

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

Jimmy Smith

v.

Case No. 21-cv-133-PJB-AKJ

Roger Williams University  
Law School, et al.

**REPORT AND RECOMMENDATION**

Pro se plaintiff Jimmy Smith has filed a [Complaint \(Doc. No. 1\)](#) and a complaint addendum (Doc. No. 5) claiming that the Roger Williams University Law School ("RWU Law") and other defendants are liable for breach of contract and have treated him differently because of his race, in violation of civil rights statutes and the U.S. Constitution. In addition, Mr. Smith claims that the American Bar Association ("ABA") and the U.S. Department of Education failed to monitor RWU Law's compliance with federal anti-discrimination laws, policies, and accreditation standards. The pleadings are before this court for preliminary review under [28 U.S.C. §1915\(e\)\(2\)](#).

**Standard**

This court conducts a preliminary review of complaints filed in forma pauperis. See [28 U.S.C. §1915\(e\)\(2\)](#). Claims may be dismissed sua sponte, if, among other things, the court lacks jurisdiction, a defendant is immune from the relief sought, or

the complaint fails to state a claim upon which relief may be granted. See [28 U.S.C. §1915\(e\)\(2\)](#). In considering whether the complaint states a claim, the court determines whether, stripped of legal conclusions and with all reasonable inferences construed in plaintiff's favor, the complaint contains "sufficient factual matter, accepted as true, to state a claim to relief" upon which relief can be granted. [Ashcroft v. Iqbal](#), 556 U.S. 662, 678 (2009) (citation omitted). In undertaking this review, the court is mindful that pro se complaints must be construed liberally. See [Erickson v. Pardus](#), 551 U.S. 89, 94 (2007) (per curiam).

### **Background**

Mr. Smith, who is African American and an amputee, began his studies at RWU Law in Fall 2016. He alleges that his internal complaints about race discrimination at RWU Law were dismissed by RWU Law staff and by the U.S. Department of Education Office of Civil Rights ("OCR"), which dismissed his complaint in March 2021.

Mr. Smith additionally alleges that RWU Law has overlooked or lauded the conduct of professors including Jared Goldstein and Michael Yelonsky who have been arrested or ticketed by police officers, while Mr. Smith suffered the loss of an opportunity to undertake a clinical internship or otherwise participate in a clinical program at RWU Law because he was arrested for

disorderly conduct. He asserts that RWU Law breached the school's "clinical guarantee," in that regard. He alleges that other students who have had "run-ins" with the law have been allowed to participate in clinical programs.

Mr. Smith asserts he has witnessed and complained internally about the conduct of RWU Law students that he has considered to be racist or not racially sensitive, but RWU Law professors who reviewed those complaints did not investigate or otherwise take his complaints seriously. In Fall 2019, he complained about two students he says are white, Students 1 and 2, but RWU Law Professors Jared Goldstein and Jonathan Gutoff dismissed his complaints about those students as de minimis. He has alleged, however, that when Student 1 complained about him to the disciplinary board or the "Honor Board," that complaint resulted in disciplinary proceedings targeting him.

He asserts that RWU Law did not afford him a fair disciplinary process involving the same protections afforded to criminal defendants in criminal prosecutions. And, he adds in a post-complaint filing (see, e.g., [Doc. No. 16](#)), that he and Student 1 were excluded from the final competition in his Trial Advocacy class after he filed this lawsuit.

## Claims

The claims asserted in the Complaint (Doc. No. 1) and the "Amended Complaint" that is liberally construed as a complaint addendum (Doc. No. 5), are the following:

1. RWU Law has engaged in racially discriminatory practices, in violation of civil rights laws, in that:

- a. RWU Law and its professors have summarily dismissed Mr. Smith's complaints about racial insensitivity and race discrimination at RWU Law;
- b. RWU Law and its professors handled internal complaints against Mr. Smith lodged by white students differently than the complaints Mr. Smith lodged against white students;
- c. RWU Law failed to provide a fair disciplinary hearing to Mr. Smith, with the same procedural protections afforded to defendants in criminal trials;
- d. RWU Law negligently or intentionally fails to change its curriculum from year to year, giving second or third generation law students, who are typically white, an advantage;
- e. RWU Law has failed to recruit and hire adequate racial minority faculty;
- f. RWU Law Professor Jenna Hashway sent Mr. Smith to "Academic Support" because of racial animus; and
- g. RWU Law has violated ABA standards concerning diversity and inclusion in disciplinary hearings, as every person on the disciplinary board in Mr. Smith's hearing on the complaint filed by Student 1 was a white female.

