

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-14244
Non-Argument Calendar

TAMIKA MOMANYI,

Plaintiff-Appellant,

versus

UNIVERSITY OF ALABAMA AT BIRMINGHAM,

Defendant,

THE BOARD OF TRUSTEES OF
THE UNIVERSITY OF ALABAMA,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:24-cv-00467-GMB

Before LAGOA, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Tamika Momanyi, pro se, appeals the court's¹ dismissal of her claims against the Board of Trustees of the University of Alabama (the "Board") for alleged violations of the Americans with Disabilities Act of 1990 ("ADA") and the Fourteenth Amendment to the United States Constitution. Specifically, she argues that the Board discriminated against her because of her anxiety disorder and retaliated against her after she requested disability accommodations and reported how university employees mistreated her. Moreover, Momanyi argues that the court erred by denying her motion for a preliminary injunction and motion for leave to amend and supplement her complaint.

After careful review of the record, we vacate the district court's order dismissing Momanyi's Title I claims and the corresponding Title V claim, remand those claims for dismissal without prejudice, and affirm on all other grounds.

I. FACTUAL AND PROCEDURAL BACKGROUND

Momanyi was enrolled in the Master of Public Administration graduate program at the University of Alabama at Birmingham ("UAB") and due to graduate in December 2024. To help with her expenses, she worked as an office associate at UAB, a role that required her to perform general clerical duties and assist international students.

¹ Momanyi consented to magistrate judge jurisdiction. References to the court in this opinion refer to the magistrate judge presiding over this matter.

24-14244

Opinion of the Court

3

On July 18, 2023, her second day of work, Momanyi disclosed her anxiety disorder to the individual tasked with her onboarding. Momanyi explained that this disorder exacerbated her diabetes and high blood pressure and requested that “information [] be broken down for better understanding” to stave off these effects. A week later, Momanyi formally notified UAB about her disability and requested disability accommodations. The following day, she was placed on unpaid administrative leave without knowing why and it was only after Momanyi reported the incident to human resources that she was switched to paid leave.

Upon returning to her office a week later, and approximately two weeks after she began working as an office associate, Momanyi discovered that her office space was emptied and that her name was removed from her door. Her meeting with human resources later that day revealed that she was placed on leave for “wearing headphones and engaging in a personal conversation” while working.

On August 1, 2023, Momanyi’s request for accommodations was denied and she discovered that her access to various platforms used for her office associate duties was revoked. Momanyi reported this incident, the seemingly arbitrary reason for placing her on unpaid leave, and her empty office to human resources and claimed that she was retaliated against for requesting disability accommodations. UAB investigated the incidents and concluded that there was no evidence of retaliation. On September 20, 2023,

Momanyi resigned from her position and cited the “persistent retaliation and hostile environment” that “severely exacerbated her medical conditions.”

According to Momanyi, the retaliation and hostility seeped into her classroom experience. Specifically, Momanyi experienced “public humiliation during class sessions, sarcastic commentary, and unfair targeting in academic evaluations” from Professors Pink-Harper and Haque. For example, Professor Pink-Harper, who taught Human Resource Management, made references in class about an unnamed individual’s training for the office associate position and Professor Haque, who taught Administrative Ethics, publicly discussed the office associate role, which suggested to Momanyi that both were aware of what happened to her in that position. Moreover, Professor Pink-Harper was increasingly harsh in his critiques of Momanyi’s work, and despite adhering to all the instructions for an assignment, Momanyi was assigned a “significantly low grade.” In another instance, Professor Haque had Momanyi recite the code of ethics and honor code in front of the class and regularly suggested that she engaged in academic dishonesty. Despite receiving what she perceived to be low grades, Momanyi remained enrolled at UAB. Momanyi reported the classroom incidents to the graduate program director and department chair and alleged that the incidents were the result of “previous reports of workplace retaliation” but did not specify that the incidents were due to her disability. The complaints were dismissed.

On April 15, 2024, Momanyi, while still enrolled at UAB, filed a complaint against UAB alleging claims under the ADA for workplace discrimination.² In its motion to dismiss the initial complaint, UAB argued that sovereign immunity barred Momanyi's ADA claims, and even if immunity did not bar the claims, Momanyi failed to sufficiently plead a hostile work environment or retaliation for her disability accommodation requests.

