

require this Court to supervise how a public university administers its education-record processes in connection with an academic dismissal. Sovereign immunity does not permit such intrusion.

Plaintiff's theory rests on the premise that Texas Government Code § 559.004 and TTUHSC's internal policy, HSC OP 77.13, convert record-inspection logistics into purely ministerial duties enforceable by injunction. They do not. Section 559.004 requires a governmental body to establish a reasonable procedure, and TTUHSC has done so. Plaintiff's dissatisfaction with how that procedure was applied to his situation does not transform discretionary administrative judgment into ultra vires conduct.

Because Plaintiff challenges discretionary acts rather than conduct taken without legal authority, sovereign immunity bars this suit. Even if jurisdiction existed, abatement remains warranted due to the parallel federal action involving the same disciplinary nucleus and the same officials. Accordingly, the Plea should be granted.

II. REPLY

A. Plaintiff Has Not Alleged Ultra Vires Conduct

The ultra vires exception to sovereign immunity is narrow. Under *City of El Paso v. Heinrich*, sovereign immunity does not bar suits seeking prospective relief against officials who act without legal authority or who fail to perform a purely ministerial duty.¹ 284 S.W.3d 366, 372-73 (Tex. 2009). The exception does not permit courts to control discretionary governmental conduct, nor does it authorize judicial supervision of administrative implementation mechanics simply because a plaintiff labels them “procedural.”

¹ Plaintiff's reliance on *Hensley v. State Commission on Judicial Conduct*, 692 S.W.3d 184 (Tex. 2024), is misplaced. *Hensley* addressed statutory limits that expressly constrained the Commission's authority to take specific disciplinary action—not discretionary implementation of broadly worded procedural language. *Id.* at 195-97. Here, by contrast, § 559.004 does not prescribe specific implementation mechanics for record inspection or amendment; it requires only that a governmental body establish a reasonable procedure. Determining what is reasonable necessarily involves administrative judgment. *Hensley* does not transform discretionary implementation of a broadly worded statute into a purely ministerial duty.

Plaintiff does not allege that Defendants lacked authority over education records. To the contrary, his Petition confirms that TTUHSC maintains his records and administers a published inspection and amendment procedure. His complaint concerns how inspection sessions were structured, how scheduling was handled, and how his amendment request was processed. Those allegations, even if taken as true, concern the exercise of administrative judgment within the scope of Defendants' authority. To the extent Plaintiff references transcript review or correction, those allegations likewise implicate discretionary academic and administrative judgment, not the failure to perform a ministerial duty.

Ultra vires jurisdiction turns on the absence of legal authority—not disagreement with how that authority is exercised. Plaintiff's live pleading does not allege conduct outside Defendants' statutory or institutional authority. It therefore fails to satisfy *Heinrich's* threshold requirement. Plaintiff challenges discretionary implementation rather than unauthorized action. The ultra vires exception therefore does not apply.

B. Section 559.004 Does Not Create a Purely Ministerial Duty

Plaintiff's central argument is that Texas Government Code § 559.004 imposes a mandatory, ministerial obligation that Defendants have failed to perform. The statute provides that a state governmental body "shall establish a reasonable procedure" under which an individual may seek correction of information and that the procedure "may not unduly burden" the individual. That language does not eliminate discretion.

The Legislature did not prescribe a specific format for inspection, copying, recording, or third-party attendance. It did not define what constitutes a "reasonable" procedure or what qualifies as an "undue burden." By employing flexible terms such as "reasonable" and "unduly burden," the Legislature necessarily entrusted implementation to the governmental body. Determining what

is reasonable in this context requires administrative judgment. A duty is ministerial only when “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). Section 559.004 does not meet that standard.

TTUHSC has established a procedure—OP 77.13. Plaintiff’s disagreement with how inspection was conducted does not demonstrate that Defendants failed to establish a procedure. At most, it reflects disagreement with how that procedure was administered. That is not a ministerial omission. Section 559.004 leaves room for institutional judgment; it does not support ultra vires jurisdiction.

C. OP 77.13 Does Not Transform Administrative Discretion into Enforceable Ministerial Duties

Plaintiff further argues that TTUHSC’s internal policy, OP 77.13, functions as “enabling law” and therefore constrains discretion in a manner enforceable under *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154 (Tex. 2016). That analogy fails.

Houston Belt involved a municipal ordinance defining the parameters of a drainage fee and statutory limits on its imposition. It did not involve internal academic policy governing record administration. An internal university policy outlining procedural steps does not eliminate administrative discretion in implementation, nor does it waive sovereign immunity. Even when policies employ mandatory language, the existence of procedural steps does not render every aspect of their administration ministerial. *See Southwestern Bell Telephone, L.P. v. Emmett*, 459 S.W.3d 578 (Tex. 2015) (recognizing that statutory “shall” language does not eliminate discretion where implementation requires judgment).

