

MS

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	OF LUBBOCK COUNTY, TEXAS
Plaintiff,	§	
	§	237th JUDICIAL DISTRICT
v.	§	
	§	
DARRIN D'AGOSTINO, D.O.,	§	
M.P.H., M.B.A., 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 of Texas Tech University	§	
Health Sciences Center,	§	
	§	
Defendants.	§	

PLAINTIFF'S SWORN MOTION UNDER RULE 306a(5) AND MOTION FOR
NEW TRIAL UNDER RULE 329b

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, KEVIN N. BASS, Plaintiff in the above-entitled and numbered cause,
proceeding pro se, and files this Sworn Motion Under Rule 306a(5) of the Texas Rules of Civil
Procedure and Motion for New Trial Under Rule 329b, and would respectfully show the Court
as follows:

I. SUMMARY

On March 26, 2026, this Court signed an Order granting Defendants' Plea to the
Jurisdiction. Plaintiff did not receive notice of this Order, the preceding Notice of Submission,
Defendants' Reply brief, or the Final Judgment until April 2, 2026 -- seven days after the Order
was signed. Plaintiff received no notice because the eFileTexas electronic service system
contained an incorrect email address for Plaintiff, causing all electronic service attempts after

March 3, 2026 to be sent to a nonexistent email address. This error is documented in Defendants' own Automated Certificates of eService, which show service directed to "kbassphiladelphi@gmail.com" rather than Plaintiff's actual email address, "kbassphiladelphia@gmail.com."

As a result, Plaintiff was denied notice of and an opportunity to respond to (1) the Notice of Submission requesting the Court rule without oral hearing, (2) Defendants' 10-page Reply brief raising new arguments, and (3) the proposed order submitted by Defendants for the Court's signature. Plaintiff was denied due process.

II. SWORN MOTION UNDER RULE 306a(5)

1. Under Texas Rule of Civil Procedure 306a(4), when a party adversely affected by a judgment has neither received the notice required by Rule 306a(3) nor acquired actual knowledge of the signing within twenty days after the judgment is signed, all appellate deadlines begin on the date the party first received notice or acquired actual knowledge of the signing.

2. The Order on Defendants' Plea to the Jurisdiction was signed on March 26, 2026.

3. Plaintiff did not receive the notice of judgment required by Rule 306a(3) within twenty days of March 26, 2026.

4. Plaintiff first acquired actual knowledge of the signing of the Order on April 2, 2026, when Plaintiff discovered the judgment through a review of publicly available docket data on the re:SearchTX court records system.

5. April 2, 2026 is fewer than ninety days after March 26, 2026. As of the date of this filing, Plaintiff still has not received the notice required by Rule 306a(3).

6. Accordingly, under Rule 306a(4), all periods referenced in Rule 306a(1) -- including the deadline for filing a Motion for New Trial under Rule 329b -- begin to run from April 2, 2026, the date Plaintiff first acquired actual knowledge of the judgment.

7. This Motion for New Trial is timely under two independent bases:

a. Standard deadline under Rule 329b(a): The Order was signed March 26, 2026. Under Rule 329b(a), a motion for new trial must be filed "prior to or within thirty days after the judgment or other order complained of is signed." Thirty days from March 26 is April 25, 2026. This motion is filed before that date and is therefore timely under the standard deadline without regard to Rule 306a.

b. Extended deadline under Rule 306a(4): Plaintiff has not, as of the date of this filing, received the notice required by Rule 306a(3). The Clerk's Notice of Judgment dated April 2, 2026 (Exhibit E) was addressed only to Defendants and does not list Plaintiff's address. The eFileTexas system's record for Plaintiff contains an incorrect email address ("kbassphiladelphi@gmail.com"), and every electronic notification to Plaintiff after March 3, 2026 was directed to the incorrect address and either failed with an ERROR status or was transmitted to a nonexistent email address. Under Rule 306a(4), all periods in Rule 306a(1) begin on the date the party received actual notice or acquired actual knowledge of the signing. Plaintiff acquired actual knowledge on April 2, 2026. To the extent any question exists regarding the standard deadline, Rule 306a(4) independently establishes that this motion is timely.

III. FACTUAL BACKGROUND

A. Plaintiff Was Actively Litigating This Case

8. On March 3, 2026, Plaintiff filed a 78-page Response to Defendants' Plea to the Jurisdiction and a Fourth Amended Verified Original Petition (17 pages). Both filings were accepted by the eFileTexas system.

9. On the same date, March 3, 2026, the eFileTexas system generated "Electronic Service Undeliverable" notifications in connection with Plaintiff's filings, indicating that the electronic service system was experiencing failures. See Exhibit A (email records).

10. At no point did Plaintiff abandon or cease actively litigating this case. Plaintiff's last filing was ten days before the first document Plaintiff never received.

B. Defendants Filed Dispositive Documents Plaintiff Never Received

11. On March 13, 2026, Defendants filed a Notice of Submission requesting that the Court consider the Plea to the Jurisdiction without oral hearing. See Exhibit B.

12. On the same date, Defendants filed an Amended Notice of Submission and a Proposed Order granting Defendants' Plea to the Jurisdiction, pre-drafted for the Court's signature. See Exhibit C.

13. On March 18, 2026, Defendants filed a 10-page Reply in Support of their Plea to the Jurisdiction, raising new arguments regarding ripeness, futility of amendment, and academic deference that Plaintiff had no opportunity to address. See Exhibit D.

