

vires relief relating to education-record access and transcript procedures following his dismissal from Texas Tech University Health Sciences Center (“TTUHSC”).¹ Two days later, on November 7, 2025, Plaintiff initiated a parallel federal civil-rights lawsuit in the United States District Court for the Northern District of Texas challenging the same disciplinary proceedings, dismissal decision, and transcript consequences that underlie this case.²

Although this Court was the first to acquire jurisdiction, the subsequently filed federal action asserts broader constitutional and statutory claims against overlapping institutional defendants and university officials and raises threshold sovereign-immunity defenses that are presently pending. Allowing Plaintiff to prosecute duplicative claims against the same university officials—including Dr. D’Agostino and Ms. McSween—in parallel sovereign forums creates a substantial risk of inconsistent rulings, nullifies immunity protections, and imposes precisely the litigation burdens sovereign immunity is designed to prevent. Texas courts have repeatedly cautioned against parallel proceedings that fracture a single controversy across multiple courts. *See Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex. 1988); *Van Dyke v. Boswell, O’Toole, Davis & Pickering*, 697 S.W.2d 381, 383 (Tex. 1985).

For these reasons, and those set forth below, this Court should dismiss this action for lack of jurisdiction or, at minimum, abate proceedings pending federal disposition.

¹ See Plaintiff’s First Amended Verified Original Petition and Application for Temporary Injunction, filed November 5, 2025, in the state-court action, attached hereto as **Exhibit 1**. Plaintiff’s First Amended Petition, page 5, explains that Plaintiff’s first attempt at filing was “rejected for procedural reasons.” Plaintiff then re-filed moments later as the First Amended Verified Original Petition and Application for Temporary Injunction. It is Defendants’ understanding that no “Original Petition” is filed with this Court.

² See Plaintiff’s Verified Complaint for Damages, Declaratory, and Injunctive Relief, filed November 7, 2025, in the federal action, attached hereto as **Exhibit 2**.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The State-Court Action

Plaintiff filed this lawsuit against TTUHSC officials in their official capacities seeking prospective injunctive relief concerning education-record inspection, amendment procedures, and transcript-related processes arising from his academic dismissal. Although framed as a “procedure-only” ultra vires action, the petition expressly arises from the transcript dismissal notation and the institutional education records generated by TTUHSC’s disciplinary proceedings. Plaintiff seeks court intervention into the manner in which those records are maintained, reviewed, and annotated.

Thus, while the petition³ disclaims a direct merits challenge to the dismissal itself, the relief sought necessarily implicates the academic determinations and disciplinary outcomes reflected in those records.

B. The Subsequently Filed Federal Action

Two days after initiating this lawsuit, Plaintiff filed a parallel civil action in the United States District Court for the Northern District of Texas styled *Kevin N. Bass v. Texas Tech University Health Sciences Center, et al.*, Civil Action No. 5:25-cv-00244-H-BV. The federal complaint asserts claims under 42 U.S.C. § 1983, Title II of the Americans with Disabilities Act, and § 504 of the Rehabilitation Act, and seeks declaratory and injunctive relief arising from the same disciplinary proceedings, dismissal decision, and transcript consequences at issue here. Defendants have filed a Motion to Dismiss in the federal action pursuant to Rules 12(b)(1) and 12(b)(6), asserting sovereign immunity, qualified immunity, and failure to state a claim.⁴

That motion remains pending.

³ At present, the live pleading in the state-court action is Plaintiff’s Third Amended Petition, which is on file with the papers in this cause and incorporated by reference herein.

⁴ See Defendants’ Motion to Dismiss, filed January 21, 2026, attached hereto as **Exhibit 3**.

C. Identity of Parties Across Parallel Proceedings

The duplicative nature of Plaintiff’s litigation is underscored by the identity of parties named in both forums. In this state action, Plaintiff sues Darrin D’Agostino, D.O., in his official capacity as Provost and Executive Vice President of Academics of Texas Tech University Health Sciences Center, and Amanda McSween, in her official capacity as Managing Director of Enrollment Services and University Registrar. **These same officials are likewise named defendants in Plaintiff’s federal lawsuit arising from the same disciplinary proceedings and academic actions.** Thus, Plaintiff is prosecuting parallel claims against the same university officials, arising from the same disciplinary dismissal and transcript consequences, in two separate sovereign forums.

The identity of parties across proceedings is a critical factor in determining whether suits are inherently interrelated. Texas courts focus on whether the parties and controversies are “the same or interrelated,” not whether the pleadings are identically framed. *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d 287, 294 (Tex. 2016). Where, as here, the same university officials are haled into dual sovereign forums arising from the same disciplinary nucleus, duplicative litigation concerns are at their apex. Such parallel proceedings expose state officials to inconsistent obligations, duplicative discovery burdens, and conflicting judicial directives—the precise harms abatement doctrine is designed to prevent.

III. PLEA TO THE JURISDICTION

Having established the procedural posture and overlapping party structure of the parallel proceedings, Defendants now address this Court’s subject-matter jurisdiction. Sovereign immunity from suit deprives Texas courts of jurisdiction absent legislative waiver or a valid ultra vires claim. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004). Because immunity

implicates the Court's power to adjudicate the dispute at all, it is properly raised through a plea to the jurisdiction and must be resolved at the threshold before the parties are subjected to litigation burdens.

A. Ultra Vires Jurisdiction is Narrow and Limited

To overcome sovereign immunity, Plaintiff must plead a viable ultra vires claim falling within the narrow exception recognized by the Texas Supreme Court. That burden is substantial, and courts must look beyond artful pleading to determine whether a plaintiff is attempting to control discretionary governmental conduct through procedural reframing. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 372-73 (Tex. 2009).

Plaintiff attempts to invoke the ultra vires exception to sovereign immunity. However, that exception is “narrow” and carefully circumscribed. *See id.* It permits prospective relief only where an official acts without legal authority or fails to perform a purely ministerial duty. It does not authorize courts to second-guess discretionary governmental decision-making or to entertain collateral attacks on institutional determinations recast as procedural grievances.

Accordingly, courts must scrutinize ultra vires pleadings to ensure that plaintiffs are not merely repackaging discretionary grievances as ministerial violations to circumvent immunity. When the substance of the claim targets institutional judgment, the ultra vires exception does not apply.

B. Plaintiff's Claims Impermissibly Target Discretionary Academic Judgments

Although Plaintiff characterizes this suit as a records-procedure dispute, the relief sought necessarily implicates TTUHSC's disciplinary dismissal and transcript notation. Academic discipline, transcript designations, and student status determinations are quintessential discretionary institutional judgments entitled to judicial deference. Indeed, Plaintiff's federal

lawsuit challenges those same academic determinations directly, asserting constitutional and statutory claims arising from the disciplinary proceedings and resulting dismissal. Ultra vires jurisdiction cannot be used as an indirect vehicle to re-litigate discretionary academic decisions.

Texas courts likewise recognize that academic and disciplinary determinations fall within the discretionary authority of educational institutions and are entitled to substantial judicial deference. *See, e.g., Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985) (courts should defer to academic decisions unless a substantial departure from accepted academic norms exists); *University of Tex. Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 931 (Tex. 1995) (recognizing judicial reluctance to interfere with academic decision-making and institutional disciplinary determinations); *see also Alcorn v. Vaksman*, 877 S.W.2d 390, 403 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (courts defer to academic judgments absent arbitrary or capricious action).

This deference is particularly strong in the higher-education disciplinary context, where courts lack institutional competence to reweigh academic determinations. *See Than*, 901 S.W.2d at 931. Plaintiff’s requested relief would necessarily require this Court to intrude into academic classification and disciplinary judgment—relief sovereign immunity squarely prohibits. Plaintiff cannot circumvent sovereign immunity by recasting that same academic controversy as a ministerial records dispute in state court.

C. No Ministerial Duty Exists

A ministerial act is one “where the law clearly spells out the duty to be performed...with such certainty that nothing is left to the exercise of discretion.” *Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991). Texas courts consistently hold that acts involving judgment, policy application, or professional evaluation are discretionary—not ministerial. *See City of*

Lancaster v. Chambers, 883 S.W.2d 650, 654 (Tex. 1994). Academic classification, disciplinary determinations, and transcript designations necessarily involve evaluative institutional judgment and therefore fall outside ultra vires jurisdiction.

Because Plaintiff identifies no statute imposing a nondiscretionary obligation to alter transcript notations or disciplinary classifications, his claims fall outside the ultra vires exception as a matter of law. *See Heinrich*, 284 S.W.3d at 372-73. Sovereign immunity therefore deprives this Court of jurisdiction, and dismissal is required.

D. This Case is Not Ripe

Even if Plaintiff could surmount sovereign immunity—which he cannot—this Court would still lack jurisdiction because the claims are not ripe. Ripeness is a component of subject-matter jurisdiction designed to prevent courts from entangling themselves in abstract disagreements over administrative processes. *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998). Ripeness further requires that an agency or official reach a final, definitive position before judicial intervention is appropriate. *Texas Dep’t of Protective & Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 198 (Tex. 2004). Here, Plaintiff’s petition confirms that institutional review processes concerning education records remain ongoing and available. Where administrative avenues remain open, courts lack jurisdiction to intervene.

Because sovereign immunity and ripeness defects independently deprive this Court of jurisdiction, dismissal is warranted. However, even assuming *arguendo* that jurisdiction existed, the Court should not permit duplicative litigation against the same officials to proceed simultaneously in dual forums. Where administrative review mechanisms remain ongoing and no final institutional refusal has occurred, courts lack jurisdiction to intervene. *See Mega Child Care*, 145 S.W.3d at 198.

Plaintiff's claims are therefore premature, rendering this dispute non-justiciable and subject to dismissal.

IV. PLEA IN ABATEMENT

Texas courts possess inherent authority to abate proceedings to avoid duplicative litigation, prevent inconsistent judgments, and promote judicial economy. *See Wyatt*, 760 S.W.2d at 248; *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974). The purpose of abatement is to avoid “a multiplicity of suits and the possibility of conflicting judgments.” *Wyatt*, 760 S.W.2d at 248. Even where the state court first acquires jurisdiction, abatement is appropriate when a subsequently filed action involving the same parties and controversy may resolve threshold jurisdictional or immunity issues dispositive of the dispute.

A. The Federal and State Actions are Inherently Interrelated

The interrelationship between the two proceedings is unmistakable. Both suits arise from (1) the same disciplinary hearing, (2) the same dismissal decision, (3) the same transcript notation, and (4) the same institutional records. Furthermore, both name overlapping university officials—including D’Agostino and McSween—as defendants. Courts assessing abatement examine whether the controversies are “inherently interrelated,” not whether the legal theories are identical. *In re J.B. Hunt*, 492 S.W.3d at 294.

Given the identical disciplinary nucleus, overlapping institutional records, and the presence of Dr. D’Agostino and Ms. McSween as defendants in both proceedings, the two suits are not merely interrelated—they are functionally duplicative. Permitting both to proceed invites conflicting adjudications concerning the same academic determinations and record consequences.

B. Immunity Sequencing Warrants Abatement

The federal court is presently considering sovereign-immunity and qualified-immunity defenses asserted by the same institutional defendants named here. Immunity is not merely a defense to liability—it is an entitlement not to stand trial or face the burdens of litigation. *See Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). Texas courts likewise recognize that immunity is intended to shield governmental officials not only from liability but from the burdens of litigation itself. *See Harris Cty. v. Sykes*, 136 S.W.3d 635, 639 (Tex. 2004). Permitting parallel litigation to proceed while immunity defenses remain pending would undermine the very purpose of immunity—protection from the burdens of suit itself. Furthermore, if immunity is granted federally, this action may be rendered moot or substantially narrowed.

C. Claim-Splitting Supports Abatement

Plaintiff divided a single disciplinary controversy into dual sovereign forums within forty-eight hours. Texas law disfavors claim-splitting because it breeds litigation, multiplies costs, and needlessly burdens courts and parties. *See Van Dyke*, 697 S.W.2d at 383. Such litigation fragmentation undermines judicial economy and warrants discretionary abatement to preserve orderly adjudication. *See id.*

D. Comity and Judicial Economy Favor Abatement

Federal–state comity further supports staying this case. The Northern District of Texas is positioned to resolve the following: (1) constitutional claims, (2) institutional authority issues, and (3) immunity defenses. Allowing both cases to proceed risks inconsistent rulings and unnecessary expenditure of judicial resources. Abatement promotes orderly adjudication.

