

**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’ RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION FOR  
LEAVE TO FILE A THIRD AMENDED COMPLAINT**

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”) file this Response in Opposition to Plaintiff’s Motion for Leave to Withdraw Proposed Second Amended Complaint<sup>1</sup> and Substitute Proposed Third Amended Complaint (Doc. 32), and respectfully show the Court as follows:

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<sup>1</sup> 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.

## **I. INTRODUCTION**

Plaintiff seeks leave to file what he characterizes as a “Third Amended Complaint” based on alleged “newly discovered evidence.” The motion should be denied.

Plaintiff has already amended his pleadings once as a matter of course and now seeks to revise his allegations only after Defendants’ Motion to Dismiss identified multiple jurisdictional and pleading defects. Rule 15 does not permit a plaintiff to repeatedly reshape his complaint in response to a motion to dismiss in an effort to avoid dismissal. Nor does Rule 15 entitle a litigant to continually revise a complaint each time a defendant identifies legal deficiencies in the pleadings. More importantly, the proposed amendment would be futile as a matter of law. The fundamental legal barriers identified in Defendants’ Motion to Dismiss—including sovereign immunity, qualified immunity, and the absence of any plausible constitutional or statutory violation—are legal defects that cannot be cured through additional factual allegations. Plaintiff’s proposed amendments merely expand upon the same theories already pleaded and do not overcome the controlling legal doctrines that bar his claims.

Accordingly, because Plaintiff is neither entitled to amend as a matter of course nor able to cure the dispositive legal deficiencies in his claims, leave to amend should be denied. Allowing amendment under these circumstances would only delay resolution of Defendants’ pending immunity defenses, which the Supreme Court has repeatedly instructed courts to resolve at the earliest possible stage of litigation.

## **II. ARGUMENT AND AUTHORITIES**

### **A. Legal Standard**

After the time for amendment as a matter of course has expired, a party may amend its pleading “only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P.

15(a)(2). Although Rule 15 states that leave should be freely given “when justice so requires,” courts may deny leave where amendment would result in undue delay, bad faith, repeated failure to cure deficiencies, undue prejudice, or futility. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also United States ex rel. Willard v. Humana Health Plan of Tex., Inc.*, 336 F.3d 375, 386 (5th Cir. 2003) (citing *Foman* for examples of permitted reasons to deny leave to amend). In the Fifth Circuit, futility alone is sufficient to deny leave to amend. *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 872-73 (5th Cir. 2000). An amendment is futile when it would fail to survive a Rule 12(b)(6) motion. *See U.S. ex rel. Adrian v. Regents of the Univ. of California*, 363 F.3d 398, 403-04 (5th Cir. 2004) (affirming denial of leave to amend where proposed amendment would not survive dismissal). Courts likewise deny leave where a plaintiff has already had opportunities to amend and the proposed amendment would not cure the legal deficiencies in the claims. *Brewster v. Dretke*, 587 F.3d 764, 767-68 (5th Cir. 2009).

**B. Plaintiff is Not Entitled to Serial Amendments**

Plaintiff has already amended his pleading once as a matter of course under Rule 15(a)(1). After Defendants filed their Motion to Dismiss, Plaintiff sought leave to file a Second Amended Complaint and now seeks to substitute an additional Third Amended Complaint. Courts routinely deny leave to amend where a plaintiff seeks to revise the complaint only after a motion to dismiss exposes legal defects that additional factual allegations cannot cure. *See Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 864 (5th Cir. 2003); *Humana Health Plan*, 336 F.3d at 387-88; *Jacquez v. Procunier*, 801 F.2d 789, 792–93 (5th Cir. 1986). Allowing amendment under these circumstances would effectively permit Plaintiff to test the sufficiency of his allegations through serial revisions of the complaint in response to Defendants’ Rule 12 motion—a practice the Fifth Circuit has repeatedly discouraged.

For that reason alone, the Court should deny Plaintiff's motion.

**C. Plaintiff's Proposed Amendment Would Be Futile**

Even if leave were otherwise appropriate, amendment would be futile because Plaintiff's proposed Third Amended Complaint does not cure the fundamental legal defects identified in Defendants' Motion to Dismiss.

1. Sovereign immunity remains a complete bar to claims against TTUHSC

Plaintiff's proposed amendments do not alter the jurisdictional reality that TTUHSC is an arm of the State of Texas. Claims for damages against a state agency and against state officials in their official capacities are barred by the Eleventh Amendment absent waiver or valid congressional abrogation. Additional factual allegations cannot overcome sovereign immunity. The jurisdictional bar remains unchanged, rendering amendment futile.

