IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

MILDRED CRESPO,

Plaintiff,

v.

ROSITA LOPEZ,

Defendant.

Case No. 2025L009086

Calendar Y

Honorable John J. Tully, Jr.

DEFENDANT'S REPLY IN SUPPORT OF HER MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO 735 ILCS 2-619(a)(1)

Defendant Dr. Rosita Lopez ("Dr. Lopez"), by and through her undersigned counsel, Monica H. Khetarpal and Raseq Moizuddin of Jackson Lewis P.C., hereby submits this Reply in Support of her Motion to Dismiss Plaintiff's Complaint with prejudice pursuant to 735 ILCS 2-619(a)(1). In support of her Reply, Dr. Lopez submits the following:

Dated: October 30, 2025

Respectfully submitted,

By: **DR. ROSITA LOPEZ**

/s/ *Monica H. Khetarpal*
One of Her Attorneys

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I. INTRODUCTION

In her motion to dismiss, Dr. Lopez establishes that Plaintiff's claims are barred because the State Lawsuit Immunity Act ("SLIA") and Illinois Court of Claims Act ("ICCA") require all claims "sounding in tort" against State employees, like Dr. Lopez, to proceed in the Illinois Court of Claims against the State entity, not against Dr. Lopez individually.[1] In support, Dr. Lopez correctly asserts that all of Plaintiff's allegations reference conduct that Dr. Lopez allegedly exhibited within her role as Chair of NEIU's El Centro Advisory Council ("Council"). Specifically, Plaintiff alleges that Dr. Lopez made comments discussing Plaintiff's performance as El Centro's Interim Director, which was within her role as Council Chair as Dr. Lopez was required to collaborate directly with Plaintiff to achieve the Council and El Centro's mutual goals.

In response to Dr. Lopez's arguments, Plaintiff relies solely on inapplicable agency law principles and argues that the SLIA and ICCA do not apply in this case. Specifically, Plaintiff argues that Dr. Lopez does not qualify as an employee or agent of NEIU, which is incorrect given Dr. Lopez's status as an "employee" under the State Employee Indemnification Act ("SEIA"). The SEIA's definition of "employee" brings Dr. Lopez within the scope of the SLIA and ICCA, which bar Plaintiff's claims. Moreover, Plaintiff's improper agency law analysis disregards the actual legal standard for determining whether an action is against the State for sovereign immunity purposes, which requires analyzing the "issues involved" and the "relief sought" in the case. *See Currie v. Lao*, 148 Ill. 2d 151, 158 (1992). Plaintiff's Response does not engage in this analysis. Plaintiff also argues that the SLIA and ICCA do not apply because Dr. Lopez, as Council Chair, allegedly acted beyond the scope of her authority. However, Plaintiff's own allegations show

[1] Plaintiff incorrectly asserts that Dr. Lopez did not seek dismissal of Count III for defamation. As discussed in Dr. Lopez's Motion to Dismiss and herein, Count III should be dismissed pursuant to the SLIA and ICCA because it sounds in tort and involves comments Dr. Lopez allegedly made within the scope of her role at NEIU.

otherwise as Dr. Lopez critiqued Plaintiff's ability to work with the Council, and with Dr. Lopez as its Chair, to accomplish the Council and El Centro's mutual goals—actions that fall entirely within Dr. Lopez's role with NEIU. For all these reasons, as Dr. Lopez further describes below and in her motion to dismiss, the SLIA and ICCA bar all of Plaintiff's claims.

II. ARGUMENT

a. Dr. Lopez is an Employee Under the State Employee Indemnification Act.

Plaintiff incorrectly asserts that the SLIA and ICCA cannot apply because Dr. Lopez is not an employee or agent of NEIU. Immunity under the SLIA and ICCA can apply even if the State does not directly employ the individual, as long as the individual qualifies as an "employee" under the SEIA, 5 ILCS 350/0.01, *et seq*. *See Toth v. England*, 348 Ill. App. 3d 378, 380-82 (5th Dist. 2004) (holding that a nursing association and its employee, "though private actors, were acting as agents of the State" because they fit the SEIA's definition of "employee"); *Corona v. N. Cent. Narcotics Task Force*, No. 24 CV 2306, 2025 U.S. Dist. LEXIS 23313, *9-10 (N.D. Ill. Feb. 10, 2025) (holding that the Eleventh Amendment bars claims against an organization that fits the SEIA's definition of "employee").