2. RWU Law and professors on the RWU Law disciplinary board and/or Honor Board violated Mr. Smith's federal constitutional rights under the First, Fifth, Sixth, and Fourteenth Amendments, rendering them liable under 42 U.S.C. §1981 and/or § 1983, by:

- a. Retaliating against him for filing this lawsuit, in violation of his First Amendment right to petition the government for a redress of grievances;
  - b. Failing to afford him a fair and confidential disciplinary hearing, affording the same protections criminal defendants receive in criminal trials, in violation of the Fifth, Sixth, and Fourteenth Amendments;
  - c. Requiring him to make a statement against his own interest in disciplinary proceedings, in violation of the Fifth Amendment privilege against self-incrimination; and
  - d. Treating him differently than other students and faculty because of his race.
3. RWU Law breached its contractual obligation to provide him with a clinical legal experience, known as the "clinical guarantee," because of Mr. Smith's arrest record.
4. The U.S. Department of Education Office of Civil Rights "investigation procedure" is facially discriminatory, as persons with certain types of disabilities are unable to file a complaint.

### **Discussion**

Construing Mr. Smith's often-scattershot allegations liberally, the court finds that he has pleaded sufficient facts at this stage to support claims 1(a) and 1(b) above against RWU Law, alleging violations of [42 U.S.C. § 1981](#). In addition, the court finds Mr. Smith has alleged sufficient facts at this stage to support claims 2(a) and 2(d), insofar as those claims allege violations of [42 U.S.C. § 1981](#) by RWU Law. The court further finds that Mr. Smith has alleged sufficient facts at this stage of the litigation to support claim 3 against RWU Law. By

separate order, the court will direct service of these claims on RWU Law. As set forth below, however, the court recommends dismissal of several other claims against RWU Law, and all claims against the individual defendants and the U.S. Department of Education.

1. Claims 1(c) - (g)

A. Claim 1(c)

In this claim, Mr. Smith alleges that RWU Law failed to provide a disciplinary hearing to Mr. Smith with the same procedural protections afforded to defendants in criminal trials. As a private actor, RWU Law is not held to the same due process standards as a public entity. See [Logiodice v. Trustees of Maine Cent. Inst.](#), 296 F.3d 22, 28 (1st Cir. 2002) (no state action arising from imposition of discipline on students by private school). This claim should therefore be dismissed.

B. Claim 1(d)

In this claim, Mr. Smith alleges that RWU Law negligently or intentionally failed to change its curriculum from year to year, giving second or third generation law students, who are typically white, an advantage. Even if such a claim was legally actionable, this conclusory allegation lacks any factual support. Moreover, the complaint contains no facts to support any claim the Mr. Smith was somehow disadvantaged by the alleged curriculum policy. Claim 1(d) should therefore be dismissed.

C. Claim 1(e)

In this claim, Mr. Smith alleges that RWU Law has failed to recruit and hire adequate racial minority faculty. This claim lacks any factual support in the complaint and addendum. It should therefore be dismissed.

D. Claim 1(f)

Mr. Smith next asserts that RWU Law Professor Jenna Hashway sent Mr. Smith to "Academic Support" because of racial animus. He provides no factual support for his claim of racial animus, alleging only that the reference to Academic Support "followed his use of a dissent that he framed as a novel issue of law." Absent any facts suggesting racial animus on the part of this defendant, this claim should be dismissed.

E. Claim 1(g)

Mr. Smith next asserts that RWU Law violated ABA standards concerning diversity and inclusion in disciplinary hearings, as every person on the disciplinary board in Mr. Smith's hearing on the complaint filed by Student 1 was a white female. Courts have found that ABA standards do not provide a private right of action. See, e.g. [Shinabargar v. Bd. of Trustees of Univ. of District of Columbia](#), 164 F. Supp. 3d 1, 30-31 (D.D.C. 2016) (and cases cited therein.). Claim 1(g) should therefore be dismissed.