14. On March 19, 2026, the case appeared on the Motions Docket.

15. On March 26, 2026, the Court signed the Proposed Order submitted by Defendants on March 13, 2026. The filename of the signed order is "20260313_Proposed Order.pdf," confirming it is the same document Defendants submitted thirteen days earlier.

16. On April 2, 2026, the Clerk entered Final Judgment and mailed a Notice of Judgment. See Exhibit E.

17. Plaintiff received none of the filings described in paragraphs 11 through 16.

C. The eFileTexas System Had Plaintiff's Email Address Wrong

18. Defendants' Automated Certificates of eService reveal the cause of the service failure. Each certificate shows that electronic service on Plaintiff was directed to:

kbassphiladelphi@gmail.com

19. Plaintiff's actual email address is:

kbassphiladelphia@gmail.com

20. The system email is missing the letter "a" at the end of "philadelphia." The address "kbassphiladelphi@gmail.com" does not exist and has never existed. Every electronic service attempt to this address failed.

21. The failure was not silent. The Automated Certificate of eService attached to the signed Order (Exhibit C) explicitly records the service status for Plaintiff as "ERROR." See Exhibit C at Automated Certificate of eService ("Associated Case Party: Kevin Bass ... Status: ERROR"). The eFileTexas system affirmatively recorded that service on Plaintiff failed.

22. This error appears in the Automated Certificate of eService attached to every filing after March 3, 2026. The certificates for the Notice of Submission (March 13) and the Proposed Order (March 13) each record the service status for Plaintiff as "ERROR." The certificate for the Reply (March 18) records the status as "SENT" — but to the same nonexistent address, "kbassphiladelphi@gmail.com." A "SENT" status in the eFileTexas system indicates only that the system transmitted the notification; it does not confirm delivery or receipt. Plaintiff did not receive the Reply, as confirmed by the absence of any eFileTexas notification in Plaintiff's Gmail inbox after March 3, 2026 (Exhibit A-3).

See Exhibits B, C, D (Automated Certificates of eService, each showing service directed to "kbassphiladelphi@gmail.com").

23. By contrast, the body of Defendants' own Certificate of Service -- drafted by Counsel Scott D. Smith -- correctly identifies Plaintiff's email as "kbassphiladelphia@gmail.com." The attorney knew the correct email. The system had the wrong one.

D. The Email Error Originated in the Court's Case Management System, Not Plaintiff's Registration

24. Plaintiff's eFileTexas user profile correctly lists his email as "kbassphiladelphia@gmail.com." See Exhibit G (eFileTexas profile screenshot). Plaintiff registered with the correct email address. The truncated address "kbassphiladelphi@gmail.com" appearing in the Automated Certificates of eService originated in the Lubbock County case management system's records for this case — not from any error by Plaintiff. The eFileTexas system and the county CMS maintain separate records, and the

county system contained an incorrect email for Plaintiff.

E. Defendants Received Notification That Service Was Failing and Were Instructed to Serve by Alternative Means

25. On March 3, 2026, the eFileTexas system sent "Electronic Service Undeliverable" notifications to all service contacts in this case, including Defendants' counsel Scott D. Smith (scott.smith@oag.texas.gov), Karla Gutierrez (karla.gutierrez@oag.texas.gov), and Tristan Garza (tristan.garza@oag.texas.gov). See Exhibit A.

26. The Service Undeliverable notification explicitly listed the misspelled email address: "Kevin Bass (kbassphiladelphi@gmail.com)." It further stated: "Please serve the document using a different method." Defendants' counsel was thus on actual notice, as of March 3, 2026, that electronic service on Plaintiff was failing and that alternative service was required.

F. Defendants Had Actual Knowledge of Plaintiff's Correct Email and Used It During the Same Period

27. On March 12, 2026, Defendants' counsel Scott D. Smith sent an email directly to Plaintiff at kbassphiladelphia@gmail.com regarding this very case, styled "Bass v. Rice-Spearman, et al. -- FERPA Records Request." See Exhibit F.

28. On March 13, 2026 -- the same day Defendants filed the Notice of Submission in the state case -- Smith again emailed Plaintiff directly at the correct address regarding Plaintiff's TTUHSC records. See Exhibit F.

29. On March 22 and March 30, 2026, Smith continued to email Plaintiff at the correct address regarding the parallel federal case, Bass v. TTUHSC, No. 5:25-cv-00244-H-BV. See Exhibit F.

30. Defendants' counsel was therefore in active, ongoing email communication with Plaintiff at the correct email address throughout the entire period (March 13 through April 2) during which the eFileTexas system was failing to deliver state-case filings to Plaintiff. At no

point did counsel inform Plaintiff of the Notice of Submission, the Reply brief, the Proposed Order, or the signed Order -- despite the system's explicit instruction to "serve the document using a different method" and despite counsel's demonstrated ability to reach Plaintiff directly.

G. The Clerk's Notice of Judgment Was Not Sent to Plaintiff

31. The Notice of Judgment dated April 2, 2026 lists mailing addresses for all eight Defendants. See Exhibit E. The Notice does not list an address for Plaintiff. There is no indication that Plaintiff was mailed or otherwise provided a copy of the Notice of Judgment.

