Filed 4/23/2026 8:44 AM
Sara L. Smith
Lubbock County - 237th District Court
Lubbock County, Texas

CAUSE NO. DC-2025-CV-1817

TB

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT A

Electronic Service Undeliverable Notifications

Date: March 3, 2026

Description: Two eFileTexas notifications of March 3, 2026 to Plaintiff's Gmail, showing service to Plaintiff recorded as the truncated address "kbassphiladelphi@gmail.com" with instruction to serve by another method.

Gmail 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> Tue, Mar 3, 2026 at 7:16 AM
To: kbassphiladelphia@gmail.com

EFILE TEXAS.gov

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

EFILETEXAS.gov

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> Tue, Mar 3, 2026 at 7:16 AM
To: kbassphiladelphia@gmail.com

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,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT A-2

No eFileTexas Notifications, March 4 – April 2, 2026

Date: March 4 – April 2, 2026

Description: Gmail search confirming zero eFileTexas notifications received between March 4 and April 2, 2026. The last such notification before April 2, 2026 was on March 3, 2026.

Gmail

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

Compose

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,[
no-reply 2	Inbox	Electronic Service Undeliverable for Case: DC-2025-CV-1817; Kevin Bassvs.Lori F

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT B

Notice of Submission

Date: March 13, 2026, 3:42 p.m.

Description: Envelope ID 112412497. The Automated Certificate of eService on page 3 records Plaintiff's status as "ERROR" to kbassphiladelphi@gmail.com. The Certificate of Service on the same page hand-types Plaintiff's correct email.

Filed 3/13/2026 3:42 PM
Sara L. Smith
Lubbock County - 237th District Court
Lubbock County, Texas
SC

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
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,	§	
	§	
Defendants.	§	**237th JUDICIAL DISTRICT**

NOTICE OF SUBMISSION

TO THE HONORABLE JUDGE OF SAID COURT:

Please take notice that Defendants' Plea to the Jurisdiction or, in the Alternative, Plea in Abatement (the "Motion") will be submitted to the Court for consideration without oral hearing on **March 9, 2026, at 9:00 a.m.**

The Court will consider the Motion, Plaintiff's response, and any reply on file at that time. No personal appearance is required. The Court may rule on the Motion after the submission date without further notice or hearing.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

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
[redacted]
Phone: 512-333-4092
Email: kbassphiladelphia@gmail.com

Via E-File

Pro Se Plaintiff

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

Copy from re:SearchTX

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

Copy from re:SearchTX

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT B-2

Amended Notice of Submission

Date: March 13, 2026, 4:40 p.m.

Description: Envelope ID 112418015. Defendants amended the Notice of Submission fifty-eight minutes after filing the original. The Automated Certificate of eService on the Amended Notice continued to record Plaintiff's status as "ERROR"; Defendants corrected the submission date defect but not the service-to-Plaintiff defect.

Filed 3/13/2026 4:40 PM
Sara L. Smith
Lubbock County - 237th District Court
Lubbock County, Texas

CAUSE NO. DC-2025-CV-1817

BL

KEVIN N. BASS,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
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,	§	
	§	
Defendants.	§	**237th JUDICIAL DISTRICT**

AMENDED NOTICE OF SUBMISSION

TO THE HONORABLE JUDGE OF SAID COURT:

Please take notice that Defendants' Plea to the Jurisdiction or, in the Alternative, Plea in Abatement (the "Motion") will be submitted to the Court for consideration without oral hearing on **March 19, 2026, at 9:00 a.m.**

The Court will consider the Motion, Plaintiff's response, and any reply on file at that time. No personal appearance is required. The Court may rule on the Motion after the submission date without further notice or hearing.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

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
[redacted]
Phone: 512-333-4092
Email: kbassphiladelphia@gmail.com

Via E-File

Pro Se Plaintiff

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

Copy from re:SearchTX

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: 112418015
Filing Code Description: Amended Filing
Filing Description: Amended Notice of Submission
Status as of 3/13/2026 4:45 PM CST

Associated Case Party: Darrin D'Agostino

Name	BarNumber	Email	TimestampSubmitted	Status
Karla Gutierrez		karla.gutierrez@oag.texas.gov	3/13/2026 4:40:34 PM	SENT
Scott D. Smith		scott.smith@oag.texas.gov	3/13/2026 4:40:34 PM	SENT

Associated Case Party: Kevin Bass

Name	BarNumber	Email	TimestampSubmitted	Status
Kevin N. Bass		kbassphiladelphi@gmail.com	3/13/2026 4:40:34 PM	ERROR

Copy from re:SearchTX

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT C

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

Date: March 13, 2026 (signed March 26, 2026)

Description: Envelope ID 112411933. Pre-drafted by Defendants, signed by the Court on March 26, 2026 with the alternative Plea-in-Abatement paragraph struck in pen. The Automated Certificate of eService remained ERROR for the thirteen days between filing and signing.

Filed 3/26/2026 3:49 PM
Sara L. Smith
Lubbock County - 237th District Court
Lubbock County, Texas

CAUSE NO. DC-2025-CV-1817

TB

KEVIN N. BASS,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
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,	§	
	§	
Defendants.	§	**237th JUDICIAL DISTRICT**

ORDER ON DEFENDANTS' PLEA TO THE JURISDICTION OR, IN THE ALTERNATIVE, PLEA IN ABATEMENT

On this day the Court considered Defendants' Plea to the Jurisdiction or, in the Alternative, Plea in Abatement (the "Motion"). The Court, having considered the Motion, Plaintiff's response, Defendants' reply, the pleadings on file, and the applicable law, finds that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that Defendants' Plea to the Jurisdiction is GRANTED. The Court finds that it lacks subject-matter jurisdiction over Plaintiff's claims. Accordingly, Plaintiff's claims are DISMISSED without prejudice.

