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DURHAM COUNTY, C.S.C.

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IN THE STATE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 DISTRICT, DURHAM, NORTH CAROLINA

LUPING QU, Guardian ad Litem for Jing Qu)

Plaintiff,)

vs.)

NORTH CAROLINA SCHOOL OF SCIENCE)

AND MATHEMATICS (NCSSM), a public high)

school in Durham, managed by the NCSSM)

Board of Trustees,)

Defendant)

Case No.: 04 CV 06351

OPPOSITION TO MOTION TO DISMISS
BY DEFENDANT NCSSM

_____)

Now comes the Plaintiff, Luping Qu, to oppose Defendant NCSSM's Motion to Dismiss (MTD) the Complaint pursuant to N.C. R. Civ. P. 12 (b) (6). Defendant in its MTD claims or admits:

a. The Court does not have jurisdiction over plaintiff's claims for "capricious grading and false presentation' of grades (MTD ¶¶ 3, 16 - 18) .

b. NCSSM is a state agency (MTD ¶ 4) .

c. As a state agency, NCSSM is entitled to sovereign immunity from liability in the action brought up by Plaintiff (MTD ¶¶ 5 - 7).

d. Plaintiff has not alleged a violation of any constitutional right and, therefore, cannot pursue such a claim in the action (MTD ¶ 8).

1 e. Plaintiff failed to exhaust the administrative remedies granted by NCSSM for the
2 appeal of grades (§§ 9 – 15).

3 Plaintiff's opposition to a:

- 4 1. The Court has jurisdiction over plaintiff's claims for "capricious grading and false
5 presentation' of grades (see Exhibit A).
- 6 2. N.C. G.S. § 150B-43 states "Nothing in this Chapter shall prevent any person from
7 invoking any judicial remedy available to him under the law to test the validity of any
8 administrative action not made reviewable under this Article."

9 Plaintiff's opposition to b:

- 10 3. NCSSM is not a state agency. The website,
11 http://www.ncgov.com/ncagency/agencylink_main.asp, lists all N.C state agencies
12 known to have information on the Internet. NCSSM has information on the Internet,
13 but is not on the list.
- 14 4. Even if NCSSM is a State Agency, it cannot be shield from Plaintiff's cause of action
15 for the reasons given below (§§ 5 and 6).
- 16 5. The teacher Dr. Sheck, whose actions supported by NCSSM's president and senior
17 vice president Mr. Stephen Warshaw, has breached her statutory duty as a teacher
18 by knowingly and willfully making false report or record [N.C. G.S. 115C-307 (g)].
- 19 6. If the agency or agent breaches its statutory duty, they can not be excused by
20 claiming sovereign immunity (55 Am. Jur. Proof of Facts 3d 313, Page 345).

21 Plaintiff's opposition to c:

- 22 7. For the reasons stated in Plaintiff's opposition to b, NCSSM is liable in the action.

23 Plaintiff's opposition to d:

- 24 8. For the reasons stated in Plaintiff's opposition to a, b and c, Plaintiff can pursue his
25 claims in this action.

1 Plaintiff's opposition to e:

2 9. The said homework issue is not "that a grade has been incorrectly assigned due to
3 computation, clerical error, or inconsistent application of grading practice...". It is
4 that the teacher and the school knowingly and willfully to calculate a non-existing
5 homework assignment in the 4th quarter for the student for the 4th quarter, in which
6 the evolution teacher and the school breached their statutory duty (§ 5, 6).

7 10. Within NCSSM, Plaintiff have contacted the course teacher, NCSSM Senior
8 Vice President for Academic Programs, NCSSM president, and Chairperson, Mr. T.
9 Brock Winslow, of NCSSM board of Trustees to resolve the homework issue (see
10 exhibit B).

11 11. Through the whole process, Mr. Warshaw has been denying to investigate the
12 said homework assignment (see Exhibit b).

13 12. In the Motion for Summary Judgment filed by Plaintiff in the Court on
14 February 10, 2005 for his Complaint, Plaintiff provided the Court the material facts
15 claimed in Plaintiff's Complaint.

16 **WHEREFORE**, the facts before this Court present ample reason for allowing Plaintiff's
17 complaint for defendant Capricious Grading and False Presentation to go forward at trial,
18 and Plaintiff respectfully requests that defendant's Motion to Dismiss Plaintiff's Claim for
19 Relief be denied.

20 Respectfully submitted, this the 2nd day of March, 2005.

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