2. Qualified immunity still bars the individual-capacity claims

Plaintiff's proposed amendment likewise does nothing to overcome qualified immunity. To defeat qualified immunity, a plaintiff must plausibly allege that a defendant violated a clearly established constitutional right. Plaintiff's proposed amendments merely add additional narrative allegations concerning the same disciplinary proceedings and alleged speech issues already at issue in the existing complaint.

Additional factual elaboration does not transform routine academic disciplinary decisions into clearly established constitutional violations. The proposed pleading still fails to identify any clearly established law placing Defendants' conduct beyond debate, and qualified immunity therefore continues to bar Plaintiff's claims.

3. The proposed amendments do not cure the pleading deficiencies identified in Defendants' Motion

Plaintiff asserts that newly obtained FERPA materials justify amendment. But the proposed amendments simply expand the factual narrative underlying Plaintiff's existing theories—speech retaliation, disability accommodation disputes, and alleged procedural deficiencies in a student disciplinary process. Those additional allegations do not cure the deficiencies identified in Defendants' Motion to Dismiss. As explained in Defendants' motion, Plaintiff fails to plausibly allege intentional discrimination under the ADA or Rehabilitation Act, fails to plead a real and immediate threat of future injury sufficient to support prospective relief, fails to identify the publication of any materially false statement necessary to support a stigma-plus claim, and fails to allege facts plausibly establishing retaliation as the but-for cause of his dismissal. Expanding the factual narrative surrounding the same disciplinary proceedings does not cure these legal defects.

The proposed amendment merely repackages the same theories with additional factual detail and would not survive dismissal. A request for leave to amend is particularly deficient where the plaintiff fails to explain how additional allegations would cure the deficiencies identified by the court. *See Goldsmith v. Hood County Jail*, 299 F. App'x 422, 423 (5th Cir. 2008) (affirming dismissal where a pro se litigant failed to explain "what facts he would have added or how he could have overcome the deficiencies found by the district court if he had been granted an opportunity to amend"). Indeed, the Fifth Circuit has made clear that leave to amend may be denied where the proposed amendment would be futile and would serve no purpose other than prolonging the litigation. *See Wimm v. Jack Eckerd Corp.*, 3 F.3d 137, 139 (5th Cir. 1993). Amendment is therefore futile and leave should be denied.

**D. Plaintiff's "New Evidence" Does Not Justify Amendment**

Plaintiff contends that newly discovered evidence obtained through FERPA materials justifies substitution of a Third Amended Complaint. The categories of evidence he identifies—internal communications, alleged institutional motivations, and third-party reactions—simply expand the factual narrative of claims already pleaded. Rule 15 does not require courts to allow amendment merely because a plaintiff obtains additional documents supporting previously asserted theories. Where the proposed amendments merely elaborate on existing allegations without curing legal defects, courts routinely deny leave to amend.

Here, Plaintiff's proposed amendments do not alter the legal framework governing sovereign immunity, qualified immunity, or the deference afforded to academic disciplinary decisions. Those doctrines independently bar Plaintiff's claims, and additional factual allegations cannot change that result. Furthermore, Plaintiff's reliance on FERPA document inspections further underscores why amendment should be denied. Plaintiff has already spent extensive time reviewing institutional records through multiple FERPA inspection sessions, yet he now attempts to use that informal access both as a substitute for discovery and as a basis to continually revise his pleadings. FERPA's educational-record access provisions do not transform institutional record review into civil discovery, nor do they entitle a litigant to repeatedly amend a complaint each time additional documents are reviewed. If discovery becomes appropriate after the Court resolves Defendants' jurisdictional and immunity defenses, the Federal Rules provide a structured mechanism for obtaining documents. Plaintiff cannot bypass that framework by conducting unilateral FERPA inspections and then invoking those materials as a basis for serial amendments to his complaint.

In sum, allowing amendment under these circumstances would effectively permit Plaintiff to conduct rolling pre-discovery document review while dispositive immunity defenses remain pending—precisely the litigation burden that qualified immunity and sovereign immunity are designed to prevent.

### **III. CONCLUSION AND PRAYER FOR RELIEF**

Plaintiff's motion represents yet another attempt to revise his allegations after Defendants identified dispositive jurisdictional and legal defects in his claims. Rule 15 does not permit serial amendments in response to a motion to dismiss, particularly where the proposed amendment would be futile. Plaintiff cannot cure the fundamental legal deficiencies in his claims, and further amendment would serve no purpose other than prolonging litigation while Defendants' immunity defenses remain unresolved. Plaintiff's Motion for Leave to File a Third Amended Complaint should therefore be denied.

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

1. Deny Plaintiff's Motion for Leave to Withdraw Proposed Second Amended Complaint and Substitute Proposed Third Amended Complaint; and
2. Grant Defendants all other relief to which they may be entitled.

Respectfully submitted,

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**Counsel for Defendants**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served on March 9, 2026, via the Court's ECF system to:

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