

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, *et al.*,

Plaintiffs,

v.

DALE FOLWELL, in his official capacity as
State Treasurer of North Carolina, *et al.*,

Defendants.

Case No. 1:19-cv-00272-LCB-LPA

**JOINT MOTION TO DISMISS PLAINTIFFS' CLAIMS AGAINST THE
UNIVERSITY DEFENDANTS WITH PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a)(2), or, in the alternative, Federal Rule of Civil Procedure 21, Plaintiffs Maxwell Kadel, Jason Fleck, Connor Thonen-Fleck, Julia McKeown, Michael D. Bunting, Jr., C.B., by his next friends and parents, Michael D. Bunting, Jr. and Shelley K. Bunting, and Sam Silvaine (collectively, "Plaintiffs"),¹ on the one hand, and Defendants University of North Carolina at Chapel Hill, North Carolina State University, University of North Carolina at Greensboro (collectively, "University Defendants"), on the other hand, respectfully move this Court to dismiss with prejudice Plaintiffs' claims against University Defendants under Title IX of the Education Amendments of 1972 ("Title IX"), and Title VII of the Civil Rights Act of 1964 ("Title VII"), which are the only claims being brought against University

¹ Plaintiff Dana Caraway has not asserted any claims against the University Defendants.

Defendants in Plaintiffs' Amended Complaint. Plaintiffs and University Defendants have reached a negotiated settlement of those claims, and Plaintiffs seek to dismiss their Title IX and Title VII claims against the University Defendants in consideration of that agreement.

Federal Rule of Civil Procedure 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” “While there is a split of authority as to whether Rule 41(a) permits voluntary dismissal of fewer than all defendants, including among district courts within the Fourth Circuit,” “the ‘sounder view’ is that Rule 41(a) permits the voluntary dismissal of fewer than all defendants in an action.” *Duke Progress Energy LLC v. 3M Co.*, No. 5:08-CV-460-FL, 2015 WL 5603344, at *2 (E.D.N.C. Sept. 23, 2015); *see also I.P. by Newsome v. Pierce*, No. 5:19-CV-228-M, 2020 WL 5535428, at *2 (E.D.N.C. Sept. 15, 2020) (“This Court agrees and finds Rule 41(a) permits the voluntary dismissal of all claims against a particular defendant.”); 9 Charles Alan Wright, et al., *Federal Practice and Procedure* § 2362 (3d ed.) (noting that “the sounder view and the weight of judicial authority” would support permitting a plaintiff to dismiss one of several defendants under Rule 41(a)).

Alternatively, Federal Rule of Civil Procedure 21 provides that “[o]n motion or on its own, the court may at any time, on just terms, add or drop a party,” and that “[t]he court may also sever any claim against a party.” Given the settlement between Plaintiffs and the University Defendants, dismissal of the Title IX and Title VII claims against the University Defendants would be “on just terms.” Fed. R. Civ. P. 21.

Dismissal of Plaintiffs' Title IX and Title VII claims against the University Defendants will serve party and judicial economy, as well as be in the interests of justice, because Plaintiffs and University Defendants have reached a settlement agreement that fully resolves these claims. Because "[i]t has long been clear that the law favors settlement," *United States v. Manning Coal Corp.*, 977 F.2d 117, 120 (4th Cir. 1992), dismissal of these claims is "proper" under either Rule 41(a)(2) or Rule 21.

Plaintiffs and University Defendants will each bear their own attorney's fees and costs, except for the attorney's fees and costs paid as part of their settlement.

* * *

Dated: August 23, 2021

/s/ Amy E. Richardson

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users.

Dated: August 23, 2021

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ORDER

Upon consideration of the joint motion by Plaintiffs Maxwell Kadel, Jason Fleck, Connor Thonen-Fleck, Julia McKeown, Michael D. Bunting, Jr., C.B., by his next friends and parents, Michael D. Bunting, Jr. and Shelley K. Bunting, and Sam Silvaine (collectively, “Plaintiffs”), and Defendants University of North Carolina at Chapel Hill, North Carolina State University, University of North Carolina at Greensboro (collectively, “University Defendants”), to dismiss with prejudice Plaintiffs’ claims against the University Defendants under Title IX of the Education Amendments of 1972 (“Title IX”), and Title VII of the Civil Rights Act of 1964 (“Title VII”), which are the only claims being brought against University Defendants, it is hereby

ORDERED that the motion is **GRANTED**. Plaintiffs’ claims against the University Defendants under Title IX and Title VII are dismissed with prejudice. Each

party will bear its own attorney's fees and costs, with the exception of the attorney's fees and costs paid as part of the parties' settlement.

Dated: _____

U.S. District Court Judge for the
Middle District of North Carolina