V. CONCLUSION AND PRAYER FOR RELIEF

For all of these reasons—including sovereign immunity, the narrow limits of ultra vires jurisdiction, lack of ripeness, duplicative party identity, claim-splitting, and the pendency of dispositive federal immunity rulings involving the same officials—this Court should decline to exercise jurisdiction over this parallel proceeding.

At minimum, fundamental principles of comity, judicial economy, and immunity sequencing warrant abatement pending federal disposition, where threshold jurisdictional defenses designed to shield state officials from litigation burdens are currently under consideration.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court:

1. Grant this Plea to the Jurisdiction and dismiss Plaintiff's claims without prejudice; or
2. Alternatively, grant the Plea in Abatement and stay all proceedings pending final disposition of the federal action; and
3. Grant all other and further relief to which Defendants are entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing instrument was served in accordance with Rule 21a of the Texas Rules of Civil Procedure upon the party of record below on this 9th day of February, 2026.

Kevin N. Bass
[REDACTED]
[REDACTED]

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Pro Se Plaintiff

/s/ Scott D. Smith

SCOTT D. SMITH

Assistant Attorney General

EXHIBIT 1

CAUSE NO. DC-2025-CV-1817

IN THE 237TH DISTRICT COURT OF LUBBOCK COUNTY, TEXAS

KEVIN BASS,
Plaintiff,

v.

Lori Rice-Spearman, Ph.D., in her official capacity as President of Texas Tech University Health Sciences Center;
Darrin D'Agostino, D.O., M.P.H., M.B.A., in his official capacity as Provost and Executive Vice President of Academics (Chief Academic Officer) of Texas Tech University Health Sciences Center;
Amanda McSween, in her official capacity as Managing Director of Enrollment Services and University Registrar of Texas Tech University Health Sciences Center;
Lauren Cobbs, M.D., M.Ed., F.A.C.P., in her official capacity as Senior Associate Dean for Student Affairs (School of Medicine) of Texas Tech University Health Sciences Center;
Tamara Mancini, M.Ed., in her official capacity as Director, Student Disability Services of Texas Tech University Health Sciences Center; and
Simon Williams, Ph.D., in his official capacity as Senior Associate Dean for Academic Affairs (School of Medicine) of Texas Tech University Health Sciences Center,

Defendants.

FIRST AMENDED VERIFIED ORIGINAL PETITION
& APPLICATION FOR TEMPORARY INJUNCTION
(Prospective Official-Capacity Relief Only; No Damages)

TO THE HONORABLE COURT:

Plaintiff Kevin Bass files this exhibit-free, verified first amended petition seeking prospective, official-capacity relief only:
(1) a prompt, public name-clearing/FERPA-amendment hearing; and (2) annotation/correction of education records so future disclosures append the corrective hearing record or, if no change is ordered, Plaintiff's statement. No damages are sought.

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Kevin Bass is a resident of Lubbock County, Texas.

2. Defendants are TTUHSC officials sued only in their official capacities for prospective relief:

a. Lori Rice-Spearman, Ph.D., President (appoints hearing official/committee for FERPA amendment hearings).

b. Darrin D'Agostino, D.O., M.P.H., M.B.A., Provost & EVP of Academics (EVPAA) (receives/acts on amendment requests and arranges hearings).

c. Amanda McSween, Managing Director of Enrollment Services & University Registrar (custodian of academic records/transcripts; implements annotations/appendments).

d. Lauren Cobbs, M.D., M.Ed., F.A.C.P., Senior Associate Dean for Student Affairs, School of Medicine (school-level implementation/scheduling coordination).

e. Tamara Mancini, M.Ed., Director, Student Disability Services (ADA/§504 accommodations at the hearing).

f. Simon Williams, Ph.D., Senior Associate Dean for Academic Affairs, School of Medicine (school-level implementation for academic status processes).

For service of process on each official: Texas Tech University Health Sciences Center,

3601 4th Street, Lubbock, Texas 79430 (their usual place of business).

3. Jurisdiction & Venue. This Court has jurisdiction over claims for prospective relief requiring state officers to comply with

constitutional/statutory duties (*ultra vires*). Venue is mandatory in Lubbock County because this suit primarily seeks

injunctive relief against resident state officers. Tex. Civ. Prac. & Rem. Code § 65.023(a). Governmental immunity does not bar

prospective, official-capacity *ultra vires* claims. See, e.g., *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2009).

II. INTRODUCTION AND NATURE OF THE ACTION

4. University officials authorized or issued communications portraying Plaintiff as “threatening” or otherwise dangerous and

imposed exclusion measures. Those statements were false. The University later acknowledged Plaintiff was not a threat, yet

the initial stigma persisted in official channels and foreseeably reached outsiders.

5. Plaintiff repeatedly requested a public, on-the-record opportunity to clear his name and to correct or annotate affected

records; officials did not provide that process.

III. FACTS (Exhibit-Free; Dates/Actors/Quotes Included)

A. Government publication (official channels; class-wide broadcast)

6. On October 19, 2025, Plaintiff requested a public name-clearing hearing, interim transcript relief, ADA/§ 504 accommodations,

and preservation; the request set an October 21, 2025, 5:00 p.m. CT deadline to identify the scheduling official and procedures.

The deadline passed without the required action.

7. Around this period, official statements were disseminated to students and other recipients. Two publications are central:

(i) on January 1, 2024, a public-facing post stated that a committee had voted to expel Plaintiff; and (ii) at 7:46 a.m. on

January 7, 2024, the Assistant Vice Dean for Student Affairs sent a class-wide broadcast stating “we are one student lighter

than last week,” instructing recipients to “check his Twitter.” System records reflect a recall attempt of that message. These

are agency publications, not private rumor.

B. Status change and exclusion measures (Emergency Removal; CTW)

8. On and after November 4, 2023, the University imposed Emergency Removal and issued a criminal trespass warning (CTW)

barring Plaintiff from TTUHSC campus or property pending further process.

Although the CTW later expired, while in force it

operated as an official restriction on Plaintiff's access and movement.

9. While the CTW was in effect, Plaintiff was required to coordinate any campus presence through Texas Tech Police (including

CDRC drop-off/pick-up), often resulting in visible police escort. That visible involvement signaled to others that Plaintiff

was dangerous, causing stigma and humiliation and deterring him from visiting campus-based witnesses or offices to gather

evidence. The Emergency Removal/CTW thus imposed concrete, intimidating burdens on ordinary activities and on case

preparation—part of the “status-change” plus—while the ongoing reputational harm and publication are addressed below.

C. Present-tense dissemination via official records (transcript notation; third-party recipients)

10. On October 16, 2025, TTUHSC issued an official transcript listing

“Administrative Dismissal Effective 01-11-2024.” That

notation was transmitted to third-party institutions; at least one recipient declined to offer an interview. This is ongoing

publication via official records, warranting annotation/appendment of a corrective hearing record to any future disclosure.

D. ADA/§ 504 context (notice; policy anchors; why prior process was not a name-clearing hearing)

11. Plaintiff gave Student Disability Services notice on December 8, 2023 and requested accommodations consistent with TTUHSC

policy. The prior internal proceeding did not function as a public name-clearing hearing: accommodations evidence was treated

outside scope, questioning was time-limited, and recording ceased before deliberations.

E. Request and denial (element satisfied)

12. Plaintiff requested a name-clearing hearing (§ 6); the October 21 deadline passed without scheduling, and subsequent follow-ups

failed to secure the hearing. Request and denial are adequately alleged.

IV. CLAIMS FOR PROSPECTIVE RELIEF (Official-Capacity Only; No Damages)

COUNT 1 – Texas Due Course of Law (Tex. Const. art. I, § 19): Stigma-Plus / Name-Clearing

13. Government publication of false, stigmatizing charges tied to a status change triggers a right to a public name-clearing hearing

and to a corrective record appended to future disclosures.

COUNT 2 – Ultra Vires Injunctive Relief (Prospective Only)

14. Under TTUHSC's Student Education Records policy (HSC OP 77.13 or successor), the

EVPAAs (Provost) or designee must arrange a hearing upon request, and the President or designee must appoint the hearing official/committee; if no change is ordered, the student's statement must be maintained with, and disclosed with, the contested portion. Defendants with these duties act without legal authority when they refuse to perform them or decline to implement lawful correction/annotation. Prospective injunctions should compel compliance.

COUNT 3 – Statutory Annotation/Correction (Tex. Gov't Code § 559.004)

15. Section 559.004 requires a reasonable correction/annotation procedure for incorrect personal information. Refusal to apply that procedure warrants prospective orders implementing it here, including appendment of the hearing record or student statement to any future disclosure.

V. APPLICATION FOR TEMPORARY INJUNCTION

16. Probable right to relief: ¶¶ 6–12 allege stigmatizing publication, status change, falsity, lack of an adequate prior public hearing, request, and denial.

17. Probable, imminent, irreparable injury; no adequate remedy at law: Ongoing dissemination of disputed stigma via official records/transcripts to third parties is non-compensable reputational and opportunity harm; Plaintiff seeks equitable process.

Although the CTW has expired, the current harm arises from TTUHSC's ongoing dissemination of stigmatizing information through official records/transcripts to third parties, which equitable relief can remedy by ordering a public name-clearing/FERPA amendment hearing and record annotation.

18. Requested interim relief pending final judgment:

(a) Order the President (or designee) to identify and appoint the hearing official/committee by a date certain, and order the EVPAAs/Provost (or designee) to schedule a public name-clearing/FERPA-amendment hearing on a near date certain, with ADA/§ 504 accommodations coordinated by Student Disability Services.

(b) Order the Registrar to implement a neutral interim transcript notation stating "Disputed; correction/annotation process pending" until the hearing occurs, and after the hearing, to append the corrective hearing record (or, if no change is ordered, Plaintiff's statement) to any future disclosure of the affected record(s).

(c) Preservation of relevant records.

(d) Bond: set a nominal bond under TRCP 684.

VI. PRAYER

19. Plaintiff asks the Court to:

(a) order a prompt, public, ADA-accommodated name-clearing/FERPA amendment hearing under HSC OP 77.13, with a preserved public record;

(b) order implementation of Tex. Gov't Code § 559.004 by directing the Registrar to correct or annotate records so any future transcript/records disclosure includes the corrective hearing record or

Plaintiff's statement;
(c) tax costs; and
(d) grant such further prospective relief as justice requires.

Respectfully submitted,

/s/ Kevin Bass
Kevin Bass (pro se)

Phone: 512-333-4092 | Email: kbassphiladelphia@gmail.com

Note regarding timing:

Plaintiff originally transmitted this petition for electronic filing through the eFileTexas system on November 5, 2025, at approximately 12:00 a.m. Central Time—within minutes of the target date of November 4, 2025. Because the original envelope was later rejected for procedural reasons (caption, filing office, and signature block), Plaintiff re-filed promptly in the correct form and venue. This note is included to demonstrate diligence and good-faith compliance; Plaintiff does not concede any untimeliness.

VERIFICATION (Tex. Civ. Prac. & Rem. Code § 132.001)

My name is Kevin Bass. My date of birth is 12/07/1984. My address is

I declare under penalty of perjury that the facts stated in paragraphs 6-12 of this First Amended Petition are true and correct.

Executed in Lubbock County, Texas, on 11/05/2025, 2025.

/s/ Kevin Bass
Kevin Bass

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

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KEVIN N. BASS,
Plaintiff,

5-25CV-244-H

v. Civil Action No. _____

TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER;
AMANDA McSWEEN, in her individual and official capacities as University Registrar;
LAUREN COBBS, M.D., M.Ed., FACP, in her individual and official capacities as Senior Associate
Dean for Student Affairs (SOM);
SIMON WILLIAMS, Ph.D., in his individual and official capacities as Senior Associate Dean for
Academic Affairs (SOM);
TAMARA MANCINI, M.Ed., in her official capacity as Director of Student Disability Services;
MIA MYERS, in her official capacity as Associate Managing Director, Student Financial Aid;
JOHN/JANE DOE, in his/her official capacity as TTUHSC ADA Title II Coordinator;
DOE HEARING OFFICER 1, in his/her individual capacity; and
DOES 2-10, in their individual capacities,

Defendants.