IV. MOTION FOR NEW TRIAL UNDER RULE 329b

32. Under Rule 329b(a), a motion for new trial must be filed within thirty days after the judgment is signed. As established in Section II, Plaintiff's appellate timetable runs from April 2, 2026, the date Plaintiff first acquired actual knowledge of the judgment. This motion is timely.

A. Plaintiff Was Denied Due Process

33. The Fourteenth Amendment to the United States Constitution requires that a party receive notice and an opportunity to be heard before a court enters judgment affecting the party's rights. *Peralta v. Heights Med. Ctr.*, 485 U.S. 80, 84-86 (1988).

34. Under *Peralta*, when a party establishes that it had no notice of proceedings resulting in judgment, the judgment must be set aside without requiring a showing of meritorious defense. *Id.* at 86-87. Texas courts have consistently applied this principle. See *Gonzales v. Surplus Ins. Servs.*, 863 S.W.2d 96, 99-100 (Tex. App.—Beaumont 1993, writ denied) (reversing judgment entered without adequate notice under *Peralta* due process standard); *McDaniel v. Hale*, 893 S.W.2d 652 (Tex. App.—Amarillo 1994, no writ) (Seventh Court of Appeals recognizing due process requires actual notice before entry of judgment). The Seventh Court of Appeals — the appellate court with jurisdiction over this Court — has expressly held that due process requires meaningful notice and opportunity to be heard before a judgment affecting a party's rights may be entered.

35. Plaintiff had no notice of: a. The March 13 Notice of Submission; b. The March 13 Proposed Order; c. The March 18 Reply raising new arguments; d. The March 19 hearing; e. The March 26 Order; or f. The April 2 Final Judgment.

36. Plaintiff was denied the opportunity to: a. Object to submission without oral hearing; b. Request oral argument on the Plea to the Jurisdiction; c. File a sur-reply responding to Defendants' new arguments regarding ripeness, futility of amendment, and academic deference; d. Appear at the March 19 hearing; and e. Object to the Proposed Order.

37. The denial of notice was not caused by Plaintiff's negligence or conscious indifference. It was caused by an incorrect email address in the eFileTexas system, as documented in Defendants' own filings.

B. Defendants Bore a Duty to Ensure Service Under Rule 21a

38. Texas Rule of Civil Procedure 21a governs methods of service. When electronic service fails, the serving party has a duty to effectuate service by alternative means.

39. The eFileTexas system generates notifications when electronic service is undeliverable. If Defendants or their counsel received such notifications -- as Plaintiff did when his own March 3 filings generated "Service Undeliverable" alerts -- Defendants had an affirmative duty to serve Plaintiff through an alternative method.

40. Defendants' counsel had Plaintiff's correct email address and had used it as recently as January 26, 2026. Counsel could have served Plaintiff directly. Counsel chose not to.

41. Instead, Defendants submitted the case for ruling on the papers, filed a Reply brief raising new arguments, and attached a pre-written order for the Court's signature -- all while the eFileTexas system was directing service to a nonexistent email address and recording failed or undeliverable service on Plaintiff. Defendants knew or should have known that Plaintiff was not receiving electronic service, yet took no alternative action to ensure notice.

42. Notably, the Proposed Order submitted by Defendants on March 13 bears the filename "20260313_Proposed Order.pdf." Defendants drafted the order granting their own

motion before the submission date, before filing their Reply brief, and before any opportunity for Plaintiff to respond to the Notice of Submission -- which Plaintiff never received. The Court signed this pre-drafted order on March 26, 2026.

C. The Judgment Should Be Set Aside

43. The judgment entered March 26, 2026, was procured without notice to Plaintiff. Plaintiff was actively litigating this case, having filed a 78-page Response and a Fourth Amended Petition just ten days before Defendants submitted the case for ruling without his knowledge.

44. Plaintiff has a meritorious defense to the Plea to the Jurisdiction, as set forth in his 78-page Response filed March 3, 2026, which is part of the record. Although Peralta does not require a showing of meritorious defense where notice was absent, the Court's own record reflects that Plaintiff's Response raised substantial legal arguments that warranted consideration.

45. Granting a new trial will not cause undue delay or injury to Defendants. The case was pending for less than five months before the Order was signed. The underlying dispute concerns access to education records -- a matter of ongoing concern that is not mooted by delay.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Kevin N. Bass respectfully requests that this Court:

1. Find, pursuant to Rule 306a(4) and 306a(5), that Plaintiff first acquired actual knowledge of the signing of the March 26, 2026 Order on April 2, 2026, and that all appellate deadlines run from that date;

2. Grant Plaintiff's Motion for New Trial and set aside the Order on Defendants' Plea to the Jurisdiction signed March 26, 2026, and the Final Judgment entered April 2, 2026;

3. Set this matter for oral hearing on Defendants' Plea to the Jurisdiction, with proper notice to all parties;

4. Grant all other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Kevin N. Bass

KEVIN N. BASS

Pro Se Plaintiff

[REDACTED]

Telephone: (512) 333-4092

Email: kbassphiladelphia@gmail.com

UNSWORN DECLARATION UNDER TEXAS CIVIL PRACTICE & REMEDIES
CODE SECTION 132.001

My name is Kevin N. Bass. My date of birth is December 7, 1984. My address is [REDACTED]
[REDACTED]

I am the Plaintiff in Cause No. DC-2025-CV-1817. I have read the foregoing Sworn Motion Under Rule 306a(5) and Motion for New Trial. The factual statements contained therein are within my personal knowledge and are true and correct.