Before the court decided on the motion to dismiss, Momanyi filed an amended complaint against UAB that provided more color on her ADA claims. For example, Momanyi alleged that she "suffer[red] from anxiety and diabetes," and experienced adverse employment actions and was retaliated against because of her request for accommodations. Momanyi also added claims for "academic retaliation" and alleged that Professors Pink-Harper and Haque continued the retaliation in the classroom.

On July 9, 2024, UAB filed a motion to dismiss the amended complaint and again argued that it was entitled to sovereign immunity and that Momanyi failed to sufficiently plead a claim. Instead of filing an opposition, Momanyi filed a motion for leave to amend her complaint. The court granted Momanyi's motion, and she filed a second amended complaint, which is the operative complaint for this appeal, naming the Board as the defendant instead of

² Momanyi also filed a claim under the Civil Rights Act of 1964 but later withdrew this claim.

UAB.³ She also filed a motion for preliminary injunction requesting that the district court enjoin what she perceived to be the Board's continued retaliatory conduct.

In her second amended complaint, Momanyi added allegations that UAB further retaliated against her because of this litigation and her complaints about her professors. For example, she alleged that her "academic records were tampered with and deleted, and her case file against the university was stolen from her personal laptop," which forced her to "purchase multiple new devices." Moreover, Momanyi alleged that UAB deleted the assignments she had completed and needed for her graduate portfolio. In addition, Momanyi alleged that UAB arbitrarily introduced additional terms and conditions for her to receive her financial aid, terms and conditions that were not previously required and not required by federal law for aid disbursement. According to Momanyi, the introduction of these terms and conditions, in conjunction with all else that had happened to her, exacerbated her stress and anxiety. Momanyi ultimately decided not to accept these terms and conditions but was still disbursed her financial aid and able to continue with the semester.

³ Despite recognizing that the second amended complaint had "significant modifications" to the proposed second amended complaint, the court permitted the filing "because it contain[ed] specific factual allegations lacking from previous versions of the complaint." The court denied UAB's motion to dismiss the first amended complaint as moot.

24-14244

Opinion of the Court

7

The second amended complaint alleged nine counts against the Board. Counts I through III alleged violations of Titles I and V of the ADA and arose from the discrimination, retaliation, and hostility Momanyi allegedly experienced in the workplace. Counts IV through VI alleged violations of Titles II and V of the ADA arising from the discrimination and retaliation Momanyi allegedly experienced as a UAB graduate student. And Counts VII through IX alleged procedural due process, substantive due process, and equal protection clause violations under the Fourteenth Amendment arising from the denial of her accommodations and the retaliation Momanyi allegedly experienced for seeking those accommodations. Momanyi sought money damages and injunctive relief for her claims.

On September 17, 2024, the Board filed a motion to dismiss Momanyi's second amended complaint and reiterated its sovereign immunity defenses for Momanyi's Title I claims. As to the new claims alleged in the second amended complaint, the Board of Trustees argued that it was similarly entitled to sovereign immunity for the Title V claim predicated on the Title I claims,⁴ that Momanyi failed to sufficiently plead facts supporting her Title II claims and the corresponding Title V claim, and that there was no private right of action for her Fourteenth Amendment claims.

⁴ Title V states that "[n]o person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter." 42 U.S.C. § 12203.

Before the court ruled on the Board's motion, Momanyi filed another motion for leave to amend and supplement her complaint with 932 pages of exhibits, and a subsequent motion for leave to supplement the complaint with additional claims and supporting facts. Her motions alleged new claims for breach of contract, medical malpractice, negligence, promissory estoppel, and breach of confidentiality and violations of the First Amendment, Family Educational Rights and Privacy Act ("FERPA"), Health Insurance Portability and Accountability Act ("HIPAA"), and Section 504 of the Rehabilitation Act of 1973.⁵

On December 4, 2024, the court granted the Board's motion to dismiss; denied Momanyi's motions for leave to amend, leave to supplement, and preliminary injunction; and dismissed the case in its entirety with prejudice.

The court dismissed Counts I and III because it concluded that the Board was an arm of the state for Eleventh Amendment purposes and that the Board did not waive, nor did Congress abrogate, its sovereign immunity as to Title I. Though Momanyi did not specify the ADA provision that gave rise to her Title V claim (Count II), the court construed it to be predicated on Title I, and thus, the dismissal of the Title I claims meant that this Title V claim was also dismissed.

⁵ Momanyi's state law claims for medical malpractice, negligence, and breach of confidentiality were brought on behalf of her spouse.