~~**IT IS FURTHER ORDERED** that, in the alternative, Defendants' Plea in Abatement is~~ GRANTED. Accordingly, all proceedings in this case are ABATED pending ~~final~~ disposition of the parallel civil action in the U.S. District Court for the ~~Northern~~ District of Texas styled *Kevin N. Bass v. Texas Tech University Health Sciences Center, et al.*, Civil Action No. 5:25-cv-00244-H-BV (the "~~federal action~~"). The parties shall notify the Court within fourteen (14) days after the ~~federal action has been finally disposed.~~

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SIGNED on March 26, 2026



HONORABLE LES HATCH

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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

Copy from re:SearchTX

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT D

Reply in Support of Plea to Jurisdiction

Date: March 18, 2026

Description: Envelope ID 112584730. Defendants' 10-page Reply raised three new arguments — academic deference, FERPA-analogy ripeness, and Miranda futility — that Plaintiff had no opportunity to address because the Reply was never served on him. Cert. eService: SENT to nonexistent truncated address.

Filed 3/18/2026 3:29 PM
Sara L. Smith
Lubbock County - 237th District Court
Lubbock County, Texas

TB

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
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,	§	
	§	
Defendants.	§	**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

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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.

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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

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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

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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*

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& 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

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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

Copy from re:SearchTX

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

Copy from re:SearchTX

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
[redacted]
Phone: 512-333-4092
Email: kbassphiladelphia@gmail.com

Pro Se Plaintiff

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

Copy from re:SearchTX

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		kbassphiladelphi@gmail.com	3/18/2026 3:29:07 PM	SENT

Copy from re:SearchTX

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT E

Notice of Judgment

Date: April 2, 2026

Description: Clerk's Notice of Judgment listing mailing addresses for eight Defendants. Plaintiff's name and address do not appear.

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. Detoledo, 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.

_____ 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

Tammie Bell, Deputy District Clerk

Copy from re:SearchTX

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT F-1

Scott Smith to Kevin Bass — State Case Communication

Date: March 12, 2026, 1:29 PM CDT

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.

Gmail **Kevin Bass <kbassphiladelphia@gmail.com>**

Bass v. Rice-Spearman, et al. – FERPA Records Request

Scott Smith <Scott.Smith@oag.texas.gov> Thu, Mar 12, 2026 at 2:29 PM
To: "kbassphiladelphia@gmail.com" <kbassphiladelphia@gmail.com>

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
P.O. Box 12548
Austin, Texas 78711-2548
Phone: 512-917-3132
Facsimile: 512-477-2348
Email: scott.smith@oag.texas.gov

PRIVILEGED AND CONFIDENTIAL: This communication is intended solely for the use of the individual or entity to which it is addressed, may be confidential and/or privileged pursuant to Government Code sections 552.101, 552.103, 552.107 and 552.111, and should not be disclosed without the express authorization of the Attorney General. If you have received this e-mail in error, immediately delete same and contact the sender.

-----Original Message-----
From: kbassphiladelphia@gmail.com <kbassphiladelphia@gmail.com>
Sent: Tuesday, March 3, 2026 11:29 PM
To: Registrar@ttuhsc.edu
Cc: Scott Smith <Scott.Smith@oag.texas.gov>; amanda.mcsween@ttuhsc.edu
Subject: Re: TTUHSC Student Record — Request for Additional Inspection Session(s) and Outstanding Items

Dear Office of the Registrar,

I am writing to request additional FERPA education-record inspection session(s) to continue the review that began with my October 2, 2025 request and was supplemented on October 20, 2025.

Despite sessions on December 12, 2025, January 5-8, 2026, and February 9-10, 2026, I have not been able to complete meaningful inspection and review of the full responsive set under the current conditions. Multiple categories of outstanding items remain.

1. Scheduling

Please propose at least two full-day in-person inspection dates during the weeks of March 10 and March 17, 2026 (9:00 AM - 4:00 PM). My
availability:

- Mon 3/10 through Fri 3/14: any day, any time
- Mon 3/17 through Fri 3/21: any day, any time

If no in-person dates are available those weeks, please propose the next available dates and, in the interim, provide a FERPA "other arrangement" sufficient for meaningful inspection/review (34 C.F.R.
Section 99.10(d)(2)).

2. Items to be staged

Please have the following available for inspection/review at the next
session:

A. The December 11, 2023 hearing recording, "as maintained," with playback controls sufficient for meaningful review (pause/rewind/skip). The recording was visible on the inspection laptop but I have not had sufficient time to inspect/review it given the volume of document records and session constraints.

B. The 22 referenced-but-not-produced items identified in my January 27, 2026 email (with TTUHSC production number crosswalk attached). If TTUHSC contends any item was already produced, please identify precisely where it appears (folder/filename/production number).

C. Any record maintained pursuant to 34 C.F.R. Section 99.32 (record of disclosures). If no such record exists, please confirm that in writing with the basis.

D. Any records added to the responsive set since the February 9-10 sessions.

3. Copies / alternative arrangement (renewed request)

I renew my request under 34 C.F.R. Section 99.10(d) for copies of my education records or, alternatively, secure read-only portal access for a defined period. The responsive set contains over 1,600 document records plus a 14-hour hearing video. Under the current conditions--handwritten notes only, no copies, no recording, escorted in-person sessions--meaningful inspection/review of the complete set is not feasible within a reasonable number of sessions.

If TTUHSC requires a per-page copying fee, please identify the fee schedule and I will remit payment.

4. Preservation

Please confirm that all education records responsive to my pending access and amendment requests will be preserved while those requests remain outstanding (34 C.F.R. Section 99.10(e)).

Please confirm receipt and advise on next steps.

Thank you,
Kevin Bass
[redacted]
512-333-4092
[redacted]

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT F-2

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

Date: March 13, 2026, 3:17 PM CDT

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.

Gmail

Kevin Bass <kbassphiladelphia@gmail.com>

Re: TTUHSC Student Record — Follow-up on Outstanding FERPA Inspection Request

Scott Smith <Scott.Smith@oag.texas.gov> Fri, Mar 13, 2026 at 4:17 PM
To: "kbassphiladelphia@gmail.com" <kbassphiladelphia@gmail.com>

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
P.O. Box 12548
Austin, Texas 78711-2548
Phone: 512-917-3132
Facsimile: 512-477-2348
Email: scott.smith@oag.texas.gov

PRIVILEGED AND CONFIDENTIAL: This communication is intended solely for the use of the individual or entity to which it is addressed, may be confidential and/or privileged pursuant to Government Code sections 552.101, 552.103, 552.107 and 552.111, and should not be disclosed without the express authorization of the Attorney General. If you have received this e-mail in error, immediately delete same and contact the sender.