I first acquired actual knowledge that the Court had signed the Order on Defendants' Plea to the Jurisdiction on April 2, 2026, when I discovered the docket entry through a review of publicly available court records data. Prior to April 2, 2026, I had neither received notice of the Order nor acquired actual knowledge of its signing. I had not received the Notice of Submission filed March 13, 2026, the Reply filed March 18, 2026, or the Proposed Order filed March 13, 2026.

The last notification I received from the eFileTexas system regarding this case was on March 3, 2026, confirming acceptance of my own filings. I received no notifications from the eFileTexas system after that date.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Lubbock County, State of Texas, on the 3rd day of April, 2026.

/s/ Kevin N. Bass
KEVIN N. BASS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Sworn Motion Under Rule 306a(5) and Motion for New Trial was served on the following counsel of record via email and via the eFileTexas electronic filing system on this 3rd day of April, 2026:

Scott D. Smith
Assistant Attorney General
Office of the Attorney General of Texas
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Email: scott.smith@oag.texas.gov
Karla Gutierrez
Office of the Attorney General of Texas
Email: karla.gutierrez@oag.texas.gov

/s/ Kevin N. Bass
KEVIN N. BASS

EXHIBITS

Exhibit A: Email records showing (1) last eFileTexas notification received March 3, 2026; (2) "Electronic Service Undeliverable" notifications dated March 3, 2026; (3) absence of any notifications after March 3, 2026.

Exhibit B: Notice of Submission filed March 13, 2026, with Automated Certificate of eService showing service to "kbassphiladelphi@gmail.com."

Exhibit C: Proposed Order filed March 13, 2026 (signed by the Court March 26, 2026), with Automated Certificate of eService showing service to "kbassphiladelphi@gmail.com."

Exhibit D: Reply in Support of Defendants' PTJ filed March 18, 2026, with Automated Certificate of eService showing service to "kbassphiladelphi@gmail.com."

Exhibit E: Notice of Judgment dated April 2, 2026, listing addresses for Defendants only and not listing any address for Plaintiff.

Exhibit F: Email from Scott D. Smith to kbassphiladelphia@gmail.com dated January 26, 2026, demonstrating counsel's knowledge of Plaintiff's correct email address.

Exhibit G: Screenshot of Plaintiff's eFileTexas user profile showing registered email as "kbassphiladelphia@gmail.com" (correct), demonstrating that the truncated address in the Automated Certificates of eService originated in the court's case management system, not Plaintiff's registration.

CAUSE NO. DC-2025-CV-1817
KEVIN N. BASS v. D'AGOSTINO & McSWEEN
IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT A

Electronic Service Undeliverable Notification

eFileTexas notification dated March 3, 2026, sent to all service contacts including Defendants' counsel, showing Plaintiff's email as "kbassphiladelphi@gmail.com" (truncated) and stating: "Please serve the document using a different method."

Exhibit to Plaintiff's Sworn Motion Under Rule 306a(5)
and Motion for New Trial Under Rule 329b
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817



Kevin Bass <kbassphiladelphia@gmail.com>

Electronic Service Undeliverable for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spearman,Darrin D'Agostino,Amanda McSween,Lauren Cobbs,Tamara Mancini,Simon Williams,Mia Myers,John DeToledo; Envelope Number: 111913822

2 messages

no-reply@efilingmail.tylertech.cloud <no-reply@efilingmail.tylertech.cloud>
To: kbassphiladelphia@gmail.com

Tue, Mar 3, 2026 at 7:16 AM

Service Undeliverable



Envelope Number: 111913822
Case Number: DC-2025-CV-1817
Case Style: Kevin Bassvs.Lori Rice-Spearman,Darrin D'Agostino,Amanda McSween,Lauren Cobbs,Tamara Mancini,Simon Williams,Mia Myers,John DeToledo

This is a notification that service was undeliverable for the contact(s) listed below. Please serve the document using a different method.

Service Undeliverable To	
Contact	Kevin N. Bass

Filing Details	
Case Number	DC-2025-CV-1817
Case Style	Kevin Bassvs.Lori Rice-Spearman,Darrin D'Agostino,Amanda McSween,Lauren Cobbs,Tamara Mancini,Simon Williams,Mia Myers,John DeToledo
Date/Time Submitted	3/3/2026 7:16 AM CST
Activity Requested	Amended Filing
Filed By	Kevin Bass
Service Contacts	Other Service Contacts not associated with a party on the case: Tristan Garza (tristan.garza@oag.texas.gov) Karla Gutierrez (karla.gutierrez@oag.texas.gov) Scott Smith (scott.smith@oag.texas.gov) Kevin Bass (kbassphiladelphi@gmail.com)

For technical assistance, contact your service provider



Need Help? [Help](#)
Visit: <https://efiletexas.gov/contacts.htm>
Email: support@eFileTexas.gov

Please do not reply to this email. It was automatically generated.

no-reply@efilingmail.tylertech.cloud <no-reply@efilingmail.tylertech.cloud>
To: kbassphiladelphia@gmail.com

Tue, Mar 3, 2026 at 7:16 AM



Service Undeliverable

Envelope Number: 111913822
Case Number: DC-2025-CV-1817
Case Style: Kevin Bassvs.Lori Rice-Spearman,Darrin D'Agostino,Amanda McSween,Lauren Cobbs,Tamara Mancini,Simon Williams,Mia Myers,John DeToledo

This is a notification that service was undeliverable for the contact(s) listed below. Please serve the document using a different method.