Next, the court dismissed Counts IV and V because Momanyi did not allege that she was excluded from, or denied the benefits of, the Board's services, programs, or activities, or that she was discriminated against in another manner. The court construed the allegations of Count VI—that additional terms and conditions were imposed by UAB before Momanyi could receive her financial aid—as providing support for Momanyi's claims under Counts IV and V, not an independent cause of action.

As to Counts VII through IX, the court dismissed these claims because the Fourteenth Amendment did not provide a private right of action to enforce due process and equal protection rights. To the extent Momanyi's pro se claims could be liberally construed to arise under 42 U.S.C. § 1983, the court concluded that the Board was not the proper defendant under the statute, which permits suits against individuals, not state agencies like the Board.

As to Momanyi's motion for leave to amend or supplement her second amended complaint, the court concluded that amendment or supplementation would be futile. And having concluded that Momanyi's claims are either barred by sovereign immunity or lacked merit, the court denied her motion for a preliminary injunction.

On December 30, 2024, Momanyi filed this timely appeal.⁶

⁶ During the pendency of this appeal, and after she filed her initial brief, Momanyi filed a motion to take judicial notice of the magistrate judge's affiliation with the University of Alabama School of Law. Because a motion to take judicial notice is not the proper medium to consider her legal argument that the

II. STANDARD OF REVIEW

We review de novo a court's determination of sovereign immunity, which is jurisdictional in nature. *Dupree v. Owens*, 92 F.4th 999, 1007 (11th Cir. 2024).

We review a court's order granting a motion to dismiss for failure to state a claim de novo. *EEOC v. STME, LLC*, 938 F.3d 1305, 1313 (11th Cir. 2019). In reviewing dismissals under Fed. R. Civ. P. 12(b)(6), we accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003). To survive a Rule 12(b)(6) motion to dismiss, a complaint must allege sufficient facts to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation marks omitted). Factual allegations "must be enough to raise a right to relief above the speculative level," and "unadorned, the-defendant-unlawfully-harmed-me accusation[s]" are not sufficient. *Id.*; *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will be liberally construed. *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014).

magistrate judge should have recused himself, *cf. Shahar v. Bowers*, 120 F.3d 211, 214 (11th Cir. 1997) (en banc), and because she does not raise this argument until her reply brief, we conclude that she has thus abandoned it, *see Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) ("[W]e do not address arguments raised for the first time in a *pro se* litigant's reply brief.") (emphasis in original).

24-14244

Opinion of the Court

11

We review a court's denial of a preliminary injunction and denial of leave to amend or supplement a complaint for abuse of discretion. *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016) (preliminary injunction); *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1211 (11th Cir. 2008) (amend or supplement).

III. ANALYSIS

On appeal, Momanyi argues that the court erred by granting sovereign immunity to the Board for her workplace discrimination and retaliation claims. Moreover, she argues that the court erred by dismissing her classroom discrimination and retaliation claims and Fourteenth Amendment claims for failure to state a claim. Momanyi also argues that the district court erred by denying her motion for preliminary injunction. And lastly, Momanyi argues that the court erred by denying her motion to amend and supplement her pleadings. We address each in turn.

A. Workplace Discrimination and Retaliation

Momanyi argues that the Board is not entitled to sovereign immunity for her disability discrimination (Count I) and hostile work environment (Count III) claims because the Board is responsible for the actions of its employees. Momanyi also argues that even if sovereign immunity bars recovery for money damages, the same defense does not protect the Board from Momanyi's claim for injunctive relief. And to the extent the Board is not the correct party to sue for the Title I violations, Momanyi argues that her claims should have been denied without prejudice and that she should be permitted to amend her pleadings.

The Eleventh Amendment provides that “the Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. Amend. XI. “Eleventh Amendment immunity bars suits by private individuals in federal court against a state unless the state has consented to be sued or has waived its immunity or Congress has abrogated the states’ immunity.” *Nichols v. Ala. State Bar*, 815 F.3d 726, 731 (11th Cir. 2016). “The Eleventh Amendment applies when the State or one of its agencies or departments is named as the defendant[.]” *Id.* (citation modified).

Here, we conclude that the Board is entitled to sovereign immunity for Momanyi’s Title I claims. The Board was created by the State of Alabama to operate UAB and is a state agency for purposes of Eleventh Amendment immunity. *See Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363 (2001); Ala. Code § 16-47-1. Congress did not abrogate the states’ sovereign immunity when it enacted Title I. *See Garrett*, 531 U.S. at 362–63 (2001); *Dupree*, 92 F.4th at 1007. Nor did the State of Alabama agree to be sued for violations of an individual’s civil rights. *See Nichols*, 815 F.3d at 731; Ala. Const. Art. I, § 14 (“[T]he State of Alabama shall never be made a defendant in any court of law or equity.”).