From: kbassphiladelphia@gmail.com <kbassphiladelphia@gmail.com>
Sent: Friday, March 13, 2026 3:44 PM
To: Registrar@ttuhsc.edu <Registrar@ttuhsc.edu>
Cc: Scott Smith <Scott.Smith@oag.texas.gov>
Subject: Re: TTUHSC Student Record — Follow-up on Outstanding FERPA Inspection Request

[Quoted text hidden]

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT F-3

Scott Smith to Kevin Bass — Continued Direct Contact

Date: March 22, 2026, 3:45 PM CDT

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.

Gmail

Kevin Bass <kbassphiladelphia@gmail.com>

Bass v. TTUHSC — Conference re: Motion for Leave to Exceed Page Limitation

2 messages

kbassphiladelphia@gmail.com <kbassphiladelphia@gmail.com> Sun, Mar 22, 2026 at 4:36 PM
To: Scott.Smith@oag.texas.gov

Mr. Smith,

Pursuant to LR 7.1(a), I am writing to confer regarding a motion I intend to file. I plan to file a reply brief of approximately eleven pages in support of my Motion for Leave (Doc. 32), which exceeds the ten-page limitation of LR 7.2(c) by one page.

Do you oppose a motion for leave to exceed the page limitation?

Kevin Bass
512-333-4092

Scott Smith <Scott.Smith@oag.texas.gov> Sun, Mar 22, 2026 at 4:45 PM
To: "kbassphiladelphia@gmail.com" <kbassphiladelphia@gmail.com>

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
P.O. Box 12548
Austin, Texas 78711-2548
Phone: 512-917-3132
Facsimile: 512-477-2348
Email: scott.smith@oag.texas.gov

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[Quoted text hidden]

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT F-4

Scott Smith to Kevin Bass — Four Days After Order Signed

Date: March 30, 2026, 5:40 PM CDT

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.

Gmail **Kevin Bass <kbassphiladelphia@gmail.com>**

Bass v. TTUHSC, No. 5:25-cv-00244-H-BV — Conference re Motion for Leave to Amend

2 messages

kbassphiladelphia@gmail.com <kbassphiladelphia@gmail.com> Sun, Mar 29, 2026 at 3:05 PM
To: scott.smith@oag.texas.gov

Mr. Smith,

Pursuant to Local Rule 7.1, I am writing to confer regarding a motion I intend to file. I plan to move for leave to file a Second Amended Complaint that addresses the deficiencies identified in the Court's March 27, 2026 Order (Dkt. No. 42). Please let me know whether Defendants oppose.

Thank you.

Kevin N. Bass

Scott Smith <Scott.Smith@oag.texas.gov> Mon, Mar 30, 2026 at 6:40 PM
To: "kbassphiladelphia@gmail.com" <kbassphiladelphia@gmail.com>

Mr. Bass,

Defendants are opposed.

Best Regards,

Scott D. Smith
Assistant Attorney General
General Litigation Division

Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548
Phone: 512-917-3132
Facsimile: 512-477-2348
Email: scott.smith@oag.texas.gov

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[Quoted text hidden]

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., & AMANDA McSWEEN,	§	
	§	
	§	
Defendants.	§	

EXHIBIT G

Plaintiff's eFileTexas Profile — Correct Email Registered

Date: April 3, 2026 (screenshot)

Description: Screenshot of Plaintiff's eFileTexas user profile registering kbassphiladelphia@gmail.com as the correct email. Confirms the truncated address originated in the county case management system's service-contacts list, not in Plaintiff's eFileTexas registration.

User Profile

Profile Information

Edit

First Name
Kevin

Middle Name

Last Name
Bass

Email
kbassphiladelphia@gmail.com

Support

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., & AMANDA McSWEEN,	§	
	§	
	§	
Defendants.	§	

EXHIBIT H

FDB52DC0.zip Forensic Metadata (April 3, 2026 Zip Download)

Date: April 3, 2026, 12:15:45 a.m. CDT

Description: Forensic metadata for the zip package downloaded from Plaintiff's eFile-Texas account at 12:15 a.m. Central Time on April 3, 2026. File-system modification time 00:15:45 CDT / 05:15:45 UTC. SHA-256 digest fbe7ca4c2e6c1608bcc6fff96885f6248b4fef46a853a36f913815304ad466b5. Contains the four Defendants' filings Plaintiff had never received: the March 13 Notice of Submission, the March 13 Proposed Order, the March 18 Reply, and the April 2 Notice of Judgment, plus the eFileTexas zip-receipt.txt recording the Order and Zip Reference numbers. Fixes the outer bound of Plaintiff's actual knowledge of the signed Order.

EXHIBIT H — AUTHENTICITY CERTIFICATION

The zip package tendered as Exhibit H is preserved in its native form on Plaintiff's computer at the path below. The metadata recorded by the operating system and the SHA-256 hash of the file at the moment of its creation are reproduced here. The file has not been modified since the 12:15 a.m. Central Time download described in the Supplemental Unsworn Declaration (¶¶ 2–5). Any person with access to the file may independently verify these values.

Filename:	`FDB52DC0.zip`
Native path:	`C:\Users\Kevin\Downloads\FDB52DC0.zip`
File size (bytes):	`727,190`
Modification time (local):	`2026-04-03 00:15:45 Central Daylight Time (UTC-0500)`
Modification time (UTC):	`2026-04-03 05:15:45 UTC`
SHA-256 hash:	`fbe7ca4c2e6c1608bcc6fff96885f624 8b4fef46a853a36f913815304ad466b5`
eFileTexas Order number:	`fdb52dc0-204e-46f1-a4c6-fde614a3b931`
eFileTexas Zip Reference:	`7736a2c5-5cd1-4845-ba72-b58e46365846`

Reproduction of zip-receipt.txt (embedded in FDB52DC0.zip):

```
Order : fdb52dc0-204e-46f1-a4c6-fde614a3b931
Zip Reference : 7736a2c5-5cd1-4845-ba72-b58e46365846

Document Found
Case Number : DC-2025-CV-1817
Document Name : 20260313_Notice of Submission.pdf
Document Key : 3fe81fa2-4fbf-4754-9796-32de708f40d0
Document Found
Case Number : DC-2025-CV-1817
Document Name : 20260318_Reply in Support of Defendants PTJ and Pl.pdf
Document Key : 4373fca7-a746-4eb0-8526-9c28ff2fba5c
Document Found
Case Number : DC-2025-CV-1817
Document Name : 20260313_Proposed Order.pdf
Document Key : 373ee374-9ad4-4bcc-b37a-eca0d7006252
Document Found
Case Number : DC-2025-CV-1817
Document Name : Notice Of Judgment.pdf
Document Key : 763b78a9-bd57-4799-b7e4-df65f7795dc9
```

EXHIBIT H — ZIP CONTENTS

The following files are present inside FDB52DC0.zip. Each PDF in the list is a copy of one of Defendants' own filings and is also present on the public docket under its own envelope identifier.