Here, Dr. Lopez fits into two parts of the SEIA's definition for "employee": "individuals or organizations who perform volunteer services for the State where such volunteer relationship is reduced to writing" and "individuals or not for profit organizations who, either as volunteers, where such volunteer relationship is reduced to writing, or pursuant to contract, furnish professional advice or consultation to any agency or instrumentality of the State" 5 ILCS 350/1(b). The Council's By-Laws demonstrate that the Council and Dr. Lopez's role as Council Chair are reduced to writing. Specifically, the Council's By-Laws state that the President of NEIU originally established the Council and that it was established in accord with the NEIU's Constitution and By-

Laws. (Motion to Dismiss, Ex. A, Ex. 1.) Moreover, the Council's By-Laws describe the Council and Chair's roles, *i.e.*, to provide recommendations and analysis for the benefit and support of NEIU's El Centro campus and to work with El Centro's Director (or Interim Director) to accomplish their mutual goals. *Id.* Thus, no dispute exists that the Council, and Dr. Lopez as its Chair, provide unpaid, volunteer services to NEIU's El Centro, which constitutes the State. Dr. Lopez therefore qualifies as an "employee" under the SEIA. Dr. Lopez also provides professional services, as she is a lifelong educator with substantial experience dealing with El Centro and has served as the Council's Chair for thirty years, which allows her to provide unique insights and perspectives to NEIU. As such, she "furnish[es] professional advice or consultation" to NEIU in accordance with the SEIA's "employee" definition. 5 ILCS 350/1(b).

Plaintiff even asserts in her Response that the Council acts "voluntarily and on its own behalf to provide whatever advice and recommendations it wishes without being under the supervision of NEIU in doing so." (*See* Plt.'s Resp., p. 5.) Plaintiff's assertions describe the Council's volunteer relationship to furnish advice or consultation to NEIU, which exemplifies the SEIA's definition of "employee." 5 ILCS 350/1(b). Dr. Lopez's status as an "employee" under the SEIA qualifies her as a State actor. *Giovenco-Pappas v. Berauer*, 2020 IL App (1st) 190904, *28-29 (finding that an individual who fits the definition of "employee" under the SEIA for immunity purposes constitutes a State actor). As such, Plaintiff's lawsuit against Dr. Lopez is barred by the SLIA and ICCA and should be against NEIU and filed in the Illinois Court of Claims.

b. The Applicable Legal Standard Requires an Analysis of the Issues Involved and Relief Sought, Not Agency Law Principles.

Plaintiff has not cited any basis to apply agency law to determine whether the SLIA or ICCA apply to Plaintiff's claims, and no such basis exists. Rather, the relevant question is "whether the employee intended to perform some function within the scope of h[er]

authority when committing the legal wrong." *Jackson v. Alvarez*, 358 Ill. App. 3d 555, 561 (4th Dist. 2005). The applicable legal standard for this question requires the court to analyze the "issues involved" and the "relief sought". *Carmody*, 2012 IL App (4th) 120202, ¶ 21. Plaintiff ignores this analysis and her own Complaint, which contains allegations that show her claims fall entirely within the scope of her and Dr. Lopez's work with NEIU. (*See* Compl., ¶ 9 (Dr. Lopez sent an email to NEIU's Provost and Plaintiff regarding the Logan Square Neighborhood Association's ("LSNA") use of El Centro for meetings, which shows a direct communication between Dr. Lopez and Plaintiff regarding conduct the Council handled in conjunction with the Director or Interim Director of El Centro); ¶ 12 (Dr. Lopez emailed Plaintiff regarding Plaintiff's question about other Council officers, which shows a direct communication between Plaintiff and Dr. Lopez regarding information Dr. Lopez knew as Council Chair); ¶ 16 (Dr. Lopez emailed Dr. Gabriel Cortez, an NEIU Professor, to assert her opinion that Plaintiff should not receive a permanent Director position for El Centro, which shows a direct recommendation to another NEIU employee regarding Dr. Lopez's opinion as Council Chair on Plaintiff's inability to effectively act as El Centro's Director); and ¶ 17 (Dr. Lopez contacted Plaintiff's staff regarding Plaintiff's management style and/or skills, which shows additional critiques by Dr. Lopez of Plaintiff's work as El Centro's Interim Director)). Plaintiff's allegations fall within the Council and Council Chair's roles as the Council's By-Laws require the Council Chair to meet and collaborate with El Centro's Interim Director, make recommendations regarding program plans, and provide continuing analysis of the need for education, training, and related services directly to El Centro's Interim Director. (*See* Motion to Dismiss, Ex. A, Ex. 1.)

Plaintiff argues that Dr. Lopez's conduct went beyond the scope of her role, *i.e.*, Dr. Lopez was only allowed to speak to Plaintiff regarding El Centro activities and could not comment on or

criticize her work performance. (Plt's Resp., pp. 3-4.) Plaintiff cites several allegations in the Complaint but fails to acknowledge that all of them relate to comments about Plaintiff's performance as El Centro's Interim Director. (See Compl., ¶ 15 (Dr. Lopez emailed NEIU's Provost and other NEIU employees regarding Plaintiff's "integrity as an employee."); *Id.* at ¶ 18 (alleging that Dr. Lopez told a staff member who complained of Plaintiff's leadership of El Centro that he should be the Interim Director); *Id.* at ¶ 20 (Dr. Lopez told the Provost that Plaintiff cut ties with LSNA, an organization the Council and El Centro Director work with closely, referenced Plaintiff's staff member's complaints regarding her leadership, and claimed that Plaintiff cut off communications with the Council even though the Council's NEIU-approved By-Laws require her to communicate with the Council.)) Plaintiff's argument ignores that work relationships inherently allow a colleague to comment on and critique another's work performance, especially when that relationship requires direct collaboration as Dr. Lopez and Plaintiff's did under the Council's By-Laws. Moreover, like in *Toth*, if Dr. Lopez could not comment on Plaintiff's work performance, she would not be able to work with Plaintiff and meet the Council and El Centro's mutual goals, and Plaintiff would not be able to implement decisions on behalf of NEIU, the State. *See Toth*, 348 Ill. App. 3d at 389 ("the threat of private suits against the Department's social workers for work-related statements… affects the way the social workers communicate and make decisions on behalf of the [State]."). Thus, all the "issues involved" are employment-related.