Momanyi, however, argues that though the Board may be immune from suits for money damages under Title I, it is not immune from her request for injunctive relief pursuant to *Ex parte*

Young's⁷ narrow exception to immunity. But the *Ex parte Young* doctrine permits lawsuits against state officials who are noncompliant with federal law and "has no application in suits against the States and their agencies, which are barred regardless of the relief sought." *Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993). We conclude that sovereign immunity, thus, also protects the Board from Momanyi's claims for injunctive relief.

We also conclude that the court did not err by dismissing Momanyi's Title V claim (Count II) after dismissing the Title I claims on which it was predicated. Title V of the ADA bars retaliation against an individual for opposing any act or practice made illegal under the ADA. 42 U.S.C. § 12203(a). Accordingly, "[a] retaliation claim under Title V is predicated on an individual suffering a harm post-asserting rights under a separate ADA provision." *Dupree*, 92 F.4th at 1007. When a state entity is entitled to sovereign immunity against a Title I claim, a Title V claim predicated on that Title I claim cannot be raised against the entity. *Id.* Since Momanyi raised a separate retaliation claim related to her Title II claim (Count V), we construe Count II as being predicated on her Title I claims, and the court thus did not err by dismissing Count II along with Counts I and III.

⁷ 209 U.S. 123 (1908).

Even so, Momanyi is correct that Counts I through III should have been dismissed without prejudice. “Sovereign immunity is jurisdictional in nature” and dismissal on this ground is not a judgment on the merits and is to be entered without prejudice.” *Dupree*, 92 F.4th at 1007. We thus remand for the limited purpose of allowing the court to dismiss these claims without prejudice.

B. Academic Discrimination and Retaliation

Momanyi reiterates her factual pleadings in support of her Title II claim for disability discrimination in the classroom (Count IV) and the Title V retaliation claim predicated on that Title II claim (Count V). Specifically, she argues that the alleged denial of accommodations, public humiliation, tampering with academic records, retaliatory grading, and coercive terms and conditions all sufficiently stated a claim for which relief can be granted.⁸

As an initial matter, we note that states are not entitled to sovereign immunity for a Title II claim. Title II provides that “[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in [a] Federal or State court of competent jurisdiction for a violation of this chapter.” 42 U.S.C. § 12202. In *United States v. Georgia*, the Supreme Court held that this provision validly abrogated the states’ sovereign immunity. 546 U.S. 151, 159 (2006). Thus, in contrast to Title

⁸ We liberally construe Count VI to be a factual allegation in support of Momanyi’s Title II claim. See *Campbell*, 760 F.3d at 1168.

24-14244

Opinion of the Court

15

I, the Board is not entitled to sovereign immunity for violations of Title II. *Id.*

a. Disability Discrimination

With regards to Momanyi’s claims of disability discrimination in the classroom, Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. To state a Title II discrimination claim, a plaintiff must allege that:

- (1) that [she] is a qualified individual with a disability;
- (2) that [she] was either excluded from participation in or denied the benefits of a public entity’s services, programs, or activities, or was otherwise discriminated against by the public entity; and (3) that the exclusion, denial of benefit, or discrimination was by reason of [her] disability.

Ingram v. Kubik, 30 F.4th 1241, 1256–57 (11th Cir. 2022) (quoting *Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1134 (11th Cir. 2019)). “[A]n otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers” and “to assure meaningful access, reasonable accommodations in the grantee’s program or benefit may have to be made.” *Alexander v. Choate*, 469 U.S. 287, 301 (1985). In the university context for Title II, we “‘show great respect for the faculty’s professional judgment’ when it comes to a ‘genuinely academic deci-

sion,” and faculty members are given “the widest range of discretion in making judgments as to the academic performance of students[.]” *Nehme v. Fla. Int’l Univ. Bd. of Trs.*, 121 F.4th 1379, 1383 (11th Cir. 2024) (quoting *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 & n.11 (1985)).