VERIFIED COMPLAINT FOR DAMAGES, DECLARATORY (28 U.S.C. §§ 2201-02), AND
INJUNCTIVE RELIEF

INTRODUCTION

1. This civil action challenges Defendants' disability-based denial of meaningful access to a high-stakes student disciplinary hearing; selective departures from written procedures; publication of stigmatizing accusations tied to a status-changing transcript notation; and retaliation for protected speech and disability-rights activity.

2. Plaintiff seeks: (a) damages and declaratory relief under § 504 of the Rehabilitation Act against TTUHSC as a federal-funds recipient; (b) prospective relief under Title II of the ADA against appropriate officials pursuant to *Ex parte Young*, 209 U.S. 123 (1908); and (c) damages and declaratory relief under 42 U.S.C. § 1983 against individual-capacity officials for violations of the First and Fourteenth Amendments.

JURISDICTION, VENUE, AND AUTHORITY FOR RELIEF

3. This Court has federal-question jurisdiction under 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in this District and Division under 28 U.S.C. § 1391(b)(1)–(2) because a substantial part of the events or omissions giving rise to the claims occurred here and at least one defendant resides or is found here.

5. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201–02 and Fed. R. Civ. P. 57 and 65. Costs are authorized by 28 U.S.C. § 1920; and, if counsel appears, reasonable attorney’s fees from counsel’s appearance forward are authorized by 42 U.S.C. §§ 1988 and 12205 and 29 U.S.C. § 794a(b). Post-judgment interest is authorized by 28 U.S.C. § 1961.

SOVEREIGN IMMUNITY, REMEDIAL FRAMEWORK, AND EXHAUSTION

6. Plaintiff does not seek § 1983 money damages against TTUHSC or against officials in their official capacities. See *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989).

7. TTUHSC’s receipt of federal funds waives Eleventh Amendment immunity for § 504 claims. 42 U.S.C. § 2000d-7; *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 280–89 (5th Cir. 2005) (en banc). TTUHSC is an arm of the State of Texas and therefore a Title II “public entity,” 42 U.S.C. § 12131(1)(B), and a § 504 “program or activity,” 29 U.S.C. § 794(b)(2)(A).

8. Plaintiff seeks prospective, non-monetary relief under Title II against appropriate officials with a sufficient enforcement connection under *Ex parte Young*. See *Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645–46 (2002).

9. Consistent with *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562 (2022), and *Barnes v. Gorman*, 536 U.S. 181 (2002), Plaintiff does not seek punitive or emotional-distress damages under ADA/§ 504. He seeks economic losses and, where permitted, nominal damages. Punitive damages are sought, if at all, only on § 1983 claims against individual-capacity defendants where allowed by law.

10. No administrative exhaustion is required for the Title II or § 504 claims pleaded here.

STATUTE OF LIMITATIONS AND TIMELINESS

11. The events at issue occurred primarily between December 2023 and January 2024, with continuing effects thereafter.

12. Texas’s two-year personal-injury limitations period applies to § 1983, Title II, and § 504 claims. See *Frame v. City of Arlington*, 657 F.3d 215, 237–38 (5th Cir. 2011) (en banc); *Piotrowski v. City of Houston*, 237 F.3d 567, 576 (5th Cir. 2001). This action is timely.

PARTIES

13. Plaintiff Kevin N. Bass is a qualified individual with disabilities within the meaning of § 504 and Title II.

14. Defendant Texas Tech University Health Sciences Center (“TTUHSC”) is a public entity that receives federal financial assistance and is an arm of the State of Texas. It is therefore a Title II “public entity,” 42 U.S.C. § 12131(1)(B), and a § 504 “program or activity,” 29 U.S.C. § 794(b)(2)(A). Federal-funds proof includes TTUHSC’s Title IV participation (Federal School Code 016024), annual Single Audit reporting, and Texas Comptroller records showing federal expenditures for agency 739.

15. Defendant Amanda McSween is TTUHSC’s University Registrar. She is sued in her individual capacity (damages under § 1983) and in her official capacity (prospective Title II relief).

16. Defendant Lauren Cobbs, M.D., M.Ed., FACP, is Senior Associate Dean for Student Affairs (School of Medicine). She is sued in her individual capacity (damages under § 1983) and in her official capacity (prospective Title II relief).

17. Defendant Simon Williams, Ph.D., is Senior Associate Dean for Academic Affairs (School of Medicine). He is sued in his individual capacity (damages under § 1983) and in his official capacity (prospective Title II relief).

18. Defendant Tamara Mancini, M.Ed., is Director of Student Disability Services. She is sued in her official capacity (prospective Title II relief).

19. Defendant Mia Myers is Associate Managing Director, Student Financial Aid. She is sued in her official capacity (prospective Title II relief related to status reporting/holds interfaces).

20. Defendant John/Jane Doe is TTUHSC’s ADA Title II Coordinator (identity presently unknown). He/she is sued in official capacity to implement injunctive relief.

21. Defendant DOE Hearing Officer 1 presided over Plaintiff’s hearing and is sued in his/her individual capacity.

21A. The Hearing Officer who presided over Plaintiff’s December 11, 2023 hearing was Darren G. Gibson, an outside attorney to whom the Student Conduct Board Chair delegated procedural authority; Mr. Gibson acted under color of state law in performing a delegated public function. Plaintiff will amend to substitute service information when confirmed.

22. Defendants DOES 2–10 are presently unidentified TTUHSC officials who participated in the events alleged below. They are sued in their individual capacities.

DEFENDANTS (IDENTIFICATION & ROLES FOR RELIEF)

23. For clarity regarding implementation of prospective relief, the institutional roles implicated include:

- TTUHSC — entity defendant for § 504 (federal-funds recipient).
- AMANDA McSWEEN — University Registrar: transcript issuance/notations/holds.
- LAUREN COBBS, M.D., M.Ed., FACP — Senior Associate Dean for Student Affairs (SOM): student-discipline logistics, hearing administration.
- SIMON WILLIAMS, Ph.D. — Senior Associate Dean for Academic Affairs (SOM): emergency removal/academic-affairs process triggers.
- TAMARA MANCINI, M.Ed. — Director, Student Disability Services: ADA effective-communication/modifications execution.
- MIA MYERS — Associate Managing Director, Student Financial Aid: Title IV (R2T4)/enrollment-status reporting and holds workflows.
- ADA TITLE II COORDINATOR — 28 C.F.R. § 35.107 coordination of Title II compliance and central implementation of injunctive relief.

FEDERAL–STATE COORDINATION / NON-INTERFERENCE

24. Plaintiff maintains a separate, exhibit-free state action seeking only a prompt, public name-clearing/FERPA-amendment hearing and neutral annotation; no damages are sought there. The federal claims here (§ 504/Title II/§ 1983) seek distinct remedies and do not require this Court to enjoin or review any state-court order. No relief requested here would interfere with any state proceeding or order, and abstention is unwarranted.

FACTUAL ALLEGATIONS

A. Disability notice and requested accommodations

25. Before a December 11, 2023 disciplinary hearing, Plaintiff provided written notice of [REDACTED] diagnoses, lodged accommodation requests through Student Disability Services (“SDS”), and supplied a neuropsychological evaluation recommending communication supports, including limited attorney-assisted questioning to cue/clarify. On December 8, 2023, Plaintiff and counsel called SDS to initiate accommodations under TTUHSC HSC OP 77.14, which recognizes a Letter of Accommodation (LOA) as the university-approved mechanism and provides that, once an LOA is issued, no further proof should be required and classroom accommodations should be implemented within one week (five business days).

26. Officials acknowledged the SDS process on the record. The Hearing Officer admitted only a redacted evaluation—excluding the accommodations section as “outside the Board’s scope”—and categorically barred counsel from questioning witnesses directly even as a communication aid. This contravened OP 77.14’s effective-communication framework and Plaintiff’s documented functional limitations (processing speed/executive function under sustained adversarial sessions; need for orderly turn-taking; benefit from written copies; predictable breaks).

B. Hearing structure and departures from written rules

27. The hearing lasted roughly fourteen hours and involved ten witnesses plus Plaintiff. Published hearing materials set 10-minute openings, 30 minutes per witness per side, and confirmed recording protocols; yet the presider barred contemporaneous objections; required party questions to be submitted in writing; asserted unilateral authority to limit Plaintiff's questioning for "relevance"; and applied time limits and sequencing asymmetrically against Plaintiff, contrary to the published rules promising equal time limits, Board questions first, and no objections.

28. On information and belief, TTUHSC retained an outside Hearing Officer for Plaintiff's proceeding who lacked neutrality and operated under constraints that materially favored the administration, including restricting Plaintiff's questioning and applying time limits asymmetrically, contrary to published procedures.

C. Evidence gating and record access

29. Defendants consolidated matters without consent; denied requested separate hearings; restricted defense witnesses; accepted late/redacted evidence favorable to the administration while excluding comparable defense evidence.

30. TTUHSC controlled the recording, which contained apparent discontinuities. Access to the "official" record was delayed and limited to in-person audio review. Plaintiff seeks native audio/video files with hashes, access logs, and chain-of-custody.

D. "Direct threat" framing without individualized assessment

31. The Hearing Officer invoked ADA "direct threat" concepts but did not conduct an individualized assessment grounded in current medical knowledge or best available objective evidence, nor did he/she consider whether reasonable modifications could mitigate any risk. See 28 C.F.R. § 35.139(b); *Bragdon v. Abbott*, 524 U.S. 624, 649–50 (1998); *EEOC v. Exxon Corp.*, 203 F.3d 871, 873–74 (5th Cir. 2000).

E. Protected speech and retaliation context

32. Plaintiff publicly criticized COVID-19 policies and filed grievances—speech and petitioning on matters of public concern.

33. Within days of administrators urging him to stop posting online, professionalism charges issued; an interim removal/trespass notice referenced his speech "context"; and witnesses reported being coached to "document the most damaging" version. Class-wide messaging on January 7, 2024 explicitly told recipients to "check his Twitter," underscoring retaliatory animus and selective enforcement.

F. Publication and ongoing harm

34. Before the hearing, administrators issued a campus-wide "BOLO" message. After the hearing, administrators circulated a class-wide message—"we are one student lighter ... check his Twitter"—and

TTUHSC placed an “Administrative Dismissal Effective 01-11-2024” notation on Plaintiff’s transcript, which third-party recipients reported caused application denials. Plaintiff suffered significant educational, economic, and reputational harm. Evidence includes (i) a January 1, 2024 public post stating “we did it, Kevin Bass’ medical committee voted to expel him,” (ii) the January 7, 2024 class-wide broadcast (7:46 a.m.) with a later recall request, and (iii) BOLO/ban echoes such as “not letting this student onto campus,” attributable to or echoing agency communications.

34A. On October 16, 2025, TTUHSC issued an official transcript bearing the notation “Administrative Dismissal Effective 01-11-2024.” Third-party recipients reported adverse decisions after receiving transcripts with that notation. Ongoing transcript issuance constitutes continued publication by the agency.

G. Exclusion and campus-access restrictions (status change)

35. TTUHSC issued an Emergency Removal and campus ban—stating Plaintiff was not allowed on HSC property during the investigation—and a Criminal Trespass Warning that required police coordination even to access his child’s school on TTU property. These restrictions coincided with the stigmatizing publications described above.

35A. On November 4, 2023, the Assistant Vice Dean for Student Affairs emailed more than thirty recipients—including *Covenant Branch campus and affiliate-hospital gatekeepers*—stating: “do not allow Kevin Bass into the Covenant Branch office nor badge him in at any of the hospitals,” pending “further notice.” On information and belief, several recipients were non-TTUHSC clinical-affiliate personnel, reflecting an agency directive that barred access before any adjudication and circulated beyond the University.

H. Individual defendants’ personal participation (non-exhaustive)

36. Lauren Cobbs: Oversaw the student-discipline process and the selection/instructions of the Hearing Officer; denied or ratified denials of separate hearings and evaluator testimony; enforced or ratified asymmetric time limits and question-filtering; urged Plaintiff to curtail protected online speech; and participated in class-wide communications about Plaintiff.