Service Undeliverable To	
Contact	Kevin N. Bass

Filing Details	
Case Number	DC-2025-CV-1817
Case Style	Kevin Bassvs.Lori Rice-Spearman,Darrin D'Agostino,Amanda McSween,Lauren Cobbs,Tamara Mancini,Simon Williams,Mia Myers,John DeToledo
Date/Time Submitted	3/3/2026 7:16 AM CST
Activity Requested	Answer/Response
Filed By	Kevin Bass
Service Contacts	Other Service Contacts not associated with a party on the case: Tristan Garza (tristan.garza@oag.texas.gov) Karla Gutierrez (karla.gutierrez@oag.texas.gov) Scott Smith (scott.smith@oag.texas.gov) Kevin Bass (kbassphiladelphi@gmail.com)

[Quoted text hidden]

CAUSE NO. DC-2025-CV-1817
KEVIN N. BASS v. D'AGOSTINO & McSWEEN
IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT A-2

Gmail eFile Notification History

Screenshot of Plaintiff's Gmail inbox filtered to eFileTexas notifications, showing all notifications are for Plaintiff's own filings. No notifications of Defendants' filings were ever received.

Exhibit to Plaintiff's Sworn Motion Under Rule 306a(5)
and Motion for New Trial Under Rule 329b
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817

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no-reply 2	Inbox	Filing Accepted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spearman,D
no-reply 2	Inbox	Filing Submitted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spearman,I
no-reply 2	Inbox	Electronic Service Undeliverable for Case: DC-2025-CV-1817; Kevin Bassvs.Lori F
no-reply	Inbox	Filing Accepted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spear
no-reply	Inbox	Filing Accepted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spear
no-reply	Inbox	Filing Submitted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spear
no-reply	Inbox	Filing Submitted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spear
no-reply	Inbox	Filing Returned for Envelope Number: 109682162 in Case: DC-2025-CV-1817, Kev
no-reply	Inbox	Filing Returned for Envelope Number: 109682162 in Case: DC-2025-CV-1817, Kev
no-reply 2	Inbox	Filing Submitted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spear
no-reply 5	Inbox	Filing Accepted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spearman,D
no-reply 5	Inbox	Filing Submitted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spearman,I
no-reply	Inbox	Filing Accepted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spear
no-reply	Inbox	Filing Returned for Envelope Number: 109019270 in Case: DC-2025-CV-1817, Kev
no-reply	Inbox	Filing Submitted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spearman,I
no-reply	Inbox	Filing Submitted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spearman,I
no-reply	Inbox	Filing Returned for Envelope Number: 108969925 in Case: DC-2025-CV-1817, Kev
no-reply	Inbox	Filing Submitted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spear

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EXHIBIT A-3

**Gmail Search — No Notifications After March 3,
2026**

Gmail search for eFileTexas notifications after March 3, 2026,
confirming zero notifications received after that date.

*Exhibit to Plaintiff's Sworn Motion Under Rule 306a(5)
and Motion for New Trial Under Rule 329b
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817*



after:2026/03/03 from:efilingmail.tylertech.cloud



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Has attachment To [Advanced search](#)

Most recent 1-3 c

no-reply 2	Inbox	Filing Accepted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spearman,D
no-reply 2	Inbox	Filing Submitted for Case: DC-2025-CV-1817; Kevin Bassvs.Lori Rice-Spearman,E
no-reply 2	Inbox	Electronic Service Undeliverable for Case: DC-2025-CV-1817; Kevin Bassvs.Lori F

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IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT B

Notice of Submission (March 13, 2026)

Defendants' Notice of Submission requesting the Court rule
without oral hearing. Automated Certificate of eService shows
Status: ERROR for Plaintiff.

Exhibit to Plaintiff's Sworn Motion Under Rule 306a(5)
and Motion for New Trial Under Rule 329b
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817

Copy from re:SearchTX

AUSTIN KINGHORN
Deputy Attorney General for Civil Litigation

KIMBERLY GDULA
Chief for 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

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 counsel of record below on this 13th day of March 2026.

Kevin N. Bass

Via E-File

[REDACTED]
[REDACTED]

Phone: 512-333-4092

Email: kbassphiladelphia@gmail.com

Pro Se Plaintiff

/s/ Scott D. Smith
SCOTT D. SMITH
Assistant Attorney General

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karla Gutierrez on behalf of Scott Smith
Bar No. 24011874
karla.gutierrez@oag.texas.gov
Envelope ID: 112412497
Filing Code Description: NOTC - Notice
Filing Description: Notice of Submission
Status as of 3/13/2026 3:55 PM CST

Associated Case Party: Darrin D'Agostino

Name	BarNumber	Email	TimestampSubmitted	Status
Karla Gutierrez		karla.gutierrez@oag.texas.gov	3/13/2026 3:42:10 PM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	3/13/2026 3:42:10 PM	SENT

Associated Case Party: Kevin Bass

Name	BarNumber	Email	TimestampSubmitted	Status
Kevin N. Bass		kbassphiladelphi@gmail.com	3/13/2026 3:42:10 PM	ERROR

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IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT C

**Proposed Order (Filed March 13, Signed March 26,
2026)**

Pre-drafted order submitted by Defendants on the same day as the
Notice of Submission. Signed by the Court on March 26, 2026.
Automated Certificate of eService shows Status: ERROR for
Plaintiff.