## 2. Claims 2(b) and 2(c)

### A. Claim 2(b)

In this claim, Mr. Smith asserts that the defendants violated his statutory and constitutional rights by conducting disciplinary hearings without affording him the same protections as criminal defendants receive. This claim should be dismissed because a private university “is not required to adhere to the standards of due process guaranteed to criminal defendants or to abide by rules of evidence adopted by courts.” Doe v. Brandeis Univ., 177 F. Supp. 3d 561, 602 (D. Mass. 2016).

### B. Claim 2(c)

In Claim 2(c), Mr. Smith asserts RWU Law violated his Fifth Amendment right against self-incrimination by requiring him to make a statement against his own interest in disciplinary proceedings. It is well-settled, however, that a Fifth Amendment claim cannot lie against a private actor such as RWU Law. See United States v. Grant, 689 F. App’x 935, 941 (11th Cir. 2017) (observing that allegedly incriminating statement must be made to the government to implicate the Fifth Amendment right against self-incrimination) (emphasis added). The district judge should therefore dismiss claim 2(c) for failure to state a cause of action.



### B. Claim 2(d)

In claim 2(d), Mr. Smith asserts that RWU Law treated him differently than other students and faculty because of his race, in violation of the Equal Protection Clause of the Fourteenth Amendment. As with claim 2(c), this claim fails to state a cause of action because the defendant is a private actor. It should therefore be dismissed.

### 3. Claim 4

Mr. Smith next claims that The U.S. Department of Education Office of Civil Rights "investigation procedure" is facially discriminatory, as persons with certain types of disabilities are unable to file a complaint. As the complaint and addendum lack any factual support for this claim, it should be dismissed.

### 4. Individual Defendants

In the amendment to his complaint ([Doc. No. 5](#)). Mr. Smith seeks to include numerous individuals as defendants.<sup>1</sup> The district court should dismiss them all from this case, as Mr. Smith's submissions fail to include allegations of any actionable conduct on the part of many of them, and no conduct

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<sup>1</sup>The putative additional defendants are: Jared Goldstein, Tanya Monesteir, Jonathan Guttoff, Olivia Milonas, Jenna Wims Hashway, Michael Yelonsky, Hon. William E. Smith as Chair of the RWU Law Board of Directors, Francis X. Flaherty as former Vice Chair of the RWU Law Board of Directors, and the departing Board of Directors who left in June 2020.

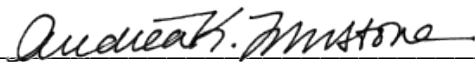
at all as to several others. For example, Mr. Smith names members of the RWU Law Board of Directors without indicating what conduct they are accused of having engaged in. Moreover, his allegations against two defendants - Goldstein and Yelonsky - relate to them receiving more favorable treatment following their legal entanglements than Mr. Smith did following his own. That they were allegedly treated more favorably than Mr. Smith does not make them liable for discrimination. Finally, to the extent that Mr. Smith alleges that defendants Goldstein and Gutoff treated his complaint differently than that of a white student, the complaint and addendum lack any factual support to suggest that the complaints each individual made to RWU Law were comparable.

### **Conclusion**

For the foregoing reasons, the district judge should dismiss claims 1(c), 1(d), 1(e), 1(f), 1(g), 2(c), 2(d), and 4. In addition, the individual defendants named in the complaint addendum should be dismissed. The case will proceed on Mr. Smith's remaining claims, as described herein.

Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). The fourteen-day period may be extended upon motion. Only those issues raised in the objection(s) to this Report and Recommendation are subject to review in the

district court. See [Sch. Union No. 37 v. United Natl Ins. Co.](#), 617 F.3d 554, 564 (1st Cir. 2010). Any issues not preserved by such objection(s) are precluded on appeal. See id. Failure to file any objections within the specified time waives the right to appeal the district courts Order. See [Santos-Santos v. Torres-Centeno](#), 842 F.3d 163, 168 (1st Cir. 2016).

  
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Andrea K. Johnstone  
United States Magistrate Judge

February 16, 2022

cc: Jimmy Smith, pro se  
Steven M. Richard, Esq.