Here, we conclude that Momanyi’s allegations—e.g., that she received low grades, professors harshly critiqued her work, and she was prompted to accept terms and conditions for her financial aid—do not show that she was “excluded from participation in or denied the benefits of [the Board’s] services, programs, or activities.” To start, Momanyi does not indicate what disability accommodations she requested, if any, to assist her in the classroom and how the Board’s failure to provide those accommodations negatively impacted her academic performance such that she was deprived of a public program. Moreover, Momanyi concedes that she received the promised financial aid without accepting the terms and conditions of her financial aid package and successfully enrolled for the semester. Though Momanyi claimed that Professor Haque discriminated against her by lowering her grade for an assignment and critiquing her in class, postsecondary faculty are given “the widest range of discretion” in evaluating students, *Nehme*, 121 F.4th at 1383, and in any event, there is no indication that Professor Haque’s conduct was “by reason of [her] disability.” *Ingram*, 30 F.4th at 1257. Thus, even after accepting her allegations as true, Momanyi failed to sufficiently plead factual allegations

amounting to a denial of “meaningful access” to her graduate program or other services offered by the Board. *Alexander*, 469 U.S. at 301.

b. Retaliation

As noted above, Title V of the ADA bars retaliation against an individual for opposing any act or practice made illegal under the ADA. 42 U.S.C. § 12203(a). A Title V claim can be predicated on a Title II claim. *Higdon v. Jackson*, 393 F.3d 1211, 1218–19 (11th Cir. 2004).

To establish a *prima facie* case of retaliation, the plaintiff must show that (1) she engaged in statutorily protected expression, (2) she suffered an adverse action, and (3) there was a causal link between the adverse action and her protected expression. *Stewart v. Happy Herman’s Cheshire Bridge, Inc.*, 117 F.3d 1278, 1287 (11th Cir. 1997). “The failure to satisfy any of these elements is fatal to a complaint of retaliation.” *Higdon v. Jackson*, 393 F.3d 1211, 1218 (11th Cir. 2004). “[I]n the public services or accommodations contexts of the ADA,” a plaintiff must show that “some type of action occurred that sufficiently qualifies as adverse under the circumstances of the case.” *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1181 (11th Cir. 2003). But not “every unkind act is sufficiently adverse” and “an ADA plaintiff must demonstrate that a reasonable person in [her] position would view the action in question as adverse.” *Id.* (quoting *Doe v. Dekalb Cnty. Sch. Dist.*, 145 F.3d 1441, 1449 (11th Cir. 1998)) (citation modified).

Here, we conclude that Momanyi's retaliation claim fails because she did not sufficiently plead that she engaged in statutorily protected activity or that she suffered a materially adverse action. *See Higdon*, 393 F.3d at 1218. As to protected activity, Momanyi did not specify what disability accommodations she requested for the classroom or how her complaints to the department chair and dean indicated that the alleged retaliation she faced was unlawful under the ADA and not just a personal grievance. To the extent Momanyi points to her request for accommodation in the workplace as the statutorily protected activity for her Title II claim, she cannot evade sovereign immunity by clothing her Title I claim in a different garb.

As to an adverse action, the grievances Momanyi had with her professors and the grades she received were well within the "faculty's professional judgment" and "range of discretion in making judgments as to the academic performance of students." *See Nehme*, 121 F.4th at 1283. Moreover, reciting the code of ethics in a class called Administrative Ethics is something a student might expect to do during her studies and Momanyi concedes that she remained enrolled at UAB and received her financial aid despite what she perceived as UAB's efforts to discourage her from continuing. Indeed, "the ADA is not a code of civility" and Momanyi has not shown that any of the alleged adverse actions "result[ed] in some tangible, negative effect." *Higdon*, 393 F.3d at 1219. The court, thus, did not err in dismissing Momanyi's retaliation claim.

C. Fourteenth Amendment Claims

Momanyi argues that she sufficiently pleaded due process and equal protection clause violations by alleging facts showing that she was deprived of employment and educational opportunities without notice and after biased decision-making. But even if true, Momanyi's arguments miss the mark. The issue is not whether she sufficiently pleaded Constitutional violations but, rather, whether the Board can be sued in federal court for those alleged violations.

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, § 1. Fourteenth Amendment rights are enforceable in federal court via the statutory vehicle of 42 U.S.C. § 1983. *Charles v. Johnson*, 18 F.4th 686, 693–94 (11th Cir. 2021). "In order to prevail on a civil rights action under § 1983, a plaintiff must show that he or she was deprived of a federal right by a person acting under color of state law." *See Griffin v. City of Opa-Locka*, 261 F.3d 1295, 1303 (11th Cir. 2001).