*Exhibit to Plaintiff's Sworn Motion Under Rule 306a(5)
and Motion for New Trial Under Rule 329b
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817*

SIGNED on March 26, 2026



HONORABLE LES HATCH

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karla Gutierrez on behalf of Scott Smith
Bar No. 24011874
karla.gutierrez@oag.texas.gov
Envelope ID: 112411933
Filing Code Description: ORDR - Order
Filing Description: 20260313_Proposed Order
Status as of 3/26/2026 4:09 PM CST

Associated Case Party: Darrin D'Agostino

Name	BarNumber	Email	TimestampSubmitted	Status
Karla Gutierrez		karla.gutierrez@oag.texas.gov	3/13/2026 3:36:55 PM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	3/13/2026 3:36:55 PM	SENT

Associated Case Party: Kevin Bass

Name	BarNumber	Email	TimestampSubmitted	Status
Kevin N. Bass		kbassphiladelphi@gmail.com	3/13/2026 3:36:55 PM	ERROR

CAUSE NO. DC-2025-CV-1817
KEVIN N. BASS v. D'AGOSTINO & McSWEEN
IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT D

**Reply in Support of Defendants' PTJ (March 18,
2026)**

Defendants' 10-page Reply raising new arguments regarding
ripeness, futility of amendment, and academic deference — none of
which Plaintiff had the opportunity to address.

*Exhibit to Plaintiff's Sworn Motion Under Rule 306a(5)
and Motion for New Trial Under Rule 329b
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817*

CAUSE NO. DC-2025-CV-1817

TB

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	OF LUBBOCK COUNTY, TEXAS
	§	
DARRIN D'AGOSTINO, D.O., M.P.H.,	§	
M.B.A., 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 of Texas Tech University	§	
Health Sciences Center,	§	
	§	
<i>Defendants.</i>	§	237th JUDICIAL DISTRICT

**DEFENDANTS' REPLY IN SUPPORT OF PLEA TO THE JURISDICTION OR, IN THE
ALTERNATIVE, PLEA IN ABATEMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, DARRIN D'AGOSTINO, D.O., M.P.H., M.B.A., 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 of Texas Tech University Health Sciences Center (collectively, "Defendants") in the above-entitled and numbered cause, and file this Reply in Support of their Plea to the Jurisdiction or, in the alternative, Plea in Abatement, and would respectfully show the Court as follows:

I. INTRODUCTION

Plaintiff's Fourth Amended Petition narrows its rhetoric but not its substance. Although Plaintiff now repeatedly characterizes this case as "procedure-only," the relief he seeks would

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,

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

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.

Kevin N. Bass

Phone: 512-333-4092

Email: kbassphiladelphia@gmail.com

Pro Se Plaintiff

/s/ Scott D. Smith

SCOTT D. SMITH

Assistant Attorney General

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karla Gutierrez on behalf of Scott Smith

Bar No. 24011874

karla.gutierrez@oag.texas.gov

Envelope ID: 112584730

Filing Code Description: Answer/Response

Filing Description: 20260318_Reply in Support of Defendants PTJ and Plea in Abatement

Status as of 3/18/2026 3:48 PM CST

Associated Case Party: Darrin D'Agostino

Name	BarNumber	Email	TimestampSubmitted	Status
Karla Gutierrez		karla.gutierrez@oag.texas.gov	3/18/2026 3:29:07 PM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	3/18/2026 3:29:07 PM	SENT

Associated Case Party: Kevin Bass

Name	BarNumber	Email	TimestampSubmitted	Status
Kevin N. Bass		kbassphiladelphia@gmail.com	3/18/2026 3:29:07 PM	SENT

CAUSE NO. DC-2025-CV-1817
KEVIN N. BASS v. D'AGOSTINO & McSWEEN
IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT E

Notice of Judgment (April 2, 2026)

Clerk's Notice of Judgment listing mailing addresses for all
eight Defendants. Plaintiff's name and address do not appear on
the notice.

*Exhibit to Plaintiff's Sworn Motion Under Rule 306a(5)
and Motion for New Trial Under Rule 329b
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817*



OFFICE OF THE DISTRICT CLERK

ROOM 105, COURTHOUSE
P O Box 10536
LUBBOCK, TEXAS 79408-3536
(806) 775-1317
FAX (806) 775-7992

SARA L. SMITH
DISTRICT CLERK
ALEXANDRA GONGORA
CHIEF DEPUTY

April 02, 2026

Lauren Cobbs
3601 4th Street Room 2B440
Lubbock, TX 79415

Darrin D'Agostino
3601 4th Street
Lubbock, TX 79415

John C. Detoleto, M.D.
3601 4th Street
Lubbock, TX 79430

Tamara Mancini
3601 4th Street
Lubbock, TX 79415

Amanda McSween
3601 4th Street
Lubbock, TX 79415

Mia Myers
3601 4th Street
Lubbock, TX 79430

Lori Rice-Spearman
3601 4th Street
Lubbock, TX 79415

Simon Williams
3601 4th Street
Lubbock, TX 79415

Re: Cause No. DC-2025-CV-1817
In the 237th District Court of Lubbock County, Texas
Kevin Bass vs. Lori Rice-Spearman, Darrin D'Agostino, Amanda McSween, Lauren Cobbs, Tamara Mancini, Simon Williams, Mia Myers, John DeToledo

