

**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' REPLY IN SUPPORT OF MOTION TO DISMISS**

TO THE HONORABLE DISTRICT COURT JUDGE:

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”) submit this Reply in support of their Motion to Dismiss and respectfully show as follows:

**I. INTRODUCTION**

Plaintiff’s Response only confirms that dismissal is required. As no legal theories exist to overcome the jurisdictional and pleading defects identified in Defendants’ Motion, Plaintiff offers a sprawling factual narrative, evidentiary appendix, and merits-based disputes that have no place at the Rule 12 stage. Even accepting Plaintiff’s allegations as true, sovereign immunity bars his claims against TTUHSC and official-capacity defendants, qualified immunity bars damages

claims against the Individual Defendants, and the First Amended Complaint fails to plausibly allege any constitutional or statutory violation. Before the Court can reach Plaintiff's factual disputes, it must resolve these threshold jurisdictional and immunity barriers, which are designed to spare public institutions and officials from the burdens of litigation.

In sum, Plaintiff attempts to constitutionalize an academic and disciplinary dismissal—an area where courts afford substantial institutional deference and where federal liability arises only in the most extraordinary circumstances. This case does not approach that threshold. Even if Plaintiff were permitted to file a third amended complaint, he would be unable to span the chasm of immunity that exists between any pleaded facts and a legal remedy. Accordingly, the only remedy that exists is to grant Defendants' Motion.

## II. REPLY

### A. Sovereign Immunity Bars Claims Against TTUHSC and Official-Capacity Defendants

Plaintiff does not—and cannot—avoid Eleventh Amendment immunity. State agencies and state officials sued in their official capacities for damages are immune from suit absent waiver or valid congressional abrogation. *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). TTUHSC is an arm of the State of Texas, and Plaintiff identifies no waiver applicable to his claims. Nor does *Ex parte Young*, 209 U.S. 123 (1908), salvage his official-capacity claims. That doctrine permits only prospective relief to remedy an ongoing violation of federal law. Plaintiff challenges a completed student dismissal decision, which he appealed and was denied, and seeks retrospective relief tied to past

conduct. *See* First Amended Complaint, p. 12; Plaintiff’s Response, p. 25. Such relief is barred. *See Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002).

Plaintiff attempts to unshackle himself from the natural consequences of his actions by placing blame on the Defendants for holding him accountable to institutional standards. Plaintiff’s Response reframes his claims as seeking reputational and forward-looking relief, but the alleged injury flows from a final student dismissal. Where the challenged action is complete and no ongoing enforcement is alleged, *Young* does not apply. Plaintiff does not allege that any Defendant is presently enforcing an unconstitutional policy against him; rather, he challenges a completed academic determination.

Accordingly, all claims against TTUHSC and official-capacity defendants should be dismissed for lack of subject-matter jurisdiction.

## **B. Qualified Immunity Bars Individual-Capacity Claims**

Qualified immunity shields public officials from damages unless a plaintiff’s well-pleaded facts show (1) a constitutional violation and (2) that the right was clearly established at the time. *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009); *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Plaintiff satisfies neither prong. While courts will accept a plaintiff’s well-pled factual allegations from the complaint, view them in light most favorable to the plaintiff, and hold pro se litigants to a less-stringent standard than lawyers, “conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.” *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002) (citing *S. Christian Leadership Conference v. Supreme Court of the State of La.*, 252 F.3d 781, 786 (5th Cir.2001)). These conclusory allegations and legal conclusions masquerading as factual conclusions are precisely what Plaintiff relies upon in his arguments.

1. No Clearly Established Right

Plaintiff identifies no controlling precedent clearly establishing: (1) a right to a name-clearing hearing following a student dismissal and appeal; (2) a right to disability accommodations in a student misconduct proceeding absent institutional approval; or (3) a right to be free from discipline where speech is intertwined with professionalism and conduct findings. To defeat qualified immunity, precedent must place the constitutional question “beyond debate.” *White v. Pauly*, 580 U.S. 73, 79 (2017). Courts are cautioned not to define clearly established law “at a high level of generality.” *Id.* Plaintiff instead relies on generalized constitutional principles and out-of-circuit student-discipline cases, which is insufficient.

2. The Response Relies on Fact Disputes

Plaintiff’s extensive appendix and evidentiary assertions attempt to litigate factual disputes. Qualified immunity, however, is designed to resolve insubstantial claims at the pleading stage—before discovery. *Iqbal*, 556 U.S. at 672. Because Plaintiff fails to allege violation of clearly established law, the Individual Defendants are immune from damages.

**C. Plaintiff Fails to State a Constitutional Violation**

Even apart from immunity, the pleadings fail under Rule 12(b)(6).

