

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CV 015616

DAVID PHILLIPS, Ph.D.,

Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION; DAVID STEGALL, in his official capacity as former Deputy Superintendent and Chief Academy Officer for the North Carolina Department of Public Instruction; SNEHA SHAH COLTRANE, in her official capacity as the Director of the Division of Advanced Learning and Gifted Education at the North Carolina Department of Public Instruction; THOMAS WINTON, in his official capacity as former Coordinator of the North Carolina Governor's School for the North Carolina Department of Public Instruction; and RODNEY K. ALLEN, in his official capacity as Coordinator of the North Carolina Governor's School and Site Director for the North Carolina Governor's School West Campus for the North Carolina Department of Public Instruction,

Defendants.

**DEFENDANTS' MOTION TO DISMISS**

**DEFENDANTS**, the North Carolina Department of Public Instruction; David Stegall, in his official capacity as former Deputy Superintendent and Chief Academy Officer for the North Carolina Department of Public Instruction; Sneha Shah Coltrane, in her official capacity as the Director of the Division of Advanced Learning and Gifted Education at the North Carolina

Department of Public Instruction; Thomas Winton, in his official capacity as former Coordinator of the North Carolina Governor's School for the North Carolina Department of Public Instruction; and Rodney K. Allen, in his official capacity as Coordinator of the North Carolina Governor's School and Site Director for the North Carolina Governor's School West Campus for the North Carolina Department of Public Instruction (hereinafter "Defendants") by and through the undersigned counsel respectfully move the Court to dismiss Plaintiff's Complaint in the above-captioned matter, pursuant to North Carolina Rules of Civil Procedure Rules 12(b)(1), 12(b)(2), and 12(b)(6). In support of this Motion, Defendants show the following:

1. Plaintiff's Complaint should be dismissed for lack of personal and subject matter jurisdiction, and because Plaintiff failed to state a claim upon which relief can be granted.
2. Specifically, the Complaint fails to state a claim for relief under *Corum v. University of North Carolina*, 330 N.C. 761, 413 S.E.2d 276 (1992).
3. Plaintiff did not plead sufficient facts to properly allege that his rights under the North Carolina Constitution were violated. Even if he had plead sufficient facts, Plaintiff's claim should be dismissed because his claims are barred by sovereign immunity as other adequate state remedies exist.
4. Plaintiff failed to state a case upon which relief can be granted regarding continued employment at the Governor's School, as his Complaint reveals that he has no cognizable property interest in continued employment with Defendant Department of Public Instruction.
5. No law supports Plaintiff's allegation that his termination from the Governor's School violated his constitutional right to free speech. The speech Plaintiff described did not constitute protected speech. Even were it protected, Defendants' interest in effectively

serving the Governor's School's students outweighed Plaintiff's right to the speech he described. Additionally, Plaintiff did not sufficiently allege the causation element for his free speech claim brought pursuant to the North Carolina Constitution.

6. To the extent that Plaintiff alleged that Defendants engaged in unconstitutional discrimination, his claim should be dismissed because Plaintiff failed to allege sufficient facts supporting his contention that his race, sex, or religion were factors in his termination.
7. Plaintiff's claim that Defendants deprived him of the fruits of his labor should similarly be dismissed for failure to state a claim upon which relief can be granted.
8. Defendants reserve all other claims and defenses.

WHEREFORE, Defendants pray for the following relief:

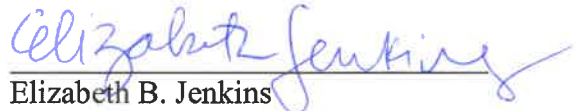
1. That Plaintiff's claim be dismissed with prejudice;
2. That Plaintiff have and recover nothing;
3. That Defendants have such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 16<sup>th</sup> day of February, 2023.

JOSHUA H. STEIN  
ATTORNEY GENERAL



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**CERTIFICATE OF SERVICE**


I certify that the foregoing **DEFENDANTS' MOTION TO DISMISS** was served on Plaintiff via first class mail and via electronic delivery, addressed as follows:

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This the 16<sup>th</sup> day of February, 2023.

  
Elizabeth B. Jenkins  
Assistant Attorney General