#	Name	Size (bytes)	Timestamp
1	20260313_Notice of Submission_3FE81FA2.pdf	171,503	2026-04-03 05:15:14
2	20260318_Reply in Support of Defendants PTJ and Pl _4373FCA7.pdf	232,286	2026-04-03 05:15:14
3	20260313_Proposed Order_373EE374.pdf	185,583	2026-04-03 05:15:14
4	Notice Of Judgment_763B78A9.pdf	192,534	2026-04-03 05:15:14
5	zip-receipt.txt	710	2026-04-03 05:15:14

Total files: 5 Total uncompressed size: 782,616 bytes

The underlying PDFs listed above are cumulative with filings already on the public docket under their envelope IDs (112412497 for the Notice of Submission; 112411933 for the Proposed Order; 112584730 for the Reply; and the Clerk's Notice of Judgment entered April 2, 2026). The evidentiary value of Exhibit H lies in the zip container's file-system modification time (00:15:45 Central Time on April 3, 2026) and its embedded eFileTexas Order and Zip Reference numbers, not in re-tendering the enclosed filings. The native zip file is preserved on Plaintiff's computer and may be produced to the Court or to opposing counsel on request.

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., &	§	
AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT I

Gutierrez April 15, 2026 Courtesy-Copy Email

Date: April 15, 2026, 12:06 PM CDT

Description: Direct email from Karla Gutierrez, Office of the Attorney General, to Plaintiff at kbassphiladelphia@gmail.com (Gmail Message ID 19d921bfa9f0f0ab), with AAG Scott D. Smith copied, sent at 12:06 p.m. Central Time on April 15, 2026 — twenty days after this Court signed the Order and twelve days after Plaintiff filed his Motion for New Trial. First use by Defendants' counsel of the direct-email channel for any filing in this state case. Confirms the working channel was available throughout and Defendants declined to use it until after dispositive relief was obtained.

Gmail

Kevin Bass <kbassphiladelphia@gmail.com>

Courtesy Copy of Filed Response to Motion

1 message

Karla Gutierrez <Karla.Gutierrez@oag.texas.gov> Wed, Apr 15, 2026 at 12:06 PM
To: "kbassphiladelphia@gmail.com" <kbassphiladelphia@gmail.com>
Cc: Scott Smith <Scott.Smith@oag.texas.gov>

Mr. Bass,

The document attached is a courtesy copy of the Defendants Response in Opposition to Plaintiff Motion to Plaintiff's Sworn Motion Under Rule 306a(5) and Motion for New Trial.

Regards,

Karla Gutiérrez

Legal Assistant

General Litigation Division

Office of the Attorney General

209 W 14th Street, 6th Floor

Austin, Texas 78701

P. (512) 475-4053 | F. (512) 477-2348

E. karla.gutierrez@oag.texas.gov

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2 attachments



image001.gif
9K

20260414_Defendants Response in Opposition to Ps Motion for New Trial.pdf
223K

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., & AMANDA McSWEEN,	§	
	§	
	§	
Defendants.	§	

EXHIBIT J

Timeline of Events (March 3 – April 23, 2026; 51 days)

Date: March 3 – April 23, 2026

Description: Single-page chronology showing every filing, every Automated Certificate of eService status, every direct counsel email, and the zip download that fixed Plaintiff's actual knowledge. Key dates: March 3 (service defect originates); March 26 (Court signs Order); April 3 at 12:15 a.m. CDT (Plaintiff's first actual knowledge via zip download); April 15 at 12:06 p.m. CDT (Defendants' first direct-email use — after dispositive relief obtained).

TIMELINE OF EVENTS

Cause No. DC-2025-CV-1817 — Bass v. D'Agostino & McSween

Day	Date / Time	Event
Day 0	2026-03-03 7:16 a.m.	Plaintiff e-files 78-page Response to Plea + 4th Amended Petition.
Day 0	2026-03-03 7:16 a.m.	eFileTexas sends TWO 'Electronic Service Undeliverable' notifications to Plaintiff. Exhibit A.
Day 9	2026-03-12	Counsel Smith emails Plaintiff directly re FERPA records. Exhibit F.
Day 10	2026-03-13 3:17 p.m.	Counsel emails Plaintiff directly (19 min before NoS filing). Exhibit F.
Day 10	2026-03-13 3:36 p.m.	Proposed Order filed (Env. 112411933). Cert. eService: ERROR. Exhibit C.
Day 10	2026-03-13 3:42 p.m.	Notice of Submission filed (Env. 112412497). Cert. eService: ERROR. Exhibit B.
Day 10	2026-03-13 4:40 p.m.	Amended Notice of Submission filed (Env. 112418015). Cert. eService: ERROR. Exhibit B-2.
Day 15	2026-03-18 3:29 p.m.	Reply in Support of Plea filed (Env. 112584730). SENT to nonexistent address. Exhibit D.
Day 19	2026-03-22	Counsel emails Plaintiff directly re parallel federal case. Exhibit F.
Day 23	2026-03-26 4:09 p.m.	COURT SIGNS ORDER. re:SearchTX refreshes — still ERROR. Exhibit C.
Day 27	2026-03-30	Counsel emails Plaintiff directly re parallel federal case. Exhibit F.
Day 30	2026-04-02	Clerk's Notice of Judgment — no address for Plaintiff. Exhibit E.
Day 31	2026-04-03 0:15:45	ZIP DOWNLOAD. FIRST ACTUAL KNOWLEDGE. SHA-256 logged. Exhibit H.
Day 31	2026-04-03 2:56 p.m.	Plaintiff e-files Sworn MNT (Env. 113237136). 14h41m later.
Day 34	2026-04-06 6:07 p.m.	Plaintiff e-files corrective Erratum (Env. 113303288).
Day 42	2026-04-14 3:28 p.m.	Defendants' Response filed (Env. 113642659). Cert. eService: ERROR. Response at 9.
Day 42	2026-04-14 4:23 p.m.	Plaintiff files Notice of Correction of Case Contact Info (Env. 113648407).
Day 43	2026-04-15 12:06 p.m.	Gutierrez direct email — FIRST use of channel for this case, AFTER Order + MNT. Exhibit I.
Day 51	2026-04-23	Plaintiff files this Reply.