JUDGMENT NOTICE

___x___ In compliance with Rule 306a(3) of the Texas Rules of Civil Procedure, you are hereby notified that an Order On Defendant's Plea To The Jurisdiction or, in the alternative, plea in abatement was signed in the above styled and numbered cause on March 26, 2026. If you are an individual (not a company), you may have a right to claim exemptions to protect your property against seizure for satisfaction of this judgment. Find out more by visiting [TexasLawHelp.org](https://www.texaslawhelp.org).

_____ In compliance with Rule 239(a) of the Texas Rules of Civil Procedure, you are hereby notified that a default judgment was signed in the above styled and numbered cause on . Judgment was entered in favor of Kevin Bass and against Lori Rice-spearman.

_____ **NOTICE OF SIGNING OF FINAL DIVORCE DECREE.** In compliance with Rule 306(a)(3) of the Texas Rules of Civil Procedure or Section 6.710 of the Texas Family Code, you are hereby notified that Divorce Decree was signed in the above styled and numbered cause on .

The original decree or order is on file in the office of the District Clerk of Lubbock County, Texas, and a copy can be obtained in the District Clerk's Archival Department located in the basement of the Lubbock County Courthouse, at the above address. You may also request a copy by emailing dcarchives@lubbockcounty.gov. Copy costs are \$1.00 per page. Please bring payment with you in the form of cash, credit/debit card, or money order. The total cost may be obtained by contacting the Archives Department at 806-775-1322.

Dated: April 02, 2026



Tammie Bell, Deputy District Clerk

CAUSE NO. DC-2025-CV-1817
KEVIN N. BASS v. D'AGOSTINO & McSWEEN
IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT F

Emails from Defendants' Counsel at Correct Address

Four emails from AAG Scott D. Smith to Plaintiff at kbassphiladelphia@gmail.com dated March 12, 13, 22, and 30, 2026, demonstrating counsel was in direct contact with Plaintiff at the correct email address throughout the period of failed e-service.

Exhibit to Plaintiff's Sworn Motion Under Rule 306a(5)
and Motion for New Trial Under Rule 329b
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817

CAUSE NO. DC-2025-CV-1817
KEVIN N. BASS v. D'AGOSTINO & McSWEEN
IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT F

**Emails from Defendants' Counsel Scott D. Smith to
Plaintiff at Correct Email Address During Period of
Failed Electronic Service**

Date:	March 12–30, 2026
Description:	Four emails from Assistant Attorney General Scott D. Smith to Plaintiff Kevin N. Bass at kbassphiladelphia@gmail.com, demonstrating that Defendants' counsel was in active, direct communication with Plaintiff at the correct email address during the same period (March 13–April 2, 2026) that the eFileTexas system was failing to deliver state-case filings to the truncated address “kbassphiladelphi@gmail.com.”

Exhibit to Plaintiff's Response to Defendants' Plea to the Jurisdiction
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817

CAUSE NO. DC-2025-CV-1817
KEVIN N. BASS v. D'AGOSTINO & McSWEEN
IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT F-1

Scott Smith to Kevin Bass — State Case Communication

Date:	March 12, 2026, 1:29 PM CST
Description:	Email from Defendants' counsel regarding the state case (Bass v. Rice-Spearman), sent to the correct email address kbassphiladelphia@gmail.com. Sent one day before the Notice of Submission was filed through the broken e-service system.

Exhibit to Plaintiff's Response to Defendants' Plea to the Jurisdiction
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817

From: Scott Smith <Scott.Smith@oag.texas.gov>
To: kbassphiladelphia@gmail.com
Date: Thu, 12 Mar 2026 19:29:03 +0000 (1:29 PM CST)
Subject: Bass v. Rice-Spearman, et al. - FERPA Records Request

Mr. Bass,

I am writing regarding your March 3, 2026 e-mail to the TTUHSC Registrar requesting additional FERPA inspection sessions and related items.

As you know, this matter is currently the subject of pending litigation. You have already been provided substantial access to your education records, including multiple in-person review sessions totaling approximately forty-three hours. Under these circumstances, TTUHSC will not schedule additional FERPA inspection sessions outside the litigation process at this time. To the extent you seek additional materials or information, those requests should be pursued through the discovery process in the litigation. TTUHSC believes it has already provided access to education records consistent with its obligations under applicable law.

Likewise, your request for a transcript amendment or annotation is also a matter currently the subject to litigation. As a court ruling may impact this request, TTUHSC will pause any processing of this request until the litigation is resolved.

I also need to reiterate for clarity going forward that because you are a litigant in an active case involving TTUHSC and its officials, all communications regarding these matters must be directed to counsel. Sending emails directly to TTUHSC personnel and copying me is not appropriate and creates unnecessary confusion. Going forward, please direct any communications concerning your records requests, the transcript issue you referenced, or any related matters to me only, and do not contact TTUHSC employees directly.

Nothing in this email should be construed as waiving any defenses or positions asserted by Defendants in the litigation.