The "relief sought" test also shows that Plaintiff's claims are against NEIU, not against Dr. Lopez individually. As discussed above, a judgment against Dr. Lopez would subject NEIU to liability because Dr. Lopez is an "employee" under the SEIA, which requires the State to indemnify "employees" for judgments, including damages and attorneys' fees and costs. 5 ILCS 350/1(b); *see also Welch v. Ill. Supreme Ct.*, 322 Ill. App. 3d 345, 348-49 (3rd Dist.

2001) ("immunity will apply whenever a judgment for the plaintiff could operate either to control the actions of the State or subject it to liability"). Plaintiff does not address the SEIA or the "relief sought" test in her Response and, as such, fails to rebut Dr. Lopez's arguments applying both to her claims. Moreover, Plaintiff seeks monetary relief against Dr. Lopez, which further shows that immunity applies in this case and that Plaintiff should bring her claims against NEIU in the Court of Claims. *Giovenco-Pappas v. Berauer*, 2020 IL App (1st) 190904, *16-17 (sovereign immunity can only be avoided "if the lawsuit seeks to *enjoin future conduct* by the State agent").

Plaintiff relies on several inapplicable cases, which themselves assert that the proper test for this case is not one of agency law, but the "issues involved" and "relief sought." In citing *Hoffman v. Yack*, 57 Ill. App. 3d 744 (5th Dist. 1978), Plaintiff omits the part of the quote pertaining to the relief sought: "[w]hen an employee of the State exceeds his authority by wrongful acts, he ceases to be a representative of the State, and the injured party may seek relief from the wrongdoer personally, ***as long as the action does not control the operations of the State or subject it to liability.***" (emphasis added). Moreover, in *Hoffman*, plaintiff alleged that defendant also diverted and intercepted plaintiff's mail and made false accusations regarding plaintiff, including that she held racist views and engaged in sexual misconduct, which clearly went beyond the scope of authority. *Id.* at 748. Plaintiff's reliance on *Leetaru v. Bd. of Trs. of the Univ. of Ill.*, 2015 IL 117485 for the proposition that a state agent acting beyond authority is subject to Circuit Court jurisdiction is misplaced, as *Leetaru* was limited only to the facts of that case, which included very detailed examples of how the defendant violated specific investigatory policies and procedures as they should have applied to plaintiff. *Id.* at ¶ 49. Here, Plaintiff only alleges that Dr. Lopez made comments related to Plaintiff's performance as El Centro's Interim Director, which members of her own staff shared and were not clearly violations of law or policy like in *Leetaru* and *Hoffman*.

Likewise, *Healy v. Vaupel*, 133 Ill.2d 295 (1990), which Plaintiff also cites, is inapplicable and actually found that immunity applied to bar plaintiff's claims in that case. As such, Dr. Lopez has satisfied the applicable legal standard for demonstrating whether a case is actually against the State, and the Court should dismiss Plaintiff's claims with prejudice.

c. Plaintiff Cannot State a Claim for Tortious Interference under Illinois Law.

As Dr. Lopez argued in her opening motion, a plaintiff cannot state a claim for tortious interference if the claim is based on conduct between the plaintiff and the defendant. *Premier Trans., LTD. v. Nextel Comm'n, Inc.*, Case No. 02 C 4536, 2002 U.S. Dist. LEXIS 21803, *9-10 (N.D. Ill. Nov. 8, 2002). As demonstrated above, Plaintiff's claims against Dr. Lopez occurred within the scope of her role as Council Chair and she is an "employee" under the SEIA, which means Plaintiff's claims are against NEIU, Plaintiff's employer. Plaintiff cannot bring a claim against her own employer for tortious interference of prospective economic advantage or of a contract. *BMC Prods.*, 1986 U.S. Dist. LEXIS 17356, *7-8 (where the complaint alleges that the individual's actions were, in essence, acts of the alleged third party, the claim must be dismissed because a defendant "cannot be liable for breach of its own business advantage"); *see DP Serv. v. Am. Int'l*, 508 F. Supp. 162, 168 (N.D. Ill. 1981) ("[o]ne contracting party does not have a cause of action against the other for conspiring to breach their contract or for wrongfully interfering with its own contract"). For these reasons, the Court should dismiss Plaintiff's claims for tortious interference with contract and prospective economic advantage.

CONCLUSION

For all of the reasons stated above, Defendant Dr. Rosita Lopez respectfully requests that the Court dismiss this action, with prejudice, and for any additional relief deemed just and appropriate.