

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

| | | |
|----------------------|---|--------------------------------|
| MASON ORTEGEL, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 7:22-cv-00510 |
| |) | |
| VIRGINIA POLYTECHNIC |) | By: Elizabeth K. Dillon |
| INSTITUTE & STATE |) | United States District Judge |
| UNIVERSITY, et al., |) | |
| |) | |
| Defendants. |) | |

ORDER

For the reasons set forth in the accompanying memorandum opinion, it is hereby ORDERED that plaintiff Mason Ortegel’s motion for leave to file a first amended complaint (Dkt. No. 14) is GRANTED, and the defendants’ motion to dismiss the first amended complaint¹ for failure to state a claim (Dkt. No. 6) is GRANTED IN PART AND DENIED IN PART as follows:

1. As to Counts I and IV, the motion to dismiss is DENIED;
2. As to Counts II and III, the motion to dismiss is GRANTED; and
3. As to Counts V and VI, the motion to dismiss is GRANTED IN PART AND DENIED IN PART. With respect to any Equal Protection Clause claim based on alleged *sex* discrimination, the motion to dismiss is DENIED. With respect to any Equal Protection Clause claim based on alleged *race* discrimination, the motion to dismiss is GRANTED.

¹ For purposes of defendants’ motion to dismiss, Ortegel’s proposed first amended complaint (Dkt. No. 14-1) is deemed filed, and the court construes defendants’ motion as seeking dismissal of the first amended complaint. Accordingly, in reaching its decision on the motion to dismiss, the court considered the arguments in the briefing both on the motion to dismiss the original complaint and the motion for leave to file the first amended complaint.

Ortegel is directed to file a final version of the proposed first amended complaint (Dkt. No. 14-1)—appropriately revised in light of the court’s dismissal of Counts II, III, V in part, and VI in part—within seven (7) days of the entry of this order.

The clerk is directed to provide a copy of this order and the accompanying opinion to all counsel of record.

Entered: November 20, 2023.

/s/ Elizabeth K. Dillon
Elizabeth K. Dillon
United States District Judge