KEY PERIODS:

- 20-day Rule 306a(4) window: March 26 (signing) + 20 days = April 15, 2026. Plaintiff's first actual knowledge: April 3 (Day 31) — within the window.
- 42 days of continuous ERROR on Defendants' Cert. eService to Plaintiff.
- Direct-email channel used by Defendants' counsel four times pre-judgment (March 12, 13, 22, 30 — all other matters); first used for this state-case filing on April 15 — the day after Response in Opposition was filed.

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., & AMANDA McSWEEN,	§	
	§	
	§	
Defendants.	§	

EXHIBIT K

Scott Smith Jan 26, 2026 Direct-Email Service Acknowledgment (State Case)

Date: January 26, 2026, 2:38 PM CST

Description: Direct email from AAG Scott D. Smith to Plaintiff at kbassphiladelphia@gmail.com in this state case (DC-2025-CV-1817), subject: Re: DC-2025-CV-1817 – Courtesy copy of today's eFiled Amended Petition and Notice of Nonsuit. Smith writes: "Service via this email is fine. Thank you for sending." Confirms counsel's affirmative acknowledgment, in the state case, that the direct-email channel to Plaintiff's correct address was valid for service — 36 days before the March 3 eFileTexas service defect arose. Gmail Message ID 19bfc077acc15dc1.

Gmail

Re: DC-2025-CV-1817 — Courtesy copy of today's eFiled Amended Petition and Notice of Nonsuit

1 message

Scott Smith <Scott.Smith@oag.texas.gov> Mon, Jan 26, 2026 at 2:38 PM
To: kbassphiladelphia@gmail.com <kbassphiladelphia@gmail.com>

Hi Kevin,

Service via this email is fine. Thank you for sending. As for the state case, due to the newest amendment to the complaint, I would appreciate having until Monday, February 9, 206 to file Defendants' Answer.

Please reply to confirm your agreement that the remaining Defendants have until Monday, February 9, 2026 to file their Answer.

I appreciate your attention to this matter.

Best Regards,

Scott D. Smith
Assistant Attorney General
General Litigation Division

Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548
Phone: 512-917-3132
Facsimile: 512-477-2348
Email: scott.smith@oag.texas.gov

PRIVILEGED AND CONFIDENTIAL: This communication is intended solely for the use of the individual or entity to which it is addressed, may be confidential and/or privileged pursuant to Government Code sections 552.101, 552.103, 552.107 and 552.111, and should not be disclosed without the express authorization of the Attorney General. If you have received this e-mail in error, immediately delete same and contact the sender.

From: Kevin Bass <kbassphiladelphia@gmail.com>
Sent: Thursday, January 22, 2026 12:30:55 PM
To: Scott Smith <Scott.Smith@oag.texas.gov>
Subject: DC-2025-CV-1817 — Courtesy copy of today's eFiled Amended Petition and Notice of Nonsuit

Counsel Smith,

As a courtesy, I am providing copies of the two documents I submitted today via eFileTexas in DC-2025-CV-1817:

1. Third Amended Verified Original Petition

2. Plaintiff's Notice of Nonsuit Without Prejudice as to Certain Defendants

Please let me know if you prefer service through a specific eService address going forward for the state case.

Regards,
Kevin Bass

Exhibit rendered from raw RFC 822 source on 2026-04-21. SHA-256 of source .eml: 355b5a8582f033274b2134a886373ce7922d198b508f4663916d828524a04116. Accompanying .eml filed for Rule 902(14) authentication.

CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	OF LUBBOCK COUNTY, TEXAS
	§	
v.	§	237th JUDICIAL DISTRICT
	§	
DARRIN D'AGOSTINO, D.O., & AMANDA McSWEEN,	§	
	§	
Defendants.	§	

EXHIBIT L

Proposed Form of Fifth Amended Verified Original Petition (Tendered for Miranda Inspection; Not the Operative Pleading)

Date: Tendered April 23, 2026

Description: Proposed form of Fifth Amended Verified Original Petition, tendered with this Reply for the Court's inspection under Texas Department of Parks & Wildlife v. Miranda, 133 S.W.3d 217 (Tex. 2004), in support of Section VII of the Reply. The Prefatory Statement on the face of the document confirms it is not filed as the operative pleading of this cause and would activate only upon the Court's granting of new trial and entry of leave to amend under Tex. R. Civ. P. 63. The tendered form supplies, on its face, the particularized jurisdictional allegations responsive to Miranda, the ministerial-versus-discretionary distinction, the scope of academic deference, the inapplicability of the FERPA analogy, and the expiration of OP 77.13's forty-five-day window — demonstrating concrete non-futility of amendment.

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.	§	

PROPOSED FORM OF FIFTH AMENDED VERIFIED ORIGINAL PETITION (Limited OP 77.13 + Tex. Gov't Code § 559.004 Record-Procedure Relief Only; Prospective Official-Capacity Relief Only; No Damages; No Federal Causes of Action; Tendered as Exhibit L to Plaintiff's Reply in Support of Sworn Motion Under Rule 306a(5) and Motion for New Trial for the Court's Inspection Under Miranda to Confirm Non-Futility of Amendment; Not Filed as the Operative Pleading of This Cause; Subject to Rule 63 Leave Upon the Granting of New Trial)

TO THE HONORABLE JUDGE OF SAID COURT:

PREFATORY STATEMENT

This document is tendered as Exhibit L to Plaintiff's Reply in Support of Sworn Motion Under Rule 306a(5) and Motion for New Trial as the proposed form of Fifth Amended Verified Original Petition. It is not filed as the operative pleading of this cause. Upon the Court's granting of new trial and entry of leave to amend under Texas Rule of Civil Procedure 63, Plaintiff will

file this document, or a pleading substantially in this form, as the operative petition. Plaintiff tenders this document at this juncture to enable the Court's inspection under Texas Department of Parks & Wildlife v. Miranda, 133 S.W.3d 217 (Tex. 2004), of the particularized jurisdictional allegations Plaintiff would assert if granted leave, and thereby to confirm that amendment is not futile. References below to actions this "Petition" takes, to parties' appearance and service, or to relief "prayed" are stated in the form this pleading would have if filed as the operative petition; no such step is completed by the tender of this exhibit.