Best Regards,

Scott D. Smith Assistant Attorney General General Litigation Division Office
of the Attorney General of Texas Phone: 512-917-3132 Email:
scott.smith@oag.texas.gov

CAUSE NO. DC-2025-CV-1817
KEVIN N. BASS v. D'AGOSTINO & McSWEEN
IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT F-2

**Scott Smith to Kevin Bass — Same Day as Notice of
Submission**

Date:	March 13, 2026, 3:17 PM CST
Description:	Email from Defendants' counsel to the correct email address, sent the same day Defendants filed the Notice of Submission (filed 3:36 PM) and Proposed Order through the e-service system that recorded "ERROR" for Plaintiff.

Exhibit to Plaintiff's Response to Defendants' Plea to the Jurisdiction
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817

From: Scott Smith <Scott.Smith@oag.texas.gov>
To: kbassphiladelphia@gmail.com
Date: Fri, 13 Mar 2026 21:17:00 +0000 (3:17 PM CST)
Subject: Re: TTUHSC Student Record – Follow-up on Outstanding FERPA
Inspection Request

Mr. Bass,

Your email below was sent directly to TTUHSC personnel despite my prior instruction that, because this matter is the subject of pending litigation, all communications regarding your records requests and related issues must be directed to counsel.

Please do not contact TTUHSC employees directly regarding these matters. As I previously explained, any requests for additional materials or information should be pursued through the discovery process in the litigation, and any communications concerning these issues should be directed to me only.

TTUHSC personnel have been instructed not to respond to your direct emails regarding matters that are the subject of the litigation.

Nothing in this email should be construed as waiving any defenses or positions asserted by Defendants.

Best Regards,

Scott D. Smith Assistant Attorney General General Litigation Division Office
of the Attorney General of Texas Phone: 512-917-3132 Email:
scott.smith@oag.texas.gov

CAUSE NO. DC-2025-CV-1817
KEVIN N. BASS v. D'AGOSTINO & McSWEEN
IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT F-3

Scott Smith to Kevin Bass — Continued Direct Contact

Date:	March 22, 2026, 3:45 PM CST
Description:	Email from Defendants' counsel regarding the parallel federal case, sent to the correct email address nine days after the Notice of Submission and four days after the Reply brief — neither of which Plaintiff received.

Exhibit to Plaintiff's Response to Defendants' Plea to the Jurisdiction
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817

From: Scott Smith <Scott.Smith@oag.texas.gov>
To: kbassphiladelphia@gmail.com
Date: Sun, 22 Mar 2026 21:45:12 +0000 (3:45 PM CST)
Subject: RE: Bass v. TTUHSC – Conference re: Motion for Leave to Exceed Page
Limitation

Mr. Bass,

Defendants are unopposed to your Reply Brief exceeding the 10-page limit.

Best Regards,

Scott D. Smith Assistant Attorney General General Litigation Division Office
of the Attorney General of Texas

CAUSE NO. DC-2025-CV-1817
KEVIN N. BASS v. D'AGOSTINO & McSWEEN
IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT F-4

**Scott Smith to Kevin Bass — Four Days After Order
Signed**

Date:	March 30, 2026, 5:40 PM CST
Description:	Email from Defendants' counsel regarding the federal case, sent four days after the Court signed the Order dismissing the state case — which Plaintiff still did not know about.

Exhibit to Plaintiff's Response to Defendants' Plea to the Jurisdiction
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817

From: Scott Smith <Scott.Smith@oag.texas.gov>
To: kbassphiladelphia@gmail.com
Date: Mon, 30 Mar 2026 23:40:26 +0000 (5:40 PM CST)
Subject: RE: Bass v. TTUHSC, No. 5:25-cv-00244-H-BV – Conference re Motion
for Leave to Amend

Mr. Bass,

Defendants are opposed.

Best Regards,

Scott D. Smith Assistant Attorney General General Litigation Division Office
of the Attorney General of Texas

CAUSE NO. DC-2025-CV-1817
KEVIN N. BASS v. D'AGOSTINO & McSWEEN
IN THE 237th JUDICIAL DISTRICT COURT
LUBBOCK COUNTY, TEXAS

EXHIBIT G

Plaintiff's eFileTexas Profile — Correct Email

Screenshot of Plaintiff's eFileTexas user profile showing registered email as "kbassphiladelphia@gmail.com" (correct), demonstrating the truncated address originated in the court's case management system.

*Exhibit to Plaintiff's Sworn Motion Under Rule 306a(5)
and Motion for New Trial Under Rule 329b
Bass v. D'Agostino & McSween, Cause No. DC-2025-CV-1817*

 User Profile **Profile Information** **Edit**

First Name

Kevin

Middle Name

Last Name

Bass

Email

kbassphiladelphia@gmail.com **Support**

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 113237136

Filing Code Description: Motion for New Trial

Filing Description: Plaintiff's Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b

Status as of 4/7/2026 8:20 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Tristan A Garza		tristan.garza@oag.texas.gov	4/3/2026 2:56:07 PM	SENT
Karla Gutierrez		karla.gutierrez@oag.texas.gov	4/3/2026 2:56:07 PM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	4/3/2026 2:56:07 PM	SENT
Kevin N. Bass		kbassphiladelphi@gmail.com	4/3/2026 2:56:07 PM	ERROR