Plaintiff’s allegations concern inspection format, copying restrictions, recording, and scheduling. Those are administrative judgments committed to institutional discretion. Nothing in

OP 77.13 strips Defendants of that discretion or converts those decisions into mechanical duties enforceable by injunction. OP 77.13 governs process but does not eliminate discretion in its administration. Ultra vires relief is therefore unavailable.

D. Academic Record Administration Is Entitled to Judicial Deference

The transcript notation at issue arises from academic disciplinary proceedings. Courts consistently recognize that academic determinations and related record administration fall within the discretionary authority of educational institutions. *See Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 225 (1985); *University of Texas Medical School at Houston v. Than*, 901 S.W.2d 926, 931 (Tex. 1995); *Alcorn v. Vaksman*, 877 S.W.2d 390, 403 (Tex. App.—Houston [1st Dist.] 1994, writ denied).

Although Plaintiff insists that he does not challenge the merits of the disciplinary decision, the relief he seeks would require this Court to supervise the manner in which TTUHSC administers education records associated with that decision. Judicial intrusion into those administrative mechanics would undermine the deference courts afford academic institutions in disciplinary matters. Academic record administration falls within institutional discretion. It is not subject to ultra vires control by this Court.

E. Plaintiff's Ripeness Theory Does Not Create Jurisdiction

Plaintiff contends that his claims are ripe because OP 77.13's 45-day window expired. Even assuming *arguendo* that his allegations are true for jurisdictional purposes, a dispute over timing does not create ultra vires jurisdiction. Failure to meet an internal administrative deadline, even if it occurred, does not constitute action without legal authority.

Ripeness does not expand ultra vires jurisdiction beyond purely ministerial duties, and it requires a final and definitive position that inflicts a concrete injury. *See Texas Dep't of Protective*

& Regulatory Servs. v. Mega Child Care, Inc., 145 S.W.3d 170, 198 (Tex. 2004). OP 77.13’s provisions governing access to education records are patterned after the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and its implementing regulations, which require only that a student be given an “opportunity to inspect and review” education records. 34 C.F.R. § 99.10. Neither OP 77.13 nor FERPA defines what constitutes an “opportunity,” nor do they mandate a minimum amount of time or prescribe the manner in which inspection must occur. Plaintiff’s own pleading reflects ongoing administrative exchanges and multiple opportunities to review the records at issue, including more than forty hours of access across seven days over a three-month period. A disagreement over inspection logistics or the pace and structure of administrative access does not create a justiciable ultra vires controversy. And even if Plaintiff attempts to characterize TTUHSC’s position as a “final” determination, the complained-of conduct still concerns discretionary implementation of a reasonable procedure—not the failure to perform a purely ministerial duty.

Accordingly, the ultra vires exception does not apply, and Plaintiff’s ripeness theory fails. Plaintiff’s theory improperly reframes discretionary administration as jurisdictional error.

F. Abatement Remains Warranted

Even if this Court were to conclude that jurisdiction exists, abatement remains appropriate. Defendants’ request is grounded not merely in Rule 93 but in this Court’s inherent authority to prevent duplicative litigation and inconsistent rulings. *See Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex. 1988); *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974); *Van Dyke v. Boswell, O’Toole, Davis & Pickering*, 697 S.W.2d 381, 383 (Tex. 1985).

The parallel federal action arises from the same disciplinary proceedings, challenges the same transcript consequences, and names the same officials. Immunity defenses are pending in

that forum. Permitting parallel litigation in two sovereign courts risks inconsistent rulings and undermines the protection from litigation burdens that immunity is designed to provide. At a minimum, orderly adjudication favors abatement pending resolution of the federal case.

G. Amendment is Futile

Under *Texas Department of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004), dismissal is proper where pleadings affirmatively negate jurisdiction. Plaintiff has amended repeatedly. His Fourth Amended Petition narrows its phrasing but continues to challenge discretionary administrative conduct. No additional amendment can convert that conduct into a purely ministerial duty. The jurisdictional defect is legal rather than factual. Further amendment would therefore be futile, and dismissal is proper.

III. CONCLUSION AND PRAYER FOR RELIEF

Plaintiff's increasingly refined procedural framing does not alter the governing analysis. Section 559.004 requires a reasonable procedure, and TTUHSC has established one. Plaintiff's disagreement with how that procedure has been implemented does not constitute ultra vires conduct. Sovereign immunity deprives this Court of subject-matter jurisdiction. Alternatively, principles of comity and judicial economy warrant abatement pending resolution of the parallel federal action.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court grant the Plea to the Jurisdiction and dismiss Plaintiff's claims without prejudice or, alternatively, grant the Plea in Abatement and stay these proceedings pending final disposition of the federal action, and grant all other and further relief to which Defendants may be justly 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 18th day of March 2026.

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