COMES NOW, KEVIN N. BASS, Plaintiff in the above-entitled and numbered cause, proceeding pro se, and, subject to the Court's granting of Plaintiff's Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b and leave under Texas Rule of Civil Procedure 63, tenders this proposed form of Fifth Amended Verified Original Petition as a complete replacement for, and not a supplement to, the Fourth Amended Verified Original Petition filed March 3, 2026. This proposed form of Petition updates the factual record to reflect events occurring between March 3, 2026 and the date of this tender; replies with particularity to the jurisdictional arguments Defendants advanced for the first time in their March 18, 2026 Reply in Support of Plea to the Jurisdiction; and concretely demonstrates, by its own content, that amendment of Plaintiff's pleading is not futile under Miranda, 133 S.W.3d 217. Plaintiff respectfully shows the Court as follows:

I.

PARTIES / SERVICE

1. Plaintiff Kevin N. Bass is a resident of Lubbock County, Texas, and proceeds pro se.
2. Defendants are officials of Texas Tech University Health Sciences Center ("TTUHSC") sued only in their official capacities for prospective relief. Defendants are named because HSC OP 77.13 and Tex. Gov't Code § 559.004 impose or contemplate discrete, ministerial, non-discretionary procedural roles necessary to implement the inspection/review and written-response steps invoked by Plaintiff's December 30, 2025 request — specifically: (i) the EVPA's limited assistance function when a student is uncertain where responsive education records are maintained, and (ii) the University Registrar's custodial processing of transcript-related education-record inspection/review logistics and the related amendment/annotation and dispute-statement procedure steps. Defendants are:
    a. Darrin D'Agostino, D.O., M.P.H., M.B.A., Provost and Executive Vice President of Academics of Texas Tech University Health Sciences Center ("EVPA"); and

b. Amanda McSween, Managing Director of Enrollment Services and University Registrar of Texas Tech University Health Sciences Center.

Plaintiff does not seek relief based on generalized supervisory authority alone. Defendants are named because each has a specific, identifiable, non-discretionary role in the procedure Plaintiff seeks to compel.

3. For service of process, Plaintiff requests that the District Clerk issue citation for each Defendant upon request and that service of citation and a copy of this Petition be accomplished in accordance with Tex. R. Civ. P. 99, 103, and 106. Plaintiff requests service at TTUHSC's principal place of business, Texas Tech University Health Sciences Center, 3601 4th Street, Lubbock, Texas 79430, unless the clerk or authorized server requires a different address for a particular Defendant.
4. Counsel of record. Assistant Attorney General Scott D. Smith of the Office of the Attorney General of Texas, General Litigation Division, has appeared on behalf of Defendants in this cause and in the parallel federal action Bass v. TTUHSC, et al., No. 5:25-cv-00244-H-BV (N.D. Tex.). AAG Smith has used Plaintiff's correct direct-email address kbassphiladelphia@gmail.com for direct case-related correspondence in this state case on at least January 26, 2026, March 12, 2026, and March 13, 2026, and in the parallel federal case on at least March 22, 2026 and March 30, 2026. On January 26, 2026, AAG Smith expressly acknowledged, in writing and in this state case, that "Service via this email is fine." Plaintiff references counsel's acknowledgment only for the proposition that the direct-email channel to Plaintiff's correct address was and is a valid service channel when Defendants choose to use it.

II.
JURISDICTION AND VENUE

5. Subject-matter jurisdiction. This Court has subject-matter jurisdiction over claims seeking prospective injunctive relief against state officials to compel performance of non-discretionary legal duties and to cease ultra vires conduct. Plaintiff seeks only prospective relief and no damages.
6. Ultra vires jurisdiction — two independent bases. This Court has subject-matter jurisdiction under the ultra vires exception recognized in City of El Paso v. Heinrich, 284 S.W.3d 366, 372–73 (Tex. 2009), on two independent bases, each pleaded separately below and each sufficient standing alone:

a. Heinrich Prong 2 (failure to perform ministerial duties). Defendants fail to perform the ministerial, non-discretionary steps that Tex. Gov't Code §

559.004 and TTUHSC's published implementing procedure (HSC OP 77.13) impose on the specific officials named. Plaintiff does not challenge Defendants' discretion to design a reasonable procedure; Plaintiff challenges Defendants' failure to perform the specific ministerial steps within the procedure Defendants themselves published.

b. Houston Belt predicate-fact jurisdiction. Under Houston Belt & Terminal Ry. Co. v. City of Houston, 487 S.W.3d 154, 163 (Tex. 2016), where a statute or policy conditions the exercise of discretion on specific predicate facts, an official who acts in violation of those predicates acts ultra vires. TTUHSC's publication of OP 77.13 with specific time limits, procedural steps, and written-response obligations establishes such predicate-fact conditions on the exercise of discretion to implement § 559.004. Defendants' failure to act within those predicate conditions is ultra vires.

7. Venue. Venue is proper in Lubbock County because Plaintiff seeks injunctive relief against Defendants, and a writ of injunction is tried in the county where the party against whom the writ is sought is domiciled. Defendants are domiciled in Lubbock County, Texas. Tex. Civ. Prac. & Rem. Code § 65.023(a).