37. Simon Williams: Initiated or ratified interim removal measures; invoked “direct threat” framing without individualized assessment; approved consolidation; and enforced or ratified procedures that limited Plaintiff’s ability to be heard.

38. Amanda McSween: Published and/or caused to be published the transcript notation “Administrative Dismissal Effective 01-11-2024”; communicated or caused the communication of the status to third parties; and maintained transcript holds/notations despite Plaintiff’s objections and pending review. Evidence of third-party reliance includes denials of opportunities upon receipt of transcripts bearing the notation.

39. DOE Hearing Officer 1: Presided over the hearing; barred real-time objections; filtered or refused Plaintiff's submitted questions; cut Plaintiff's questioning short; and admitted administrative evidence while excluding comparable defense evidence.

40. Tamara Mancini (official capacity): Received Plaintiff's SDS notice and requests; failed to give primary consideration to Plaintiff's requested auxiliary aids; and did not implement reasonable modifications to ensure effective communication at the hearing under OP 77.14's LOA and implementation benchmarks.

41. Mia Myers (official capacity): Maintains Title IV/enrollment-status reporting and related holds; has operational control over processes implicated by transcript notations and status communications and is a necessary official-capacity implementer of prospective relief. Following status change, TTUHSC cancelled \$3,524.00 in aid, revoked \$20,118.11 in scholarship, and posted a \$24,316.56 balance—all flowing from the stigmatizing dismissal status and notation.

I. Dismissal determination and scope

42. TTUHSC's Board letter states the hearing lasted approximately 14 hours and that the Board "reviewed ... additional documentation ... including a medical assessment," yet the accommodations content was excluded as "outside the Board's scope," denying a meaningful chance for disability-appropriate presentation.

J. Publication logs, recipients, and continuing effects

43. Plaintiff has compiled publication logs and will seek metadata/listserv expansion logs and meeting artifacts (calendars, Zoom/Teams recordings) to identify recipients and authenticate channels (email, LMS/Canvas, Teams/Slack, GroupMe/WhatsApp, and other student-facing platforms). These materials support both the publication element of "stigma-plus" and the need for targeted, publication-only expedited discovery.

K. Ongoing violations; basis for prospective relief and expedited preservation

44. Plaintiff faces ongoing harm from current policies and practices governing transcript notations and status communications, access to and preservation of hearing records, and rules that will govern any renewed adjudication or credentialing communications. Targeted preservation and Rule 26(d) expedited discovery (publication-only) are warranted to capture message headers, listserv logs, audit trails, and collaboration-platform exports and to enable corrective notices after judgment.

CLAIMS FOR RELIEF

(Each Count incorporates ¶¶ 1–44 by reference.)

COUNT 1 — Rehabilitation Act § 504 (Damages & Declaratory Relief) — Against TTUHSC

45. Section 504 prohibits disability discrimination in any “program or activity” receiving federal financial assistance. 29 U.S.C. § 794(a), (b)(2)(A). Elements: (1) disability; (2) otherwise qualified; (3) exclusion from participation in, denial of benefits of, or discrimination under a federally funded program; and (4) exclusion by reason of disability (and, to the extent § 504 is construed to require it, solely by reason of disability, as construed in the Fifth Circuit). See *Delano-Pyle v. Victoria Cnty.*, 302 F.3d 567, 574 (5th Cir. 2002).

46. Monetary relief requires intentional discrimination, satisfied at least by deliberate indifference to known, necessary accommodations. See *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454–55 (5th Cir. 2005); *Cadena v. El Paso Cnty.*, 946 F.3d 717, 724–27 (5th Cir. 2020); *Windham v. Harris Cnty.*, 875 F.3d 229, 235–37 (5th Cir. 2017).

47. TTUHSC—through officials with authority to provide accommodations and to rectify denials, including SDS Director Mancini and Senior Associate Deans Cobbs and Williams, and through the Hearing Officer—had actual knowledge of Plaintiff’s [REDACTED] communication needs yet (a) excluded the accommodations section of his evaluation; (b) barred attorney-assisted questioning as a communication aid; (c) applied time limits and filters asymmetrically; and (d) refused modest schedule/format modifications—denying meaningful access to the adjudication. See 28 C.F.R. § 35.160(a)(2) (effective communication); § 35.139 (direct threat). This deliberate indifference proximately caused economic losses including Title IV balance due, lost scholarship funds, lost stipends, exam and application fees, and delays in credentialing.

48. Plaintiff seeks economic damages proximately caused by the violations and, where permitted, nominal damages. No punitive or emotional-distress damages are sought under § 504.

COUNT 2 — ADA Title II (Prospective Relief) — Against Official-Capacity Defendants (ADA Coordinator; Registrar; Senior Associate Deans Cobbs and Williams; SDS Director Mancini; Financial-Aid Official Myers)

49. This claim arises under 42 U.S.C. § 12132 and is enforceable through 42 U.S.C. § 12133. Title II obligates public entities to make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination, unless doing so would fundamentally alter the service. 28 C.F.R. § 35.130(b)(7)(i).

50. Title II also requires effective communication and obligates the entity to give primary consideration to the individual’s requested auxiliary aids. 28 C.F.R. § 35.160(a)(2). Primary consideration means honoring the individual’s chosen auxiliary aid unless an equally effective alternative is available or provision would cause a fundamental alteration or undue financial/administrative burden. Where “direct threat” is asserted, the entity must conduct an individualized assessment based on current medical knowledge or best available objective evidence and consider whether reasonable modifications can mitigate risk. 28 C.F.R. § 35.139(b); *Bragdon v. Abbott*, 524 U.S. 624, 649–50 (1998); *EEOC v. Exxon Corp.*, 203 F.3d 871, 873–74 (5th Cir. 2000).

51. Defendants failed to provide reasonable modifications and effective-communication measures necessary for Plaintiff's participation (e.g., limited attorney-assisted questioning as a communication aid; equitable time allocations keyed to documented limitations; admission of evaluator testimony; timely disclosure; and record-access protocols). Each named official has a sufficient enforcement connection for Ex parte Young relief: the Registrar controls transcript notations and issuance/holds; the Senior Associate Deans oversee hearing administration and emergency-removal processes; the SDS Director implements ADA accommodations across proceedings; the Financial-Aid official controls status reporting and holds interfacing with Title IV systems; and the ADA Coordinator orchestrates Title II compliance (28 C.F.R. § 35.107). For complete prospective relief, the President (appointment of a hearing official/committee) and Provost/EVPAA (hearing scheduling and FERPA-amendment processing) possess direct enforcement connections under TTUHSC student-records policy and may be added if necessary.

52. Plaintiff seeks a narrowly tailored injunction requiring compliance with §§ 35.130(b)(7)(i), 35.160, and 35.139(b) in any ongoing or future proceedings, including: (a) designation of the ADA Coordinator as a centralized point-of-contact to implement accommodations across Student Affairs/Registrar/Academic Affairs; (b) preservation and access to native audio/video files and associated hashes, access logs, and chain-of-custody records; (c) FERPA-aligned protections; (d) procedures ensuring that transcript notations and status communications are generated, maintained, and communicated in a manner consistent with Title II going forward; and (e) if TTUHSC conducts any renewed adjudication concerning the events alleged herein, it must do so under an ADA-compliant framework that includes equal time allocation, reasonable auxiliary aids, disclosure timelines, and access to a complete, continuous record. See *Tennessee v. Lane*, 541 U.S. 509, 531–34 (2004); *United States v. Georgia*, 546 U.S. 151, 159 (2006).

52A. The injunction should also require primary consideration for Plaintiff's requested auxiliary aids—including limited attorney-assisted questioning as a communication aid, predictable breaks, CART/closed captioning, and written copies of verbal information—consistent with OP 77.14 and 28 C.F.R. § 35.160.

COUNT 3 — Procedural Due Process (Fourteenth Amendment) via 42 U.S.C. § 1983 (Damages & Declaratory Relief) — Against Cobbs, Williams, DOE Hearing Officer 1, and DOES 2–10 (individual capacities)

53. At all relevant times, Defendants Cobbs, Williams, DOE Hearing Officer 1, and DOES 2–10 acted under color of state law as officials of a public university. Students facing serious disciplinary sanctions are entitled to notice and a meaningful opportunity to be heard, evaluated under *Mathews v. Eldridge's* balancing. See *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150, 157–59 (5th Cir. 1961); *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976); *Goss v. Lopez*, 419 U.S. 565 (1975). This case concerns disciplinary, not academic, sanctions. Cf. *Bd. of Curators v. Horowitz*, 435 U.S. 78 (1978).

54. Plaintiff alleges both (i) a liberty interest in his good name, reputation, and honor, the deprivation of which was accompanied by a change of legal status (loss of student status and a transcript notation), and (ii) to the extent recognized under Texas law and TTUHSC policies, a state-created property interest in

continued enrollment. See *Hughes v. City of Garland*, 204 F.3d 223, 226–28 (5th Cir. 2000); *Bledsoe v. City of Horn Lake*, 449 F.3d 650, 653–55 (5th Cir. 2006). The liberty-interest and Mathews risk-of-error theories are primary.

55. Plaintiff does not claim a categorical right to attorney-led cross-examination. See *Plummer v. Univ. of Houston*, 860 F.3d 767 (5th Cir. 2017); *Van Overdam v. Texas A&M Univ.*, 43 F.4th 522 (5th Cir. 2022). Rather, Plaintiff challenges selective departures from written rules and communication-related restrictions that, given his disabilities, denied a meaningful opportunity to be heard and materially increased the risk of erroneous deprivation at minimal administrative cost. Cf. *Walsh v. Hodge*, 975 F.3d 475, 484–85 (5th Cir. 2020).

56. Defendants amplified the risk of error by (i) prohibiting contemporaneous objections; (ii) categorically barring counsel’s limited questioning as an auxiliary communication aid; (iii) imposing asymmetric time limits and surprise witnesses; (iv) favoring administrative evidence while gating defense evidence; and (v) restricting and delaying access to a complete, continuous record.

57. Clearly Established Law / Qualified Immunity. At the time, it was clearly established that public universities imposing serious disciplinary sanctions must provide notice and a meaningful opportunity to be heard under *Dixon* and *Mathews*, and officials may not employ arbitrary hearing restrictions that materially increase the risk of erroneous deprivation at minimal administrative cost. On the facts alleged, *Defendants are not entitled to qualified immunity at the pleading stage.*

COUNT 4 — “Stigma-Plus” (Fourteenth Amendment Liberty Interest) via 42 U.S.C. § 1983 (Damages & Declaratory Relief) — Against McSween and DOES who published stigmatizing statements (individual capacities)

58. At all relevant times, Defendants McSween and DOES 2–10 who published or caused publication of the statements at issue acted under color of state law as officials of a public university. Reputation alone is not a protected interest, but a claim lies where the government publishes materially false, stigmatizing facts in connection with an alteration of legal status. *Paul v. Davis*, 424 U.S. 693 (1976); *Codd v. Velger*, 429 U.S. 624 (1977); *Hughes*, 204 F.3d at 226–28; *Bledsoe*, 449 F.3d at 653–55.

59. On January 7, 2024 at approximately 7:46 a.m., the School of Medicine’s Office of Student Affairs, acting under the direction of Senior Associate Dean Cobbs, sent a class-wide broadcast stating: “we are one student lighter than last week ... if anyone has any further questions, just check his Twitter; I am sure he will update everyone.” A recall attempt followed, as reflected in message headers. Defendants also published an official transcript notation, “Administrative Dismissal Effective 01-11-2024,” which third parties used to deny opportunities. Together with campus-wide BOLO/ban echoes, these publications conveyed dangerousness and coincided with the loss of student status. The statements and insinuations were materially false and stigmatizing, and Plaintiff alleges falsity and causation, satisfying stigma-plus elements. Evidence includes publication logs and header captures showing the 7:46 a.m. blast and recall, as well as reports of third-party reliance.

59A. TTUHSC also disseminated exclusion directives to affiliate hospitals, foreclosing clinical opportunities and conveying dangerousness—for example, an instruction on November 4, 2023 not to permit Plaintiff into the Covenant Branch office or badge him at any hospital. This constitutes publication by the agency to third parties in connection with a status change.

