

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

SKYLER MUSGROVE,)	
)	
Plaintiff,)	
)	Civil Action File No.
v.)	3:18-CV-00080-CDL
)	
THE BOARD OF REGENTS OF)	
THE UNIVERSITY SYSTEM)	
OF GEORGIA, <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANT UNIVERSITY OF GEORGIA’S MOTION TO DISMISS
AND BRIEF IN SUPPORT THEREOF**

COMES NOW Defendant University of Georgia (“UGA”), by and through counsel, the Attorney General of the State of Georgia, and submits this Motion to Dismiss and Brief in Support thereof, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

I. INTRODUCTION

Skyler Musgrove (“Plaintiff”) brings this action against the Board of Regents of the University System of Georgia (“Board of Regents”), its unit institution UGA, Jere Morehead, Karin Elliott, and James Hull, as officials of the

Board of Regents,¹ Blue Cross Blue Shield Healthcare Plan of Georgia, Inc., Metropolitan Life Insurance Company, and Metlife, Inc. (Doc. 1). Plaintiff alleges claims of disability and gender discrimination under Title I of the American with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 701; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*; Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a; Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681, *et seq.*; and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution (enforced through 42 U.S.C. § 1983). As shown below, UGA should be dismissed as a party to this action because it is not a legal entity capable of being sued, depriving the court of subject matter jurisdiction.

II. ARGUMENT AND CITATION OF AUTHORITY

The government, control, and management of the University System of Georgia and all of its institutions is vested in the Board of Regents. GA. CONST. 1983, art. VIII, § 4, ¶ 1(b); O.C.G.A. § 20-3-51. UGA is a unit institution of the Board of Regents and is not a separate legal entity capable of being sued. *See McCafferty v. Medical College of Georgia*, 249 Ga. 62, 69 (1982) (holding that the

¹ The Board of Regents and the individually-named officials of the Board of Regents waived the requirements of formal service of summons and have a responsive deadline of September 21, 2018. (Doc. 14-17). This motion is filed on behalf of UGA only.

Medical College of Georgia, as a unit of the Board of Regents, is not a legal entity capable of being sued); *Fuciarelli v. McKinney*, 333 Ga. App. 577, 578, n. 1 (2015) (overruled on other grounds) (noting that Valdosta State University is not a separate or distinct legal entity from the Board of Regents and, therefore, cannot be sued); *Bd. of Regents of the Univ. System of Ga. v. Doe*, 278 Ga. App. 878, n. 1 (2006) (the power to sue and be sued is vested in the Board of Regents, not in individual member institutions); FED. R. CIV. PRO. 17(b) (the capacity to be sued is determined by state law).

Accordingly, UGA should be dismissed as a defendant to this action.² *See McCafferty*, 249 Ga. at 65; *Lovelace v. Dekalb Cent. Prob.*, 144 Fed. Appx. 793, 795 (11th Cir. 2005) (affirming dismissal of action because the county police department was not a legal entity subject to suit under Georgia law) (citing *Ga. Insurers Insolvency Pool v. Elbert County*, 258 Ga. 317 (1988) for the proposition that, in every lawsuit, there must be a “legal entity” as the real plaintiff and the real defendant)).

² Even if UGA were a legal entity capable of being sued, service on UGA was nevertheless improper. The Affidavit of Service shows that service was attempted on an administrative assistant at UGA. (Doc. 13). This is insufficient to initiate suit, as service must be made on the Chancellor of the Board of Regents. *See* O.C.G.A. § 9-11-4 (e)(5) and FED. R. CIV. PRO. 4 (j)(2) (requiring state government entities to be served through the chief executive officer).

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2018, I caused to be electronically filed the foregoing DEFENDANT UNIVERSITY OF GEORGIA'S MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification to the following counsel of record:

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