

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted December 11, 2025*

Decided December 12, 2025

BeforeFRANK H. EASTERBROOK, *Circuit Judge*DIANE S. SYKES, *Circuit Judge*MICHAEL Y. SCUDDER, *Circuit Judge*

No. 25-1470

JAMES PAUL ROGERS,
*Plaintiff-Appellant,**v.*WESTERN GOVERNORS
UNIVERSITY,
*Defendant-Appellee.*Appeal from the United States District
Court for the Southern District of
Illinois.

No. 23-cv-3774-JPG

J. Phil Gilbert,
*Judge.***ORDER**

James Rogers, a white veteran who suffers from several medical conditions, sued Western Governors University for disability and race discrimination, breach of contract, and fraudulent misrepresentation. He appeals the summary judgment for the University. Because no reasonable jury could find that the University engaged in race or

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

disability discrimination, breached its contract with Rogers, or fraudulently misrepresented its program, we affirm.

In March 2023, Rogers began taking classes at Western Governors University. He enrolled after seeing advertisements marketing the University's Accelerated Information Technology program, which allows students to complete a bachelor's and master's degree in information technology at the same time. The promotional materials advertised that the program was "flexible" and allowed students to "go at [their] own pace." Rogers interpreted this to mean that he could earn both degrees in twelve to eighteen months by taking several courses in the program at the same time and finishing his bachelor's degree in one semester. Shortly after he began classes, Rogers asked the University to allow him to take six to eight classes at a time. Consistent with its policies, however, the University restricted him to four classes. The University allowed Rogers to complete classes at an accelerated pace, however, by permitting him to immediately enroll in a new class when he finished one of his four courses.

In May 2023, Rogers had a severe heart attack, and as a result, suffered from mental and physical health issues, including cardiovascular disease, anxiety, and sleep apnea. Rogers also has tinnitus from his military service. Because he was anxious about completing his degrees on his preferred timeline, and as an accommodation for his health issues, Rogers asked his university-provided mentor to pause his current classes and enroll him in other classes that involved lower-stress academic work. Rogers also renewed his request with the University to take six to eight classes at a time. But the University denied the requests, informing Rogers that he could not start new courses until he completed the ones in which he already was enrolled.

In July 2023, the University's disability-services office contacted Rogers to initiate the process of providing disability accommodation. Rogers did not respond because he believed that his mentor had been able to facilitate his enrollment in additional classes. The office told Rogers that to receive an accommodation, he needed to complete certain forms. The office explained where the forms could be found, but Rogers never filled them out. The office then closed Rogers's file and provided instructions on how to reopen the process. Rogers did not respond.

Although Rogers never reported racial discrimination to anyone at the University and acknowledges that he did not experience any hostility or harassment based on race, he said that the University's Diversity, Equity, and Inclusion programming was discriminatory because it favored non-white students and forced

white students to believe in things like “white guilt.” Having become dissatisfied with his experience at the University, Rogers withdrew from the program in September 2023.

Two months later, Rogers sued the University. He alleged that the University had engaged in disability discrimination in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12182(a), and the Rehabilitation Act, 29 U.S.C. § 794(a); race discrimination in violation of Title VI of the Civil Rights Act, 42 U.S.C. § 2000d; breach of contract, *see TAS Distrib. Co. v. Cummins Engine Co.*, 491 F.3d 625, 631 (7th Cir. 2007) (stating elements of Illinois breach-of-contract claim); and fraudulent misrepresentation, *Doe v. Dilling*, 888 N.E.2d 24, 35–36 (Ill. 2008) (stating elements of Illinois fraudulent-misrepresentation claim).

The University moved for summary judgment. After Rogers responded and the University filed a reply, Rogers moved for leave to file a sur-reply. The judge denied the motion because the court’s local rules do not allow sur-replies. S.D. ILL. R. 7.1(a)(4). Rogers also filed a motion under Rule 56(d) of the Federal Rules of Civil Procedure asking the judge to withhold ruling on the summary-judgment motion because the University had been unresponsive to Rogers’s discovery requests and was withholding or altering records. Rogers also asked the court to draw certain negative inferences from the University’s alleged misconduct during discovery.