60. Plaintiff requested a name-clearing hearing on October 19, 2025 and demanded confirmation by October 21, 2025, with a hearing within 14 days; Defendants failed to provide the hearing. Post-publication hearings are proper in the Fifth Circuit. See *Wells v. Hico Indep. Sch. Dist.*, 736 F.2d 243 (5th Cir. 1984); *In re Selcraig*, 705 F.2d 789 (5th Cir. 1983); *White v. Thomas*, 660 F.2d 680 (5th Cir. 1981). Plaintiff seeks declaratory relief and damages.

COUNT 5 — First Amendment Retaliation via 42 U.S.C. § 1983 (Damages, Declaratory & Limited Injunctive Relief) — Against Cobbs, Williams, DOE Hearing Officer 1, and DOES 2–10 (individual capacities)

61. At all relevant times, Defendants Cobbs, Williams, DOE Hearing Officer 1, and DOES 2–10 acted under color of state law as officials of a public university. Plaintiff must show (1) protected speech; (2) an adverse action that would deter a person of ordinary firmness; and (3) speech was a substantial or motivating factor. See *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977).

62. Plaintiff criticized public-health policy and filed grievances. Within days of being told to stop posting, professionalism charges issued; the interim removal/trespass notice cited his speech “context”; and selective enforcement followed. Temporal proximity, contemporaneous references to his posts (“check his Twitter”), and selective departures from rules plausibly show causation.

63. Plaintiff seeks damages and a narrow anti-retaliation injunction barring adverse action for engaging in protected speech about this dispute, litigating this case, or filing/granting public-records requests—without restricting neutrally applied, lawful rules.

63A. Plaintiff intends to continue speaking publicly on the matters at issue and to request records and accommodations, and he faces a credible threat of further retaliatory adverse actions absent prospective injunctive relief.

64. Clearly Established Law / Qualified Immunity. It was clearly established that officials may not take adverse action in retaliation for a student’s protected speech on matters of public concern, and that *Mt. Healthy* burden-shifting applies. On the facts alleged, Defendants are not entitled to qualified immunity at the pleading stage.

COUNT 6 — ADA Title II and § 504 Retaliation/Interference (Damages under § 504; Prospective Relief under Title II) — Against TTUHSC (damages) and Official-Capacity Defendants (prospective relief)

65. The ADA and its regulations prohibit retaliation and interference against individuals who request

accommodations or oppose disability discrimination. 42 U.S.C. § 12203; 28 C.F.R. § 35.134. The Title VI remedies incorporated by § 504 authorize damages against a federal-funds recipient; prospective relief is available against officials under *Ex parte Young*.

66. After Plaintiff notified SDS of his diagnoses and requested communication supports, Defendants escalated adverse actions—including interim removal, selective rule enforcement, gating of the accommodations content, and status-affecting transcript notations—actions that would deter a reasonable person from engaging in ADA/§ 504 activity and are causally connected to Plaintiff’s protected requests.

67. Plaintiff seeks (a) damages against TTUHSC for economic losses proximately caused by retaliation; and (b) prospective injunctive relief under Count 2 to prevent further retaliation or interference and to require Title II-compliant processes going forward.

IMMEDIATE NEED FOR INTERIM RELIEF (Rule 65)

68. Plaintiff seeks a narrowly tailored preliminary injunction to prevent irreparable injury pending judgment. The Canal Authority factors favor relief: (1) a substantial likelihood of success on Count 4 (agency publication, request/denial of name-clearing hearing, transcript notation) and Counts 1–2 (effective-communication failures under OP 77.14 and Title II/§ 504); (2) irreparable injury to professional reputation and training trajectory through continuing publication and transcript notation; (3) the balance of equities favors preventing further dissemination and ensuring a corrective process; and (4) the public interest favors compliance with the Constitution and the ADA. See *Canal Authority of the State of Florida v. Callaway*, 489 F.2d 567, 572–73 (5th Cir. 1974). Where the current status quo itself inflicts irreparable harm, courts may alter it to prevent injury.

69. Plaintiff requests the Court’s straightforward *Ex parte Young* inquiry for prospective relief against appropriate officials, limited to halting ongoing violations and setting a prompt, ADA-compliant name-clearing process. See *Verizon Md., Inc.*, 535 U.S. at 645–46. Plaintiff is prepared to post a nominal bond in any amount the Court deems appropriate under Rule 65(c).

69A. Pending judgment, the Court should (i) order the Registrar to annotate any issued transcript with “Disputed; correction/annotation process pending,” and after the ordered name-clearing process, to append the corrective hearing record (or, if no change is ordered, Plaintiff’s statement) to future disclosures; and (ii) enjoin new or continued dissemination of outbound CTW/ban/exclusion directives to affiliates (including badge/door-access restrictions tied to the publications at issue), except as required by law, while the name-clearing process proceeds.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court enter judgment in his favor and:

A. Declare that Defendants violated Plaintiff’s rights under § 504, Title II, the First Amendment, and the Fourteenth Amendment;

B. Award compensatory damages under § 504 (economic/educational losses—e.g., Title IV balance of \$24,316.56, lost scholarship \$20,118.11, returned aid \$3,524.00, fees/stipends, and other provable economic losses—and, where permitted, nominal damages) against TTUHSC; and award damages (and, where appropriate, punitive damages) under § 1983 against individual-capacity defendants; no punitive or emotional-distress damages are sought under ADA/§ 504;

C. Issue a narrow anti-retaliation injunction barring adverse action for (i) litigating this case, (ii) pursuing public-records requests, (iii) requesting or using ADA/§ 504 accommodations, or (iv) engaging in protected speech about this dispute, while preserving neutrally applied, lawful rules;

D. Enter prospective Title II relief (pursuant to *Ex parte Young*, 209 U.S. 123 (1908), against officials with a sufficient enforcement connection) requiring compliance with 28 C.F.R. §§ 35.130(b)(7)(i), 35.160, and 35.139(b) in any ongoing or future proceedings; designate TTUHSC's ADA Coordinator (28 C.F.R. § 35.107) as the point-of-contact to implement accommodations across Student Affairs/Registrar/Academic Affairs with timelines and reporting; and require primary consideration for requested auxiliary aids consistent with OP 77.14's LOA framework and five-business-day implementation benchmarks;

E. Order Defendants to schedule and conduct a post-publication name-clearing hearing for Plaintiff within 14 days of the Court's order, with reasonable accommodations as required by Title II and § 504 and with a written decision issued promptly thereafter;

F. Order preservation (not collection at this time) of native hearing-recording files (audio/video), associated hashes, access logs, and chain-of-custody records under a FERPA-aligned protective order; and extend preservation to publication-related ESI (class-wide broadcasts; listserv/LMS/Teams/Slack posts; social-media-linked communications; calendars/Zoom/Teams meeting artifacts; metadata-only CSVs showing Message-ID/from/to/cc/bcc/subject/thread IDs), including suspension of auto-deletion and documentation of systems searched. Plaintiff will file any request for expedited discovery as a separate motion with a supporting brief consistent with the Local Rules. Such preservation and any subsequent productions shall be subject to Fed. R. Civ. P. 5.2 and a FERPA-aligned protective order;

G. Order interim annotation/issuance of a corrected transcript pending the name-clearing hearing (non-stigmatizing, status-neutral — e.g., “Disputed; correction/annotation process pending”), identify prior transcript recipients, and, upon final judgment for Plaintiff on Count 4 and/or ADA/§ 504 claims, expunge or amend the “Administrative Dismissal Effective 01-11-2024” notation and require TTUHSC to notify, at its expense, all third parties to whom the notation or stigmatizing statements were disseminated during the limitations period that the notation has been removed or corrected.

H. Prospectively order that, if TTUHSC conducts any renewed disciplinary adjudication concerning the events at issue, it must do so under an ADA-compliant framework (effective-communication and reasonable-modification measures), with equal time allocation keyed to functional limitations, fair disclosure timelines, and access to a complete, continuous, native record;

I. Award taxable costs as permitted by 28 U.S.C. § 1920 and, if counsel appears, reasonable attorney's fees from counsel's appearance forward under 42 U.S.C. §§ 1988 and 12205 and 29 U.S.C. § 794a(b);

J. Award prejudgment interest as allowed by law and post-judgment interest under 28 U.S.C. § 1961; and

K. Grant all further relief the Court deems just and proper, including nominal damages where compensatory damages may be unavailable. See *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 802 (2021).

L. Pending judgment, enjoin dissemination to third-party clinical affiliates of CTW/ban/exclusion directives concerning Plaintiff, except as required by law; require any necessary safety communications to be neutral and non-stigmatizing while the name-clearing process proceeds.

COMPLIANCE NOTE

Filed with a completed Civil Cover Sheet (JS-44) and Certificate of Interested Persons per N.D. Tex. LR 3.1/3.2.

SERVICE NOTE

Service on TTUHSC must comply with Fed. R. Civ. P. 4(j)(2) (or, via Rule 4(e)(1), any state-law method), and service on individuals must comply with Rule 4(e). If Plaintiff elects service pursuant to state law under Rule 4(e)(1) and 4(j)(2), he will effect service on the Texas Attorney General and on the agency as required.

JURY DEMAND

Plaintiff demands a jury on all issues so triable.

DATED: November 7, 2025

Respectfully submitted,


Kevin N. Bass

[REDACTED]
[REDACTED]

Phone: 512-333-4092

Email: kbassphiladelphia@gmail.com

Pro Se Plaintiff

VERIFICATION (28 U.S.C. § 1746)

I, Kevin N. Bass, declare under penalty of perjury that the foregoing is true and correct based on my personal knowledge, except as to matters stated on information and belief, and as to those I believe them to be true.

Executed on November 7, 2025.

A handwritten signature in black ink, appearing to read 'Kevin N. Bass', with a stylized, cursive script.

Kevin N. Bass

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

KEVIN N. BASS, §
Plaintiff, §
§
v. § Civil Action No. _____
§
TEXAS TECH UNIVERSITY HEALTH §
SCIENCES CENTER; et al., §
Defendants. §

NOTICE OF CLARIFICATION REGARDING PLEADING CONVENTIONS

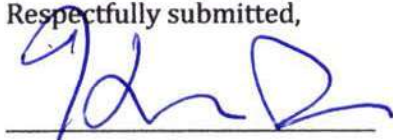
Plaintiff Kevin N. Bass respectfully files this Notice solely to clarify the pleading conventions applicable to the concurrently filed Verified Complaint. This Notice does not add or amend any party, claim, factual allegation, or request for relief and is offered only for avoidance of doubt.

Pleading Conventions. Unless otherwise stated, allegations are based on Plaintiff's personal knowledge; where matters lie within Defendants' exclusive control (e.g., listserv membership, message headers, internal logs), allegations are made on information and belief and will likely have evidentiary support after discovery.

Plaintiff respectfully requests that the Court deem this clarification incorporated by reference into the Verified Complaint. No other relief is requested.

Dated: November 7, 2025

Respectfully submitted,



Kevin N. Bass (pro se)

[REDACTED]

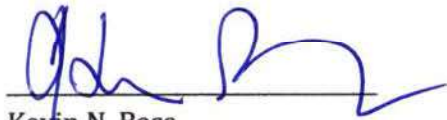
[REDACTED]

Phone: 512-333-4092

Email: kbassphiladelphia@gmail.com

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Notice will be served on each Defendant together with the summons and Verified Complaint in accordance with Fed. R. Civ. P. 4.



Kevin N. Bass

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

KEVIN N. BASS,

Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER, et al.

Defendants.

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CIVIL ACTION NO. 5:25-cv-00244-H-BV

DEFENDANTS' MOTION TO DISMISS

TO THE HONORABLE DISTRICT COURT JUDGE:

NOW COME Defendants Texas Tech University Health Sciences Center (“TTUHSC”), Amanda McSween, individually and in her official capacity, Lauren Cobbs, individually and in her official capacity, Simon Williams, individually and in his official capacity, Tamara Mancini, in her official capacity, Mia Myers, in her official capacity, Lori Rice-Spearman, in her official capacity, Darrin D’Agostino, in his official capacity, Darren G. Gibson, in his individual capacity, Jennifer Wilson, in her individual capacity, and Rachel Forbes, in her individual capacity (the “Individual Defendants”) (collectively, “Defendants”) and move to dismiss Plaintiff’s First Amended Complaint (hereinafter, referred to as the “Complaint”) in its entirety under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and respectfully show the Court as follows:

This lawsuit seeks to transform academic and student-disciplinary decisions into federal constitutional and statutory claims. The Complaint is barred in significant part by sovereign immunity as to Plaintiff’s claims against TTUHSC and qualified immunity as to Plaintiff’s claims against the Individual Defendants. Independently, the Complaint fails to state any claim upon which relief may be granted. Accordingly, and for the reasons set forth more fully below, because

immunity is “an entitlement not to stand trial or face the other burdens of litigation,” *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009), dismissal at the pleading stage is required.