1. Due Process

Courts afford substantial deference to academic and disciplinary judgments of medical schools. *See Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 90 (1978); *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985). Plaintiff received notice of the allegations, a consolidated hearing, an opportunity to present evidence, an opportunity to be heard, and an appeal. His complaints of witness limits, evidentiary rulings, and hearing structure do not amount to constitutional violations. *See Plummer v. Univ. of Houston*, 860 F.3d 767, 774 (5th Cir. 2017).

In the educational setting, “the requisite elements of procedural due process are not wooden absolutes applicable to each case regardless of circumstances.” *Pham v. Univ. of Louisiana at Monroe*, 194 F. Supp. 3d 534, 544 (W.D. La. 2016), citing *U.S. v. Richardson Indep. Sch. Dist.*, 483 F. Supp. 80, 85 (N.D. Tex. 1979). Courts have repeatedly held “a full-dress judicial hearing, with the right to cross examine witnesses” is not required. *Id.*, at 544. Additionally, a student is entitled to a hearing officer that is both neutral and free from bias; however, “[i]n a school disciplinary context, the level of impartiality required for the decision-maker does not reach the absolute neutrality required in the criminal justice system.” *Id.*, citing *Riggan v. Midland Indep. Sch. Dist.*, 86 F. Supp. 2d 647, 656 (W.D. Tex. 2000). Ultimately, federal courts do not second-guess academic disciplinary procedures so long as they are fundamentally fair. Consistent with this deference, courts decline to constitutionalize alleged procedural imperfections in academic discipline where notice and an opportunity to be heard were provided. Even taking Plaintiff’s factual at face value, his procedural due process claims fail as the Defendants clearly operated within the zone of acceptable practice.

## 2. First Amendment

Plaintiff attempts to improperly recharacterize his student hearing and professionalism and misconduct findings as speech retaliation. In doing this, Plaintiff (1) is forced to make unsupported deductive leaps and (2) seeks this court to conclude any statement he made to be protected First Amendment speech. But institutions may regulate student conduct, including speech, where it implicates professional standards, safety concerns, or educational environment obligations. Where discipline rests on multiple independent grounds—including clinical conduct, interpersonal interactions, and professionalism evaluations—speech is not the but-for cause of the adverse

action. Plaintiff's own allegations acknowledge numerous non-speech complaints and evaluations supporting dismissal.

Even so, the First Amendment is not unbounded. It does not protect student speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509, 513 (1969). One area where the First Amendment is not unbounded is in "allowing a student to knowingly make comments, whether oral or written, that reasonably could be perceived as a threat of school violence, whether general or specific, while on school property during the school day." *Boim v. Fulton Cnty. Sch. Dist.*, 494 F.3d 978, 984 (11th Cir. 2007). Courts have found that it is inconsequential whether a speaker intended to cause a material disruption. What is relevant is whether the reasonable interpretation of the speech caused a material disruption of classwork or substantial disorder. *See Morse v. Frederick*, 551 U.S. 393, 401 (2007) (determining that a school's prediction of how student speech "would be interpreted by those viewing it" was "a reasonable one" when faced with the parties' competing interpretations). It is clear from Plaintiff's First Amended Complaint that the reasonable interpretation of the Plaintiff's statements caused a disruption.

### 3. Stigma-Plus / Name-Clearing

A stigma-plus claim requires reputational harm coupled with alteration of a legal right or status. *Paul v. Davis*, 424 U.S. 693, 711 (1976). From a plain reading of the Complaint and Plaintiff's Response, any "harm" alleged by Plaintiff was a natural consequence of his actions. Again, Plaintiff fails to provide sufficient factual basis to properly allege that his commentary was the proximate cause of any harm he may have received. *See* First Amended Complaint, ¶ 33A. Academic dismissal alone does not constitute stigma-plus, nor does the internal communication of disciplinary findings. Moreover, any "online backlash" Plaintiff received was clearly due to his

commentary as Plaintiff does not allege that the “backlash” originated from the Defendants. *Id.* Plaintiff alleges no public dissemination rising to the level required under controlling precedent, and courts routinely reject attempts to constitutionalize academic records or institutional communications.

#### 4. Retaliation

Retaliation claims require protected activity, adverse action, and but-for causation. Plaintiff fails to plausibly allege that his statements or grievances—rather than documented professionalism and conduct concerns—caused his dismissal. Temporal overlap and subjective belief do not establish causation, particularly where independent disciplinary bases exist. Where independent grounds for discipline support the adverse action, a retaliation claim fails as a matter of law.

#### **D. ADA and Rehabilitation Act Claims Fail**

Plaintiff’s statutory claims suffer multiple defects. *First*, Plaintiff would do well to reach the holdings of cases he cites rather than relying on a misinterpretation by generative AI. Plaintiff cites to *Pickett v. Texas Tech University Health Sciences Center* in his Response but fails to recognize the distinction between cases. Indeed, Plaintiff misreads *Pickett* and overlooks the Fifth Circuit’s holding regarding the structured interactive process. The Fifth Circuit has recognized the accommodation process for the university student is analogous to the employee process. That is, ADA accommodations must be an “interactive process” providing for “the input of the [student] as well as the [university].” *Pickett v. Texas Tech University Health Sciences Center*, 37 F.4th 1013, 1033 (2022), citing *Loulseged v. Akzo Nobel Inc.*, 178 F.3d 731, 735 (5th Cir. 1999). This interactive process requires centralization of accommodation request and not an *ad hoc* process of submitting requests to faculty members, which would require expertise of the faculty members that they may not have and “impose an unreasonable burden to accommodate a student’s whims.”

