."[4]

In addition, as a federal court, this Court is a court of limited, as opposed to general, jurisdiction; it has authority to hear only specified classes of cases. It is Mr. Wanda's burden, as the plaintiff, to show that this Court has jurisdiction to hear the claims.[5] "To sustain a claim under § 1983, a plaintiff must show (1) that the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct deprived the plaintiff of a constitutional right."[6] As explained by the

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[3] *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965-66 (2007) (citations omitted).

[4] *Twombly*, 127 S.Ct. 15 1974 ("Because the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed.").

[5] *See Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994); *Lowdermilk v. U.S. Bank National Ass'n*, 479 F.3d. 994, 998-99 (9th Cir. 2007) ("[I]t is well established that the plaintiff is the 'master of her complaint'") (citations omitted); *Hunter v. Kalt*, 66 F.3d 1002, 1005 (9th Cir. 1995).

[6] *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990) (citations omitted).

United States Supreme Court, Section 1983 "is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred."[7]

III. FACTS

The facts, as presented by the plaintiff, are as follows: UAA's Office of Student Financial Aid "intentionally st[ole] and cashe[d his] three ... student loan [checks] after [he] either return[ed] them or [he did not pick them up]."[8] In 1997, $2656.50 was taken; in 2000, $1,273.61 was taken; and in 2001, $1,272.64 was taken.[9] Mr. Wanda then alleges that the total of those three checks, $5,202,75, was returned by UAA to the lender to avoid detection of the thefts.[10]

Mr. Wanda alleges that more recently, although a loan in the amount of $2,567 was to have been returned by UAA to the lender in the Spring of 2008, the lender only received $2,125; and that Mr. Wanda believes UAA most likely stole the $442 difference.[11] And Mr. Wanda appears to allege that he was charged $1,996 by UAA in 2007, although he did not attend school that year.[12]

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[7] *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979)

[8] Docket No. 1 at 3.

[9] *See id*. at 3-4.

[10] *See id*. at 4.

[11] *See id.*

[12] *See id.*

IV. DISCUSSION

A. "Equal Education Rights"

In his complaint, Mr. Wanda states that his "equal education rights" were violated.[13] As the Court cautioned Mr. Wanda, however, there is no constitutionally protected right to education.[14] The Supreme Court has explained that "[e]ducation, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor [is there] any basis for saying it is implicitly so protected".[15] Any claims based upon a constitutional right to education must, therefore, be dismissed.

B. State Immunity

As argued by UAA, Mr. Wanda's action against UAA is barred by Eleventh Amendment immunity.[16] "The Eleventh Amendment prohibits federal courts from

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[13] *See* Docket No. 1 at 3.

[14] *See* Docket No. 9 at 2-3.

[15] *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973); *see also Lewis v. Casey*, 518 U.S. 343, 374 (1996) ("Because the respondents in *Rodriguez* had not shown that 'the children in districts having relatively low assessable property values are receiving *no* public education,' but rather claimed only that 'they are receiving a poorer quality education than that available to children in districts having more assessable wealth,' [*Rodriguez* at 28] (emphasis added) we held that the 'Texas system does not operate to the peculiar disadvantage of any suspect class.' *id*. at 29. ... and that, 'at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.' *id*. at 24.").

[16] *See* Docket No. 17 at 5; Docket No. 30 at 2.

hearing suits brought against an unconsenting state,"[17] as well as state agencies.[18] Except for suits filed against state officials, the Eleventh Amendment bars suit regardless of the relief sought.[19] Because the University has been found to be a state agency in civil rights cases, it must be dismissed as a defendant in this action.[20]

C. The Higher Education Act of 1965

After the Court explained to Mr. Wanda that he had not alleged the violation of any specific constitutional right, he filed two documents contending that he received his loans under the Higher Education Act of 1965 (HEA), and that UAA intentionally violated his "civil rights [under the] Higher Education Act of 1965, Educational Opportunity Grant Program, and Guaranteed Student Loan Program."[21]

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[17] *Brooks v. Sulphur Springs Valley Elec. Co-op*, 951 F.2d 1050, 1053 (9th Cir. 1991), *cert. denied*, 503 U.S. 938 (1992) (citations omitted); *see also Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 66 (1996).

[18] *See Natural Resources Defense Council v. California Dep't of Transp*., 96 F.3d 420, 421 (9th Cir. 1996).

[19] *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984); *Seldovia Native Ass'n, Inc. v. Lujan*, 904 F.2d 1335, 1349 (9th Cir. 1990).

[20] *See State of Alaska v. Chevron Chemical Co.*, 669 F.2d 1299, 1302 (9th Cir. 1982) (citing *Brown v. Wood*, 575 P.2d 760, 766 (Alaska 1978) ("because the University is in essence a branch of the state government, it follows that it is not a "person" which may be held liable in a suit under 42 U.S.C. § 1983).").

[21] *See* Docket No. 12; *see also* Docket No. 10.

Mr. Wanda claimed that because of UAA's theft of his money, he has been found to have defaulted on $7,000 in loans, and that his "civil rights [under the] Guaranteed Student loan Program [are] violated," and he will apparently be unable to secure a loan at "any college [in] the nation."[22] In his response to UAA's motion to dismiss, however, Mr. Wanda did not again assert this claim.

Nevertheless, although the federal government may prosecute a defendant for misapplying federally guaranteed student loan funds under Title IV of the HEA,[23] there is "no express [private] right of action under the HEA, except for suits brought by or against the Secretary of Education."[24]

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[22] Docket No. 12 at 2. Mr. Wanda does not raise this issue in his opposition to UAA's motion to dismiss, so it is unclear whether he is still basing any of his claims on the HEA.

[23] *See, e.g., Bates v. United States*, 522 U.S. 23 (1997).

[24] *Parks School of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *see also McCulloch v. PNC Bank*, 298 F.3d 1217, 1221 (11th Cir. 2002) ("Although the Eleventh Circuit has not addressed whether a private right of action exists under the HEA, it is important to note at the outset that nearly every court to consider the issue in the last twenty-five years has determined that there is no express or implied private right of action to enforce any of the HEA's provisions."); *cf. In re Lewis*, 506 F.3d 927, 928 n. 3 (9th Cir. 2007) (The Guaranteed Student Loan Program (since renamed the Federal Family Education Loan Program)" was "established by the [HEA]").

V. CONCLUSION

Mr. Wanda has not stated a federally cognizable claim for violation of “equal education rights” under federal law. UAA's motion to dismiss Mr. Wanda’s complaint, at docket number 16, is GRANTED.

DATED this 9th day of September, 2008, at Anchorage, Alaska.

/s/ TIMOTHY M. BURGESS
United States District Judge