I. PRELIMINARY STATEMENT

Plaintiff sues a Texas state agency and numerous university officials—some in their official capacities, some in their individual capacities—asserting claims under 42 U.S.C. § 1983 for alleged constitutional violations, Title II of the ADA, and § 504 of the Rehabilitation Act. Plaintiff’s claims arise from TTUHSC’s response to his student misconduct and related administrative actions affecting Plaintiff’s enrollment status and educational record.

Even accepting Plaintiff’s allegations as true, this case fails as a matter of law. First, the Eleventh Amendment bars damages claims against TTUHSC and against officials in their official capacities. Second, qualified immunity bars the § 1983 damages claims against the Individual Defendants because Plaintiff does not plead a violation of clearly established federal law. Third, Plaintiff’s remaining statutory claims fail under Rule 12(b)(6) because the pleading does not plausibly allege the required elements, including intentional discrimination for monetary relief and a proper *Ex parte Young* basis for the extraordinary prospective injunctive relief requested. Because sovereign immunity and qualified immunity are threshold jurisdictional and quasi-jurisdictional defenses designed to spare public entities and officials from litigation burdens, these issues should be resolved at the pleadings stage.

Accordingly, all of Plaintiff’s claims should be dismissed as a matter of law.

II. FACTUAL BACKGROUND¹

Plaintiff challenges TTUHSC’s response to allegations and the outcome of student misconduct and related safety concerns. Complaint, ¶¶ 1, 34-35. In 2023, Plaintiff was a third-

¹ The factual background is drawn from the First Amended Complaint and the documents the Plaintiff referenced therein. “When reviewing a motion to dismiss, a district court must consider the complaint in its entirety, as well as

year medical student at TTUHSC. Between August 1, 2023 and October 27, 2023, three (3) Student Code of Conduct complaints were filed against Plaintiff, and Plaintiff lodged six (6) complaints against a number of TTUHSC employees. Given the overlapping facts and bases of the complaints lodged by and against Plaintiff, TTUHSC School of Medicine consolidated all allegations into a single hearing. Notice of the consolidated hearing was provided to Plaintiff on November 9, 2023. *See* Notice of Consolidation of Outstanding Student Matters, dated November 9, 2023, attached as Exhibit 1. That notice informed Plaintiff that he would be “afforded maximum due process” and that the consolidated hearing would follow the procedures outlined in TTHHSC Handbook, Part II, Code of Conduct. *See id.* On November 16, 2023, Plaintiff was notified by the TTUHSC School of Medicine of the date, time, and location of the hearing, as well as the Student Conduct Board members pursuant to the TTUHSC Handbook, Part II, F.4.b. *See* Hearing Notice, dated November 16, 2023, attached as Exhibit 2, at p. 1.

That notice also outlined four complaints filed against the Plaintiff and the “Below Expectations” evaluations he received for professionalism during his clerkships.² *See id.*, at p. 5. The four complaints of misconduct included: (1) unprofessional conduct by expressing romantic feelings toward a resident, (2) unprofessional conduct by sending photos of his own diarrhea and vomit to the clerkship director and Assistant Vice Dean, (3) unprofessional conduct by entering into a personal relationship with a patient during his Psychiatry clerkship, and (4) unprofessional conduct by posting a message on social media on November 3, 2023, that represented a perceived threat to the TTUHSC community. Specifically, that message read in part, “Each and every one

other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference and matters of which a court may take judicial notice.” *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011). This may include “any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint.” *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010). Defendants do not concede the accuracy of Plaintiff’s allegations.

² The November 9, 2023 Hearing Notice informed Plaintiff of a fourth allegation that pertained to a November 3, 2023 unprofessional post by Plaintiff on social media.

of us is going to be dead someday very, very soon. [...] These other people, too, are going to be dead very, very, soon.” *Id.*, at pp. 3-17.

On Friday, December 8, 2023, at 2:19 PM, one (1) business day before the consolidated hearing, Plaintiff submitted an online disability services application. He requested “accommodation generally, but in particular concerning a student conduct hearing scheduled for Dec.11 at 8am.” *See* Disability Services Application Submission, dated December 12, 2023, attached as Exhibit 3, at p. 2. Plaintiff asserted he had never before used classroom accommodations or assistive technology while at TTUHSC. His application was routed to the Student Disability Services (SDS) Office. In accordance with TTUHSC’s accommodations policy, TTUHSC OP 77.14, SDS is the only office authorized to grant student requests for Letters of Accommodation (“LOAs”) for disabilities. TTUHSC OP 77.14 states the process may take up to two (2) weeks and “No requirement exists that accommodation be made prior to completion of the approved university process.” *See* TTUHSC OP 77.14, Establishing Reasonable Accommodations for Students with Disabilities, attached as Exhibit 4, at pp. 1-2. Only after an LOA is issued, may a student avail himself of the approved accommodation. No LOA was ever issued to Plaintiff.

The following Monday, December 11, 2023, Plaintiff appeared at the dismissal hearing with his attorney. All parties were provided the “Hearing Process and Rules of Decorum” by the Hearing Officer. *See* TTUHSC’s Hearing Process and Rules of Decorum, dated December 11, 2023, attached as Exhibit 5. Plaintiff asked the Hearing Officer for the same accommodations he requested, but which had not been approved by the SDS. The Hearing Officer explained he did not have the authority to grant disability accommodations but permitted portions of the neuropsychological evaluation to be admitted that pertained to potential explanations for Plaintiff’s behavior at issue in the hearing. Other portions related to Plaintiff’s request for accommodations,

which was before the SDS, were redacted as being “outside the Board’s scope.” *See* Complaint, ¶ 26; Neuropsychological Evaluation, dated December 6, 2023, attached as Exhibit 6 (redacted).³ The hearing proceeded for approximately 14 hours following the procedures outlined in Part II of the TTUHSC Handbook. After the hearing concluded, the Student Conduct Board went into closed deliberations.

On December 27, 2023, the Student Conduct Board issued its Findings and Recommendations (“Report”) and provided a copy to Plaintiff. *See* Findings and Recommendations of Student Conduct Board, dated December 27, 2023, attached as Exhibit 8. The Report summarized the allegations made by and against Plaintiff and the substandard evaluations. It documented the dismissal hearing process, Plaintiff’s request for accommodations, and his attempt to submit untimely evidence consisting of the neuropsychological evaluation. The Report also noted the Hearing Officer admitted portions of the evaluation, despite the untimely submission. *See id.*

The Board found, by unanimous vote, that Plaintiff violated the Code of Conduct for each of the four (4) allegations against him. The Board agreed, by unanimous vote, that the six (6) substandard evaluations Plaintiff received constituted a further basis of action against Plaintiff. The Board found, by unanimous vote, the six (6) grievances made by Plaintiff against TTUHSC personnel were unsubstantiated. *Id.*, at pp. 11-12. The Board’s final unanimous recommendation was that Plaintiff “be dismissed as a student from the TTUHSC School of Medicine.” *Id.*, at p. 12. Specifically, the Board recommended, “Non-Academic Dismissal from the TTUHSC School of Medicine, without the option to apply for readmission, with a notation on Dr. Bass’s transcript

³ Exhibit 7 is the unredacted Neuropsychological Evaluation submitted by Plaintiff.

reflecting the nature of the dismissal (i.e. Non-Academic Dismissal – Ineligible to Re-Enroll), as described in the Code of Conduct, Part II.G.2.g.” *Id.*, at p. 13. The Board specifically noted:

In making these recommendations, the Board considered all the evidence presented, including the neuropsychological evaluation and diagnosis submitted by Dr. Bass. The Board determined that Dr. Bass’s diagnosis, which was not disclosed until the morning of the hearing, was not a proper basis for retroactive leniency for Dr. Bass, particularly given that Dr. Bass had been provided numerous opportunities to remedy his behavior, had been provided the professionalism resources of Dr. Erwin, and had been advised to see medical professionals in the months he was exhibiting unprofessional behavior and leading up to his November 3, 2023 tweet.

Id.

Pursuant to the Code of Conduct, Part II.F.4.o, the Report was then forwarded to the Dean of the School of Medicine, Dr. John DeToledo. *See* TTUHSC Student Handbook, Code of Professional Conduct, 2024-2025, attached as Exhibit 9, at p. 17. On December 29, 2023, Dean DeToledo notified Plaintiff that he reviewed the Report, the video recording of the hearing, and all supporting evidence. After a thorough review, Dean DeToledo, supported the Board’s recommendation and upheld the dismissal. The notification informed Plaintiff that he may appeal any claim of procedural deviation that substantially affected the outcome or present new information to the Provost within five (5) business days. *See* Dismissal Letter, dated December 29, 2023, attached as Exhibit 10. Plaintiff appealed. On January 11, 2024, the Vice Provost notified Plaintiff his appeal was denied. The Vice Provost determined no “procedural deviation occurred that substantially affected the outcome” and that no “new information exists to sufficiently alter the findings reviewed in the original hearing.” *See* Letter re: Appeal of Dismissal, dated January 11, 2024, attached as Exhibit 11. Plaintiff’s dismissal became effective January 11, 2024. *See* Dismissal Memorandum, dated January 12, 2024, attached as Exhibit 12. Additionally,

after submitting the initial Disability Services Application to the SDS on December 8, 2023, Plaintiff never again inquired about the application's status.

III. ARGUMENT AND AUTHORITIES

A. Legal Standard.

Eleventh Amendment immunity is jurisdictional and deprives federal courts of subject-matter jurisdiction over claims against a State, its agencies, and state officials sued in their official capacities for damages. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100-01 (1984); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54-55 (1996). A plaintiff bears the burden of establishing a clear waiver of immunity or a valid congressional abrogation. *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 675-76 (1999).

Qualified immunity shields government officials from damages unless a plaintiff plausibly alleges that (1) the defendant violated a constitutional right and (2) the right was clearly established at the time of the challenged conduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Courts may resolve cases on either prong or may dismiss solely on the clearly-established-law prong. *Id.* at 236. A right is clearly established only if existing precedent places the constitutional question beyond debate. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). The inquiry must be conducted in the specific factual context, not at a high level of generality. *Mullenix v. Luna*, 577 U.S. 7, 12 (2015).

To survive a Rule 12(b)(6) motion, a complaint must plead sufficient factual matter to state a claim that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). Courts disregard legal conclusions and conclusory allegations unsupported by well-pleaded facts. *Iqbal*, 556 U.S. at 678-79. Where a complaint fails to allege facts supporting each element of a claim, dismissal is required.

B. Plaintiff Fails to State a Claim Under the Rehabilitation Act (Count 1).

1. Plaintiff does not plausibly plead exclusion/denial of benefits “by reason of” disability.

To state a § 504 claim, a plaintiff must plausibly allege (1) he has a disability; (2) he is otherwise qualified; (3) he was excluded from participation in, denied the benefits of, or subjected to discrimination under a federally funded program; and (4) the exclusion or discrimination was by reason of (and in this Circuit, in many formulations, “solely by reason of”) disability. *Delano-Pyle v. Victoria Cty.*, 302 F.3d 567, 574 (5th Cir. 2002). To establish actionable disability discrimination, a plaintiff must show denial of “meaningful access” to the benefits of the program, not merely dissatisfaction with the procedures used or disagreement with the outcome. *See Alexander v. Choate*, 469 U.S. 287, 301 (1985); *Cadena v. El Paso County*, 946 F.3d 717, 724 (5th Cir. 2020).