Here, we conclude that Momanyi's Fourteenth Amendment claims fail for two reasons. First, Momanyi did not bring her Fourteenth Amendment claims under § 1983, which was the proper vehicle for such claims. *See Charles*, 18 F.4th at 693–94. And second, even if we were to liberally construe Momanyi's pleadings as arising under § 1983, her claims still fail because the Board is a state agency, not an individual acting under the color of state law. *See Griffin*, 261 F.3d at 1303; *cf. Garrett*, 531 U.S. at 363; *Harden v. Adams*,

760 F.2d 1158, 1163–1164 (11th Cir. 1985) (recognizing the Board of Trustees of an Alabama state university as an “instrumentality of the state”). Momanyi’s Constitutional claims against the Board, thus, are not claims against a “person” within the meaning of § 1983 and the court did not err in dismissing her Constitutional claims on this basis.

D. Preliminary Injunction

Because we conclude that Momanyi’s ADA and Constitutional claims fail on the merits, we also conclude that the court did not abuse its discretion by denying Momanyi’s motion for a preliminary injunction.

To receive a preliminary injunction, a plaintiff must show “(1) [she] has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.” *Wreal, LLC*, 840 F.3d at 1247 (quoting *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc)). Because a plaintiff “must meet all four prerequisites to obtain a preliminary injunction, failure to meet even one dooms [the plaintiff’s] appeal.” *Id.* at 1248.

Momanyi’s motion fails at the outset; our conclusions that the Board is entitled to sovereign immunity and that Momanyi failed to sufficiently plead a claim mean that she does not have a substantial likelihood of success on the merits. Thus, the court did not err in denying her motion for a preliminary injunction.

E. Motion for Leave to Amend and Supplement

Finally, Momanyi argues that the court erred by denying her motion for leave to amend and supplement her pleadings. After amending her complaint on two occasions, she seeks to add claims for breach of contract, medical malpractice, negligence, promissory estoppel, and breach of confidentiality and violations of the First Amendment, FERPA, HIPAA, and Section 504 of the Rehabilitation Act of 1973. Momanyi also seeks to supplement her pleadings with a 932-page supplemental record.

“When deciding whether to grant leave to amend, a court considers five factors: (1) undue delay, (2) bad faith or dilatory motive, (3) repeated failure to cure deficiencies by amendment, (4) undue prejudice to the opposing party by virtue of allowance of the amendment, and (5) futility.” *Blackburn v. Shire US Inc.*, 18 F.4th 1310, 1317–18 (11th Cir. 2021). “A district court may find undue delay when the movant knew of facts supporting the new claim long before the movant requested leave to amend, and amendment would further delay the proceedings.” *Tampa Bay Water v. HDR Eng’g, Inc.*, 731 F.3d 1171, 1186 (11th Cir. 2013), *overruled on other grounds by*, *CSX Transp., Inc. v. Gen. Mills, Inc.*, 846 F.3d 1333, 1340 (11th Cir. 2017). In addition, district courts “may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d).

Here, we conclude that the court did not abuse its discretion in denying Momanyi’s motions to amend and supplement because

of Momanyi’s “repeated failure to cure deficiencies by amendment” and the “futility” of her proposed amendments. During the proceedings below, the court allowed Momanyi to amend her pleadings twice and repeatedly cautioned her that it would not permit further amendments or supplementations. Moreover, Momanyi’s breach of contract, promissory estoppel, and § 504 claims arise from the same facts alleged in her initial complaint, and she provides no compelling reason why she could not have raised these claims in her earlier amendments. Momanyi’s First Amendment claim suffers the same flaw as her Fourteenth Amendment claims, and as to her HIPAA and FERPA claims, there is no private right of action under those statutes. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 289 (2002); 42 U.S.C. § 290dd-2. In addition, the court did not abuse its discretion in denying leave to add Momanyi’s remaining state law claims because she sought to impermissibly bring them on behalf of her spouse. *See Devine v. Indian River Cnty. Sch. Bd.*, 121 F.3d 576, 581 (11th Cir.1997) *overruled in part on other grounds*, *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007). As to the 932-page supplemental record, it supports claims that still fail as a matter of law.

IV. CONCLUSION

For the reasons discussed above, we vacate the court’s order dismissing Counts I, II, and III with prejudice and remand for the limited purpose of allowing the court to dismiss those claims without prejudice. We affirm on all other grounds.

AFFIRMED IN PART, VACATED AND REMANDED IN PART.