The district judge entered summary judgment for the University. The judge first disregarded the facts in Rogers’s response that were not supported by citations to the record or were supported only by unsworn statements or unauthenticated documents. The judge also denied the motion under Rule 56(d) of the Federal Rules of Civil Procedure because Rogers did not submit an affidavit in support of his request and did not describe what further discovery he needed to oppose summary judgment. Moreover, the court observed, Rogers supported his request for additional documents with merely his own speculation that the University was withholding or altering key evidence. The judge refused to draw negative inferences from the University’s conduct because Rogers’s discovery requests were overly broad, irrelevant, and not proportional to the needs of the case. *See* FED. R. CIV. P. 26(b)(1).

Next, the judge determined that no reasonable jury could conclude that the University discriminated against Rogers based on his disabilities or race. The judge pointed out that the University enforced its course-limitation policy and denied Rogers’s requests to take more classes both before and after his heart attack. And because Rogers did not provide information to the University when it reached out to

initiate the accommodation process, no reasonable jury could find that the University failed to accommodate Rogers's disabilities. As for the claim of race discrimination, the judge concluded that no reasonable jury could conclude that the University created a racially hostile educational environment because Rogers admitted that he had never suffered any adverse action, hostility, or harassment based on his race.

The judge also determined that the University was entitled to summary judgment on the state-law claims. He concluded that no reasonable factfinder could conclude that the University breached its contract with Rogers because there was no evidence that the University violated any provision of its catalogs, bulletins, or handbooks. The judge also concluded that no reasonable jury could find that the University's promotional materials contained fraudulent misrepresentations because they were "puffing, that is, unmeasurable opinions that are not statements of fact."

On appeal, Rogers first argues that the district judge overlooked the University's post-judgment discovery misconduct. Rogers alleges that 16 days after the court entered judgment, he received a disclosure that did not contain records that had been previously disclosed during discovery. He asserts that the University's omission of these documents from the post-judgment disclosure amounted to misconduct. But Rogers could have raised this issue in a motion to alter or amend the judgment. *See Vesey v. Envoy Air, Inc.*, 999 F.3d 456, 463 (7th Cir. 2021) (discussing Federal Rule of Civil Procedure 59(e)). Because he did not, this claim is not preserved for appellate review. *See Kathrein v. City of Evanston*, 752 F.3d 680, 688–89 (7th Cir. 2014). Regardless, Rogers admits that he received the documents before summary judgment, so it is unclear how the second disclosure omitting the records would have changed the outcome.

Next, Rogers argues that the judge improperly struck his sur-reply and disregarded assertions in Rogers's response to the University's motion for summary judgment that were not supported by admissible evidence or citations to the record. Rogers insists that his sur-reply was necessary to correct the deficiencies in his response and that his facts were supported by self-authenticating public records, medical statements, or records that were "authenticable by context." But the judge acted within his discretion to strike Rogers's sur-reply because the court's local rules prohibit sur-replies. *See S.D. ILL. R. 7.1(a)(4)*. The judge also appropriately exercised his discretion when he disregarded facts that were not supported by citations to the record, *see Hinterberger v. City of Indianapolis*, 966 F.3d 523, 528 (7th Cir. 2020), were supported only by inadmissible material, *see Igasaki v. Ill. Dep't of Fin. and Pro. Regul.*, 988 F.3d 948,

955–56 (7th Cir. 2021), or were supported only by unauthenticated documents, *see Castro v. DeVry Univ., Inc.*, 786 F.3d 559, 578 (7th Cir. 2015).

Rogers next argues that the judge erred by denying his motion under Rule 56(d) of the Federal Rules of Civil Procedure because the judge ignored the University's discovery misconduct. But we see no error. Rogers did not provide an affidavit in support of his request as required by the rule. FED. R. CIV. P. 56(d); *see also Alicea v. Cnty. of Cook*, 88 F.4th 1209, 1219 (7th Cir. 2023). And his motion was based only on speculation that the University was tampering with evidence. *See Helping Hand Caregivers, Ltd. v. Darden Rests., Inc.*, 900 F.3d 884, 890 (7th Cir. 2018). Rogers also never explained how more discovery would have allowed him to survive summary judgment. *See F.C. Bloxom v. Tom Lange Co. Int'l*, 109 F.4th 925, 936 (7th Cir. 2024).