Even accepting Plaintiff’s allegations, he pleads that he participated in the disciplinary hearing (indeed, he alleges it lasted roughly 14 hours and involved extensive witness testimony), was represented by counsel, and presented his position. *See* Complaint, ¶¶ 25-30, 42. Additionally, the Hearing Officer admitted, over the TTUHSC representative’s objection, a redacted version of Plaintiff’s untimely-submitted neuropsychological evaluation by Dr. Wierzchowski, which the Board specifically considered. Exhibit 8, at pp. 6, 13. Those facts negate a plausible inference that TTUHSC denied him “meaningful access” to the proceeding because of his alleged disability, with the only plausible inference being that TTUHSC applied neutral procedural limits in a disciplinary process addressing alleged conduct and safety concerns. *See* Complaint, ¶¶ 31-31C (describing “direct threat” framing) and ¶¶ 27-29 (procedural rules disputes). Additionally, Plaintiff was offered and accepted the opportunity to appeal the Dean’s decision regarding the Board’s recommendation. *See* Exhibit(s) 8, p. 13 and 10.

2. Damages require intentional discrimination; Plaintiff pleads, at most, a disagreement about process and preferred accommodations.

Monetary damages under § 504 require “intentional discrimination,” which in this Circuit is satisfied—if at all—by deliberate indifference: actual knowledge of a substantial likelihood of a statutory violation and a deliberate choice not to act. *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454-55 (5th Cir. 2005); *Cadena*, 946 F.3d at 724-27. But there was no statutory or policy violation by the Defendants. It was the Plaintiff who deviated from the process. Plaintiff was first notified of the consolidated board hearing on November 9, 2023 and a week later he received a second hearing notice informing him the hearing would be held on December 11. *See* Exhibit(s) 1 and 2. Arguably Plaintiff had three years to request disability accommodations but specifically, he was on notice of the consolidated hearing for four weeks, ample time for him to submit his accommodation request and for the SDS to complete its process. But Plaintiff failed to act until one business day prior to the hearing date.

Plaintiff provides no evidence or claim that prior to submitting his request to SDS in the late afternoon on Friday, December 8, 2023 that anyone—and specifically Mancini, Cobbs, Williams, and Gibson—had any knowledge about his alleged disability. Plaintiff’s eleventh-hour request prevented Defendants from completing the interactive process contemplated by federal law and TTUHSC policy, which requires documentation review and individualized assessment before accommodations are approved. *See Shurb v. Univ. of Texas Health Sci. Ctr. at Houston-Sch. of Med.*, 63 F. Supp. 3d 700, 709 (S.D. Tex. 2014) (citing *Aragona v. Berry*, 3:10-CV-1610-G, 2012 WL 467069, at *10 (N.D. Tex. Feb. 14, 2012)).

Plaintiff’s Count 1 theory is that TTUHSC should have provided his preferred method of participation (e.g., “limited attorney-assisted questioning”) and other format adjustments at the eleventh hour without SDS verifying his disability and engaging in an interactive process with

Plaintiff, in accordance with TTUHSC policy. *See* Complaint, ¶¶ 45-48. But the Rehabilitation Act does not create liability merely because the Plaintiff prefers a different procedure, different accommodation, or approval timeline than that which is established under policy and comports with the law. And Plaintiff’s *own* allegations—including that officials acknowledged the disability-services process and SDS’s authority and proceeded with the hearing—do not plausibly show the kind of deliberate, knowing refusal required for damages. *See* Complaint, ¶¶ 25-27, 40, 42.

Because Plaintiff has not plausibly alleged intentional discrimination, Count 1 should be dismissed under Rule 12(b)(6).

C. Plaintiff Fails to State (and Lacks Standing for) Title II Prospective Relief (Count 2).

1. Plaintiff does not allege a real and immediate threat of future injury; the requested injunction is aimed at past events or speculative future proceedings.

Article III requires that a plaintiff seeking injunctive relief plausibly allege a real and immediate threat of future injury—past exposure to alleged illegality is not enough. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105-06 (1983). Count 2 is expressly framed as “prospective relief,” but the relief Plaintiff requests is largely tethered to the already-completed December 2023 hearing and the consequences of his dismissal (record preservation, transcript practices, and procedures “in any renewed adjudication”). *See* Complaint, ¶¶ 52-52A.⁴

Further, Plaintiff does not plausibly allege that TTUHSC is about to convene a new dismissal hearing or imminently subject him to the same process again. To be certain, Plaintiff exhausted the administrative appeal process afforded to him. *See* Exhibit 11. At most, Count 2

⁴ Notably, after filing the First Amended Complaint, Plaintiff affirmatively withdrew “any request for temporary or preliminary injunctive relief,” including the request embedded in the Complaint. *See* Plaintiff’s Response to the Findings, Conclusions, and Recommendation, ECF No. 24 at 1–2. Plaintiff further stated that he “is not seeking a TRO or a preliminary injunction at this time” and does not presently pursue expedited discovery. *Id.* This withdrawal confirms that Plaintiff does not allege a real and immediate threat of future injury—as required for injunctive relief—and independently defeats standing for prospective relief under Article III and *Ex parte Young*.

seeks court supervision of how TTUHSC would conduct hypothetical *future* proceedings. That is not a justiciable basis for injunctive relief, and therefore, Count 2 should be dismissed.

2. *Ex parte Young* is not satisfied as pleaded: generalized “supervisory” authority is not an enforcement connection.

Even when a plaintiff seeks prospective relief, *Ex parte Young* applies only where the named officials have “some connection” to the enforcement of the challenged act—general supervisory authority is not enough. *Ex parte Young*, 209 U.S. 123 (1908); *Okpalobi v. Foster*, 244 F.3d 405, 414-16 (5th Cir. 2001) (en banc).

Here, Plaintiff sues a wide array of officials—up to and including the President and Provost—based on broad descriptions of institutional oversight. *See* Complaint, ¶¶ 20A-20B, 51. That is precisely the sort of generalized connection Fifth Circuit precedent rejects. *See City of Austin v. Paxton*, 943 F.3d 993, 1001-02 (5th Cir. 2019). Courts likewise reject *Ex parte Young* claims against senior university administrators based solely on institutional oversight where the official lacks direct enforcement authority over the challenged disciplinary decision. *See Morris v. Livingston*, 739 F.3d 740, 746-47 (5th Cir. 2014).

Count 2 therefore fails to invoke a valid *Ex parte Young* pathway and should be dismissed.

3. Much of the requested relief is retrospective in substance (therefore barred), even if labeled “prospective”.

The Court should look to the substance of the requested relief. Relief that is retrospective—seeking to remedy past alleged wrongs—does not fit *Ex parte Young* even if styled as an injunction. *See Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645-46 (2002) (*Young* applies only to ongoing violations and prospective relief); *Papasan v. Allain*, 478 U.S. 265, 277-78 (1986).

Here, Plaintiff’s requested injunction is aimed at undoing or re-litigating the consequences of a past disciplinary process and regulating past-publication fallout (transcript notations, record

access, and “corrective” processes). *See* Complaint, ¶¶ 52-52A, 52B. That relief is retrospective in substance and falls outside *Ex parte Young*. Accordingly, Count 2 should be dismissed.

D. Qualified Immunity Bars All § 1983 Claims Against the Individual Defendants (Counts 3-5).

Plaintiff’s constitutional claims attempt to recast routine academic discipline, campus-safety enforcement, and professionalism determinations as federal civil-rights violations. Qualified immunity exists to prevent precisely this type of litigation absent a clear showing that officials violated clearly established constitutional law. *Pearson v. Callahan*, 555 U.S. 223, 231–32 (2009).

To overcome qualified immunity, Plaintiff must plausibly allege both (1) the violation of a constitutional right and (2) that the right was clearly established at the time of the challenged conduct. *al-Kidd*, 563 U.S. at 735. This inquiry must be conducted at a high level of factual specificity—not by reference to abstract constitutional principles—and requires precedent placing the alleged violation “beyond debate.” *Mullenix v. Luna*, 577 U.S. 7, 12 (2015); *Babinski v. Sosnowsky*, 79 F.4th 515, 524 (5th Cir. 2023).

In the higher-education context, Fifth Circuit precedent affords substantial deference to university officials charged with maintaining campus safety, enforcing professionalism standards, and administering student disciplinary processes. Absent extraordinary circumstances, educators and administrators are entitled to qualified immunity unless no reasonable official could have believed the challenged conduct was lawful. *Brinsdon v. McAllen Indep. Sch. Dist.*, 863 F.3d 338, 347 (5th Cir. 2017) (citing *Morgan v. Swanson*, 659 F.3d 359, 370 (5th Cir. 2011)).

Here, Plaintiff fails to meet either prong of the qualified-immunity analysis for any of his § 1983 claims. As set forth below, Plaintiff’s own allegations demonstrate that he received constitutionally adequate process in connection with the disciplinary proceedings, and his

retaliation theory rests on vague and undefined speech allegations that are not clearly protected by controlling precedent. Because Plaintiff cannot identify any clearly established constitutional right violated by the Individual Defendants, Counts 3, 4, and 5 must be dismissed.

1. Procedural Due Process.

As for his Procedural Due Process claim (Count 3), Plaintiff's own allegations establish that he received notice of the charges, a 14-hour hearing, representation by counsel, and an opportunity to present evidence. *See* Complaint, ¶¶ 21-23. Furthermore, the Board's decision also makes clear that Defendants provided Plaintiff with more than sufficient due process. *See* Exhibit 8. The Fifth Circuit has repeatedly held that students facing discipline are entitled only to notice and an opportunity to be heard—not trial-like procedures. There is no clearly established right to attorney-led cross-examination, formal evidentiary rules, or any particular hearing format. At minimum, due process in the student disciplinary context requires only notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *See Goss v. Lopez*, 419 U.S. 565, 579 (1975); *Plummer v. Univ. of Houston*, 860 F.3d 767, 773-74 (5th Cir. 2017); *Van Overdam v. Texas A&M Univ.*, 43 F.4th 310 (5th Cir. 2022).

Here, Plaintiff affirmatively alleges that he was represented by counsel throughout the proceedings, submitted evidence, participated in a 14-hour hearing, and received the opportunity to appeal—facts that independently defeat any claim of constitutionally inadequate process. *See* Complaint, ¶¶ 21-23. Qualified immunity therefore applies.

For example, Plaintiff alleges that Defendant Gibson, in serving as the outside Hearing Officer, “barred real-time objections” and purportedly “organized the hearing in a manner contrary to the Student Handbook,” among other alleged slights to Plaintiff. *See* Complaint, ¶ 39A. However, Plaintiff has not presented any clearly established law that establishes a right for a

student to make “real-time objections” to evidence during the course of a student misconduct hearing, similar to objections lodged during a courtroom trial. Rather, “the Fifth Circuit has held that disciplinary proceedings do not require formal rules of evidence or all the procedural protections of a trial.” *Plummer*, 860 F.3d at 773-74; *see also Esfeller v. O’Keefe*, 391 F. App’x 337 (5th Cir. 2010) (holding that a state university which held a hearing in a student’s absence and barred his attorney from observing or participating in the hearing was nevertheless compliant with procedural due process because the student was otherwise heard on a number of occasions by different university officials).

Furthermore, even if the hearing did not comply with the procedures set forth in the Student Handbook (which it did), that does not constitute a violation of due process. Courts in the Fifth Circuit have made clear that “a University’s departure from its own rules and regulations does not, by itself, violate procedural due process unless the rule or regulation codifies the pertinent constitutional standard.” *Pham v. Univ. of La. Monroe*, 194 F.Supp.3d 534, 544 (W.D. La. 2016) (citing cases); *see also Levitt v. Univ. of Tex. at El Paso*, 759 F.2d 1224, 1230 (5th Cir. 1985) (holding that failure to follow internal university procedures does not itself establish a due process violation). “A plaintiff has no due process right to state-implemented procedures. The relevant inquiry at all times is whether or not a plaintiff has been afforded constitutionally adequate notice and a constitutionally adequate hearing.” *Pham*, 194 F.Supp.3d at 544. Accordingly, alleged violations of internal policy cannot transform routine disciplinary procedures into constitutional claims.

Here, the allegations indicate that Plaintiff was afforded constitutionally adequate notice and a constitutionally adequate hearing, and he has certainly not presented allegations reflecting a violation of any clearly established right by the Individual Defendants. Therefore, Count 3 of

Plaintiff's claims must be dismissed under Rule 12(b)(6) because qualified immunity applies. Because Plaintiff cannot identify any clearly established constitutional requirement governing the format, structure, or evidentiary rules of a university disciplinary hearing, his remaining constitutional theories likewise fail to overcome qualified immunity.