*Id.*, at 1032-33 (2022). *Second*, Plaintiff fails to plausibly allege intentional discrimination, which is required for monetary relief under both Title II and § 504. *Third*, Plaintiff's accommodation theory fails on its face. Plaintiff submitted a disability accommodation request one business day before the dismissal hearing. Institutional policy required review and approval through the Student Disability Services office before accommodations could issue. No Letter of Accommodation had been granted at the time of the hearing. *Fourth*, institutions may discipline misconduct even where a student has a disability. The statutes do not immunize students from professionalism or conduct standards.

Therefore, because Plaintiff pleads neither discriminatory intent nor denial of approved accommodations, his statutory claims fail.

**E. Leave to Amend Is Procedurally Improper and Futile**

Plaintiff alternatively seeks leave to file what he now characterizes as a Third Amended Complaint. The procedural posture matters.

Under Federal Rule of Civil Procedure 15(a)(1), a plaintiff may amend once “as a matter of course” within 21 days after serving the complaint or within 21 days after service of a Rule 12(b) motion. Thereafter, Rule 15(a)(2) applies, and amendment requires either written consent of the opposing party or leave of court.

Here, Plaintiff filed a Motion for Leave to File a Second Amended Complaint on January 20, 2026. Defendants filed their Motion to Dismiss on January 21, 2026. The Court never entered an order granting leave to amend. Nonetheless, on February 15, 2026, Plaintiff filed a “Motion to Amend/Correct” his prior motion and attached a Proposed Third Amended Complaint—effectively seeking leave to amend yet again without any intervening order granting the prior request.

Plaintiff has already amended his pleadings once as a matter of course. An ungranted motion for leave does not create an entitlement to continued amendment. Moreover, Plaintiff is not entitled to serial amendments without court approval, and Rule 15 does not permit iterative revisions each time a dispositive motion exposes legal deficiencies. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (leave may be denied for futility, undue delay, or repeated failure to cure deficiencies); *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 872-73 (5th Cir. 2000) (amendment is futile if it would not survive a motion to dismiss).

More importantly, amendment would be futile. Even accepting Plaintiff's proposed amendments as true and construing them in the light most favorable to him, the fundamental legal defects remain. Sovereign immunity is not cured by additional factual detail. Qualified immunity is not overcome by conclusory elaboration. And the deference afforded to academic disciplinary judgments does not evaporate through recharacterization. These barriers are legal in nature, not factual, and additional amendment cannot alter that analysis. Plaintiff's proposed amendments merely repackage the same theories—speech retaliation, disability accommodation, and procedural objections to student discipline—without curing the jurisdictional and doctrinal defects identified in Defendants' Motion.

Because Plaintiff is neither entitled to amend as a matter of course nor able to cure the fundamental legal deficiencies in his claims, leave should be denied.

### **III. CONCLUSION AND PRAYER**

Plaintiff's Response does not cure the jurisdictional and pleading deficiencies identified in Defendants' Motion. Sovereign immunity bars claims against TTUHSC and official-capacity defendants. Qualified immunity bars damages claims against the Individual Defendants. And the First Amended Complaint fails to plausibly allege any constitutional or statutory violation. For

these reasons, and those set forth in Defendants' Motion, Defendants respectfully request that the Court grant their Motion to Dismiss in its entirety and dismiss Plaintiff's claims with prejudice.

Respectfully submitted,

KEN PAXTON  
Attorney General

BRENT WEBSTER  
First Assistant Attorney General

RALPH MOLINA  
Deputy First Assistant Attorney General

AUSTIN KINGHORN  
Deputy Attorney General for Civil Litigation

KIMBERLY GDULA  
Chief, General Litigation Division

/s/ Scott D. Smith  
SCOTT D. SMITH  
Assistant Attorney General  
Texas Bar No. 24011874  
OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
General Litigation Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 917-3132  
Division Fax: (512) 477-2348  
Email: scott.smith@oag.texas.gov

***Counsel for Defendants***

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served on March 2, 2026, via the Court's ECF system to:

Kevin N. Bass  
[REDACTED]  
[REDACTED]

Phone: 512-333-4092

Email: [kbassphiladelphia@gmail.com](mailto:kbassphiladelphia@gmail.com)

***Pro Se Plaintiff***

/s/ Scott D. Smith

SCOTT D. SMITH

Assistant Attorney General