8. Jurisdictional-facts posture (Miranda). Under Miranda, 133 S.W.3d at 226–27, dismissal for want of subject-matter jurisdiction is proper only where "the pleadings affirmatively negate the existence of jurisdiction"; where the pleadings do not negate jurisdiction, the plaintiff is entitled to an opportunity to amend. As set forth throughout this Petition, Plaintiff's allegations, taken as true at this stage, affirmatively establish (not negate) jurisdiction under the ultra vires framework. To the extent the Court considers jurisdictional-facts evidence under Miranda's second prong, id. at 227, Plaintiff tenders with his companion Reply in Support of Sworn Motion Under Rule 306a(5) and Motion for New Trial specific evidence of Defendants' non-performance, Defendants' conduct, and the procedural record of this cause.

III.

LIMITED SCOPE / NON-DUPLICATION / NO FEDERAL CLAIMS

9. FIREWALL / PROCEDURE-ONLY SCOPE LOCK. This action challenges only Defendants' post-December 30, 2025 implementation of the ministerial inspection/review and response mechanics required by TTUHSC HSC OP 77.13 and Tex. Gov't Code § 559.004. Plaintiff seeks only prospective official-capacity relief compelling a workable, reasonable, non-unduly burdensome procedure. Plaintiff seeks no damages.

10. NO MERITS / NO ACCURACY / NO FEDERAL ISSUES. Plaintiff does not ask this Court to decide whether any disputed education-record item is true, false, accurate, or justified; does not ask this Court to adjudicate the merits of any underlying disciplinary decision or exclusion measure; and asserts no federal cause of action and requests no adjudication of any federal-law issue. Any mention of other proceedings is for scope clarification only and is not intended to adopt or incorporate another pleading's allegations. Nothing in this Petition depends upon, invokes, or implicates the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, or its implementing regulations at 34 C.F.R. Part 99, as a source of the duties Plaintiff seeks to enforce.
11. Definition of "education records." As used in this Petition, "education records" means only those student education records governed by TTUHSC's published Student Education Records procedure (HSC OP 77.13) and the related state-law record-procedure obligations discussed herein.
12. Non-duplication with parallel federal case. Plaintiff acknowledges the existence of the parallel federal case, Bass v. Texas Tech University Health Sciences Center, et al., No. 5:25-cv-00244-H-BV (N.D. Tex.), but that case asserts federal-law causes of action distinct from the state-law claims pleaded here. The two cases are not duplicative: each rests on a different legal theory, each seeks different relief, and the state-law procedural claims pleaded here cannot be and are not asserted in the federal forum. Abatement on grounds of duplicative litigation is therefore inappropriate; Defendants' Plea in Abatement on that ground was stricken in pen by this Court when it signed the March 26, 2026 Order (as reflected in the signed Order itself, tendered as Exhibit C to the companion Reply).

IV.

FACTS

A. Statutory and Policy Framework

13. TTUHSC is a "state governmental body" within the meaning of Tex. Gov't Code § 559.001. TTUHSC maintains Plaintiff's education records, including his official transcript.
14. TTUHSC has issued official transcripts for Plaintiff showing the notation "Administrative Dismissal Effective 01-11-2024" (or substantially similar wording). The disputed notation is republished to third parties each time an official transcript is requested or issued, including through TTUHSC's electronic transcript-verification service. Plaintiff disputes that record item and invokes the OP 77.13 / § 559.004 procedure concerning

that disputed record item. Plaintiff's dispute is presented here only to identify the record item that triggers OP 77.13 / § 559.004 procedures; Plaintiff does not ask this Court to determine whether the notation is true or false or to direct any substantive change to the transcript record.

15. TTUHSC has published a Student Education Records policy (HSC OP 77.13) providing:
    a. a right to inspect and review education records upon a written request, including a requirement that the records custodian arrange access for inspection and review within forty-five (45) days of receipt of a proper written request and notify the student of the time and place for inspection;
    b. a procedure to request amendment of education records, requiring the student to identify the part of the record at issue and specify the student's basis for requesting amendment or annotation;
    c. if amendment is denied, the right to request a hearing under OP 77.13;
    d. a post-decision dispute-statement remedy requiring that a student's written statement be maintained with the contested portion and disclosed whenever the contested portion is disclosed; and
    e. that a student's written access request must identify, as precisely as possible, the record(s) the student wishes to inspect, and that copies of written access requests are to be maintained in the student file in which the requested education record is maintained.
16. EVPA assistance function. OP 77.13 provides that if a student is uncertain what office maintains the education records at issue, the student may submit a written request for assistance to the EVPA. Plaintiff invokes this step only to the extent the OP 77.13 condition is met and/or the EVPA has received such a request.

B. Plaintiff's December 30, 2025 Request and the Pre-Expiration Period

17. On December 30, 2025, Plaintiff submitted a written request invoking OP 77.13 and Tex. Gov't Code § 559.004 to inspect and review the education-record materials relating to the dismissal notation and to initiate the OP 77.13 correction/annotation process. The "education-record materials" and "responsive set" referenced in this Petition are limited to the education-record materials relating to the transcript notation identified in ¶ 14.
18. Pre-request offerings. Before Plaintiff's formal December 30, 2025 written request, TTUHSC offered Plaintiff limited, time-restricted remote inspection/review sessions and imposed restrictions prohibiting recording, photographing, or otherwise capturing the content shown. In a one-hour remote session on December 12, 2025, Plaintiff was able to review only approximately twenty (20) items from the responsive set that ul-

timately comprised more than 1,600 PDF documents containing a substantially larger number of embedded individual records. At least one remote session was offered with less than 24 hours' notice.