2. Stigma-Plus Due Process.

As for his Stigma-Plus Due Process claim (Count 4), Plaintiff alleges reputational harm based on transcript notations and communications. *See* Complaint, ¶¶ 34–35. He does not, however, plead the publication of a materially false statement by any specific Defendant, as required to state a stigma-plus claim. *Paul v. Davis*, 424 U.S. 693, 701-12 (1976). An accurate description of a student's enrollment status or disciplinary outcome—even if unfavorable—cannot constitute a false statement as a matter of law. *Hughes v. City of Garland*, 204 F.3d 223, 226-28 (5th Cir. 2000) (stigma-plus requires publication of false and stigmatizing charges in connection with a change of legal status; if the statement is not false, the claim fails); *see also Codd v. Velger*, 429 U.S. 624, 627-28 (1977) (no name-clearing hearing required absent a dispute that the stigmatizing information is false). Plaintiff also fails to plead a separate “plus” deprivation independent of the disciplinary action itself, which cannot serve as both the alleged stigma and the required alteration of legal status. *See Blackburn v. City of Marshall*, 42 F.3d 925, 936 (5th Cir. 1995). Accordingly, Count 4 fails as a matter of law and should be dismissed.

3. Plaintiff's Retaliation Claim Fails Because He Does Not Plead Clearly Protected Speech or a Clearly Established First Amendment Violation.

Just as Plaintiff cannot identify any clearly established procedural right governing the format or conduct of a university disciplinary hearing, he likewise fails to identify any clearly established First Amendment right that would have put reasonable university officials on notice that enforcing professionalism standards, addressing perceived safety concerns, or proceeding with

student discipline constituted unlawful retaliation. Plaintiff's retaliation claim fails at the threshold because he does not plausibly allege that Defendants retaliated against constitutionally protected speech, much less speech protected by clearly established law. To state a First Amendment retaliation claim, a plaintiff must allege (1) engagement in protected activity, (2) an adverse action that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) a causal connection between the two. *Buchanan v. Alexander*, 919 F.3d 847, 852 (5th Cir. 2019). When qualified immunity is asserted, the burden rests on Plaintiff to show that the specific speech at issue was clearly protected and that existing precedent placed the alleged violation "beyond debate." *al-Kidd*, 563 U.S. at 741.⁵

Here, Plaintiff's own pleading fails to identify with any specificity what speech allegedly triggered the challenged disciplinary actions. Instead, the Complaint relies on vague references to "posts," generalized policy criticism, and non-specific allegations that administrators urged Plaintiff to "stop posting online." See Complaint, ¶¶ 32-33A. Such conclusory allegations are insufficient to establish protected activity or to overcome qualified immunity. See *Iqbal*, 556 U.S. at 678; *Babinski*, 79 F.4th at 524 (requiring a high degree of factual and legal specificity to defeat qualified immunity).

Moreover, Plaintiff affirmatively pleads that the conduct at issue included a mortality-themed social media post that was perceived as threatening by members of the university

⁵ Plaintiff's own allegations demonstrate the absence of clearly protected speech. The Complaint references (i) a generalized comment about mortality that did not address any governmental policy, (ii) crude personal communications sent directly to faculty members involving bodily fluids, and (iii) vague criticism of COVID-19 vaccination policies without identifying the content, timing, or audience of the alleged statements. Speech consisting of personal workplace communications or ambiguous statements untethered to matters of public concern is not categorically protected by the First Amendment. See *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006) (not all speech by individuals interacting with government institutions is constitutionally protected); *Buchanan v. Alexander*, 919 F.3d 847, 852-53 (5th Cir. 2019) (context and manner of speech are critical to protected-speech analysis). To the extent Plaintiff relies on unspecified "posts" criticizing institutional vaccine policies, his failure to plead what was said, when it was said, or how it allegedly motivated the challenged actions is fatal at the Rule 12 stage and independently insufficient to overcome qualified immunity. See *Iqbal*, 556 U.S. at 678; *Babinski*, 79 F.4th at 524.

community, as well as unprofessional personal communications directed to faculty. *See* Complaint, ¶¶ 31A-31C; *see also* Exhibit 4, at pp. 3-17. Even accepting Plaintiff’s characterization of these communications, the Fifth Circuit has not clearly established that such speech—particularly in a professional academic setting governed by codes of conduct and safety obligations—is constitutionally protected. Because Plaintiff cannot identify clearly established precedent placing Defendants’ conduct outside the bounds of lawful disciplinary authority, qualified immunity bars Count 5 as a matter of law. Accordingly, Plaintiff’s retaliation claim should be dismissed.

In Count 5, Plaintiff alleges retaliation based on protected speech but pleads no facts plausibly showing that any Individual Defendant acted because of protected activity rather than alleged misconduct and safety concerns. *See* Complaint, ¶¶ 1, 34–35. To support such a claim, a plaintiff must plead a “causal connection” between the government defendant’s “retaliatory animus” and the plaintiff’s “subsequent injury.” *Nieves v. Bartlett*, 587 U.S. 391, 398-99 (2019) (citing *Hartman v. Moore*, 547 U.S. 250, 259 (2006)). Specifically, it must be a “but-for” cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive. *Id.* at 399. Stated differently, a plaintiff must show that they engaged in protected speech and that it is “plausible,” not merely possible, that the adverse act in question was driven by retaliatory animus for his protected speech and not by some other factor. Moreover, temporal proximity alone is insufficient, and no clearly established law prohibits academic discipline under these circumstances. *See Anderson v. Valdez*, 845 F.3d 580, 590–92 (5th Cir. 2016); *see also Strong v. Univ. Healthcare Sys., L.L.C.*, 482 F.3d 802, 808 (5th Cir. 2007) (holding that temporal proximity, without more, is insufficient to establish causation). Where independent disciplinary grounds exist, retaliation claims fail as a matter of law absent facts plausibly negating

legitimate non-retaliatory motives. *See Woods v. Smith*, 60 F.3d 1161, 1166 (5th Cir. 1995). Further, conclusory assertions of motive are insufficient to overcome qualified immunity. *Anderson*, 845 F.3d at 590-92 (First Amendment retaliation requires plausible allegations that protected speech was a substantial/motivating factor; conclusory assertions of retaliatory motive do not overcome qualified immunity); *see also Keenan v. Tejada*, 290 F.3d 252, 258-59 (5th Cir. 2002) (same elements; causation must be plausibly pleaded).

Here, there are no specific allegations that any of the individuals had any retaliatory animus against Plaintiff's allegedly protected speech. While Plaintiff alleges that the Individual Defendants were aware of his speech, he does not allege that the alleged retaliatory acts were taken "because of" his speech based on the defendant's purported retaliatory animus. *See, e.g.,* Complaint, ¶¶ 36, 36A, 37, 39A (no allegation Cobbs or Gibson acted out of retaliatory animus; conclusory allegation of intent against Wilson, Williams, and Cobbs). Rather, Plaintiff alleges that Defendants were aware of his speech and concludes, *ipse dixit*, that Defendants' actions related to his discipline hearing and dismissal must have been in retaliation to that speech. Such vague allegations are insufficient to defeat qualified immunity.

Furthermore, even if the Court were to find that Plaintiff's social media post constitutes speech protected by the First Amendment, Defendants would nevertheless be protected by qualified immunity, because such actions in response to Plaintiff's post would still be reasonable in light of the "foreseeable substantial disruption of or material interference with school activities." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 514 (1969). In *Tinker*, the Supreme Court recognized that a school official can regulate and prohibit student speech when "facts might reasonably have led school authorities to forecast [that the proscribed speech would cause] substantial disruption of or material interference with school activities." *Id.* The Court recognizes

that acts which “materially disrupts the classwork or involves a substantial disorder or invasion of the rights of others is . . . not immunized by the [First Amendment].” *Id.* at 513; *see also A.M. ex rel. McAllum v. Cash*, 585 F.3d 214, 221-22 (5th Cir. 2009) (applying *Tinker*, holding racial tension and hostility justified the defendants’ ban on display of the Confederate flag and did not constitute a First Amendment violation).

In short, *Tinker* governs a school’s content- or viewpoint-based restrictions, and the Fifth Circuit and other circuit courts have applied *Tinker* to First Amendment higher education cases.⁶ For example, in *Esfeller v. O’Keefe*, the Fifth Circuit held that the university’s Code of Conduct that limited speech that “intrudes upon . . . the rights of other students,” was not facially unconstitutional under *Tinker*. 391 F. App’x 337, 341 (5th Cir. 2010). As a result, Plaintiff cannot establish that the Individual Defendants personally violated clearly established law in taking action against Plaintiff due to his threatening social media post.

In sum, Plaintiff’s § 1983 claims rest on an effort to transform academic discipline and campus-safety decisions into constitutional violations. Fifth Circuit precedent does not clearly establish a right to trial-like disciplinary procedures, a right to dictate hearing format, or a right to engage in the types of speech alleged here without professional or institutional consequence. Because Plaintiff has failed to plausibly allege the violation of any clearly established constitutional right, all claims against the Individual Defendants are barred by qualified immunity. Counts 3, 4, and 5 should therefore be dismissed with prejudice.

⁶ *See Esfeller v. O’Keefe*, 391 F. App’x 337, 341-42 (5th Cir. 2010); *Shamloo v. Mississippi State Bd. of Tr. of Insts. of Higher Learning*, 620 F.2d 516, 521–24 (5th Cir. 1980); *Students for Justice in Palestine, at the University of Houston, et al. v. Abbott*, Case No. 1:24-cv-00523-RP, ECF 62, at 11 (W.D. Tex. Oct. 28, 2024) (applying *Tinker* to dismiss claims on qualified immunity grounds); *see also* Daniel B. Dreyfus, *A Common Judicial Standard for Student Speech Regulations*, 102 Tex. L. Rev. 1059, 1075 (2024) (citing circuit court cases that applied or confirmed *Tinker*’s applicability to First Amendment cases involving universities).

E. Sovereign Immunity Bars Claims Against TTUHSC (Counts 6-7).

TTUHSC is an arm of the State of Texas and is immune from suit absent waiver. Public medical universities qualify as arms of the state for Eleventh Amendment purposes. *See Raj v. LSU*, 714 F.3d 322, 328 (5th Cir. 2013). Section 1983 claims fail because states are not “persons” under the statute. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58 (1989). Plaintiff seeks monetary relief under Title II of the ADA and § 504 of the Rehabilitation Act. Although Congress has conditioned receipt of federal funds on a waiver of sovereign immunity for certain § 504 claims, monetary relief nevertheless requires a plausible allegation of intentional discrimination, which Plaintiff has not pleaded. *Delano-Pyle*, 302 F.3d at 574.

As to Title II, damages remain barred absent a pleaded constitutional violation or valid abrogation under *United States v. Georgia*, 546 U.S. 151, 159 (2006), which Plaintiff has not plausibly alleged. Here, Plaintiff alleges, at most, disagreement over accommodations, which is insufficient as a matter of law. *See* Complaint, ¶¶ 6–10.

Accordingly, Counts 6 and 7 must be dismissed.

IV. DISMISSAL WITHOUT/WITH PREJUDICE

Claims dismissed under Rule 12(b)(1) should be dismissed without prejudice, while claims dismissed on immunity and merits grounds under Rule 12(b)(6) should be dismissed with prejudice where amendment would be futile. *Block v. Tex. Bd. of Law Exam’rs*, 952 F.3d 613, 620 (5th Cir. 2020). But where, as here, claims fail as a matter of law and are independently barred by qualified immunity, dismissal with prejudice is appropriate because amendment would be futile. *Cox v. City of Dallas*, 430 F.3d 734, 748 (5th Cir. 2005).

V. PRAYER AND REQUEST FOR RELIEF

Based on the foregoing, Defendants respectfully request that the Court grant this Motion, dismiss all claims against all Defendants under Rules 12(b)(1) and 12(b)(6), dismiss claims barred by sovereign immunity or qualified immunity with prejudice where appropriate, and grant all further relief to which Defendants are justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on January 21, 2026, via the Court's ECF system to:

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Status as of 2/10/2026 8:07 AM CST

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