Rogers also contends that the judge erred when he refused to draw negative inferences from the University's alleged discovery misconduct. We disagree. A district judge may draw negative inferences when a party intentionally destroys documents in bad faith for the purpose of hiding adverse information. *Reed v. Freedom Mortg. Corp.*, 869 F.3d 543, 548–49 (7th Cir. 2017). Here, Rogers does not explain what evidence satisfies the bad-faith requirement. *See Everett v. Cook Cnty.*, 655 F.3d 723, 727 (7th Cir. 2011). He merely gestures to records that he received during discovery that were later omitted from a post-judgment disclosure. But Rogers does not provide any evidence that these omissions were made to hide adverse information. *See Reed*, 869 F.3d at 549.

As for Rogers's claims of disability discrimination, he argues that the judge overlooked the fact that the University was aware of his disabilities and then discriminated against him by preventing him from taking a higher course load. Under both the Rehabilitation Act and Title III of the ADA, Rogers would need some evidence "that, 'but for' his disability, he would have been able to access the services or benefits desired." *A.H. ex rel. Holzmueller v. Ill. High Sch. Ass'n*, 881 F.3d 587, 593 (7th Cir. 2018) (quoting *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 754 (7th Cir. 2006)). But the University applied its four-course limit to Rogers both before and after he suffered disabilities from his heart attack. Moreover, Rogers never explained to the University why his requested accommodation of taking six to eight classes simultaneously was a reasonable and necessary accommodation. *See Youngman v. Peoria Cnty.*, 947 F.3d 1037, 1042 (7th Cir. 2020) (discussing necessary "causal nexus" between disability and accommodation in Title I employment context). Rogers also admits that he did not inform the University of his tinnitus.

Rogers contends that he never disengaged from providing the University with the necessary information to determine an accommodation but was instead impeded by a “circular bureaucracy.” He argues that he was told to go to his mentor to file a request for a disability accommodation but then his request was closed without resolution. But the University repeatedly reached out to Rogers to explain that he needed to request an accommodation through official channels, and he did not respond. The University cannot be held liable for failing to provide a reasonable accommodation where it lacks the necessary information from Rogers. *See A.H. ex rel. Holzmueller*, 881 F.3d at 594 (“Whether a requested accommodation is reasonable or not is a highly fact-specific inquiry and requires balancing the needs of the parties.” (quoting *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 784 (7th Cir. 2002))).

Next, Rogers argues that the judge overlooked evidence that the University’s diversity programming mandated “racial guilt for white students.” He maintains that the mere existence of diversity initiatives creates a racially hostile educational environment. We disagree. To establish a racially hostile educational environment, Rogers must show that the alleged harassment was severe or pervasive enough to deprive him of access to educational benefits. *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640–41 (1999); *Doe v. Galster*, 768 F.3d 611, 613–14, 616–17 (7th Cir. 2014). But Rogers admitted that he never experienced any harassment because of his race, and he did not identify any educational benefit that he was denied.

Next, Rogers argues that the judge erred in concluding that the University’s advertisements were “puffing” because they made specific and material representations. Under Illinois law, a claim for fraudulent misrepresentation cannot be based on “puffing,” which “denotes the exaggerations reasonably expected of a seller as to the degree of quality of his or her product, the truth or falsity of which cannot be precisely determined.” *Barbara’s Sales, Inc. v. Intel Corp.*, 879 N.E.2d 910, 926 (Ill. 2007).

We agree with the district court that no reasonable factfinder could conclude that the University’s statements that its program was flexible and allowed students to go at their own pace were fraudulent misrepresentations. The statements are subjective and their truth cannot be precisely determined. *See id.* Rogers believed that “flexible” and “go at your own pace” meant that he could take as many classes as he wanted. But no reasonable person would understand the University’s marketing to mean that a student is exempt from University policy. *See id.* And even if the University’s marketing was not puffing, no reasonable jury could conclude that the statements were fraudulent. The course-limitation policy was available to Rogers before and after he enrolled. The

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University also exercised flexibility with Rogers, allowing him to complete courses at an accelerated pace.

Finally, Rogers makes several arguments for the first time on appeal. He asserts that he filed a motion in limine that was misfiled by the clerk and not served on the University. He says that the University violated federal law by misrepresenting its program's flexibility, affordability, and veteran-friendly features. *See* 38 U.S.C. § 3696. He also argues that the University retaliated against him for seeking an accommodation. But because he did not raise these arguments in the district court, they are waived. *Lewis v. Ind. Wesleyan Univ.*, 36 F.4th 755, 760–61 (7th Cir. 2022).

AFFIRMED