19. Post-request offerings — escorted in-person only. Since Plaintiff's December 30, 2025 request, Defendants have offered only limited, escorted in-person inspection/review sessions and have rescheduled or postponed sessions. Under the current session format and postponements, Plaintiff has not been provided a workable opportunity to complete inspection/review of the responsive set within a reasonable period or on a schedule reasonably calculated to permit completion within OP 77.13's stated time limits.
20. Conditions imposed. In written scheduling communications implementing the inspection/review step, TTUHSC's Registrar's office limited Plaintiff's review to escorted, in-person viewing at a designated location within a 9:00 a.m. to 4:00 p.m. window, subject to the following conditions: (i) Plaintiff would not be permitted to take any action that may create a copy of any document; (ii) a TTUHSC staff member would be present at all times as an escort; (iii) the door to the review room was required to remain open at all times; and (iv) the inspection laptop was required to be surrendered any time Plaintiff left the room, including for restroom breaks.
21. Plaintiff's responsive requests. Plaintiff responded that he could attend the offered multi-day inspection sessions under the outlined conditions, while requesting a neutral documentation approach so he could document what he was shown for purposes of identifying the disputed record components "as precisely as possible" for the subsequent written-request steps.
22. Denials of documentation accommodations. In confirming the inspection protocol, TTUHSC's Registrar's office denied Plaintiff's request to have a third-party observer present during inspection/review and denied Plaintiff's request to make an audio recording during inspection/review. Plaintiff also requested that his spouse be allowed to attend as an observer and provided a signed FERPA consent form under 34 C.F.R. § 99.30 designating her as an authorized recipient, but the request was denied. Plaintiff requested written policy basis for any refusal; none was provided. The Registrar's office further stated: "Failure to follow the established protocol will result in you forfeiting the ability to review your record until you can comply with the protocol."
23. January 5–8, 2026 inspection window. TTUHSC's Registrar's office scheduled the in-person inspection/review sessions for January 5, 6, and 8, 2026, and later added an additional in-person session on January 7, 2026, all within the 9:00 a.m. to 4:00 p.m. window described in ¶ 20.

24. Volume and incompletion of inspection. During the January 5–8, 2026 sessions, Defendants presented for review more than 1,600 PDF documents, which collectively contained a substantially larger number of individual education-record items embedded within them — including attachments, threaded email chains, compound exhibits, and consolidated policy and procedure documents — and which aggregated to many thousands of pages of content. The records included emails, memoranda, forms, evaluations, policies, and correspondence. Under the restrictions described in ¶¶ 20–22 — no copies, no recording, no third-party observer, handwritten notes only, laptop surrendered for each restroom break — Plaintiff was unable to complete a comprehensive review of the full responsive set and was unable to identify all disputed record components "as precisely as possible" as OP 77.13 contemplates for an amendment/annotation request.
25. Hearing-video review. The production also included a video recording of the December 11, 2023 dismissal hearing, approximately fourteen (14) hours in length. During a prior review session limited to audio playback, the hearing recording displayed apparent discontinuities in the audio record. The video was available for viewing on the inspection laptop under the same conditions: no copies, no recording, no observer, and mandatory laptop surrender upon leaving the room. Given the volume of document records to review, the four-day time constraint, and the conditions imposed, Plaintiff was unable to meaningfully review the 14-hour hearing video while also inspecting the more than 1,600 PDF documents described in ¶ 24. Plaintiff has not had the opportunity to review the video recording in full. A meaningful review of the hearing video alone would require most or all of the allotted session time.
26. Effect on OP 77.13 specificity requirement. Without workable inspection/review access, Plaintiff cannot identify "as precisely as possible" the record items to be corrected or annotated, which OP 77.13 treats as a prerequisite to completing the amendment request procedure.

C. Amendment Requests and Responses (January 2026)

27. January 20, 2026 rejection. On January 20, 2026, the Office of the Registrar rejected Plaintiff's initial amendment/annotation submission and instructed Plaintiff to resubmit, without providing substantive guidance on the format or specificity required. This rejection further delayed Plaintiff's ability to proceed through the OP 77.13 process.
28. January 26, 2026 Step-2 submission. On January 26, 2026, Plaintiff submitted a Step-2 written request under OP 77.13 to Dr. Erin Justyna, TTUHSC Associate Vice President/Provost, requesting amendment or annotation of the transcript notation "Adminis-

trative Dismissal Effective 01-11-2024." Defendants D'Agostino and McSween were copied on this request.

29. January 26, 2026 counsel acknowledgment. Also on January 26, 2026, Plaintiff sent AAG Scott D. Smith (counsel for Defendants in this cause) a courtesy copy of an amended pleading and Notice of Nonsuit by direct email to scott.smith@oag.texas.gov. AAG Smith responded at 2:38 p.m. Central Time the same day by direct email from his official Office-of-the-Attorney-General account to Plaintiff's correct email address kbassphiladelphia@gmail.com, stating: "Service via this email is fine. Thank you for sending." That email is preserved with Gmail Message ID 19bfc077acc15dc1, subject "Re: DC-2025-CV-1817 — Courtesy copy of today's eFiled Amended Petition and Notice of Nonsuit," and evidences counsel's contemporaneous acknowledgment, in this state case and before the March 3, 2026 eFileTexas service defect arose, that the direct-email channel to Plaintiff's correct address was valid for service.
30. January 27, 2026 punch list. On January 27, 2026, Plaintiff submitted a 22-item written punch list to the Office of the Registrar identifying specific education records that were referenced in or by other records produced during the January 5–8 inspection but that were not themselves produced for inspection. Plaintiff included TTUHSC production numbers for each item.

D. Expiration of OP 77.13 Window and Pre-March 3 Correspondence

31. Plaintiff requested that TTUHSC process his request under OP 77.13 and Tex. Gov't Code § 559.004 (including issuance of the written response contemplated by OP 77.13 / § 559.004). Any later hearing step, if triggered by OP 77.13, is referenced only to explain why workable inspection/review is necessary. If the OP 77.13 process results in no change and Plaintiff submits a dispute statement, Plaintiff seeks only the ministerial maintenance of any dispute statement as part of the education record as OP 77.13 contemplates.
32. Plaintiff's Step-2 written amendment/annotation request (¶ 28) has been submitted and remains pending without response. No written decision — granting, denying, or otherwise disposing of the request — has issued through a workable procedure. Plaintiff does not seek to compel any hearing step in this Petition; Plaintiff seeks only that Defendants process the pending request to a written decision within a reasonable time.
33. Forty-five (45) days from Plaintiff's December 30, 2025 request was February 13, 2026. That deadline has passed. Defendants have not arranged or implemented a workable inspection/review format that would permit Plaintiff to complete the inspection/review step and proceed through the remaining OP 77.13 / § 559.004 steps within the 45-day window. On February 22, 2026, Plaintiff sent a follow-up letter to the Office of the Reg-

istrar documenting the expiration of the 45-day deadline and requesting that Defendants implement a workable procedure.

34. No alternative format proposed. Defendants have not proposed any alternative arrangement — such as secure portal access, electronic copies, or any other format — to allow Plaintiff to complete the inspection/review and amendment/annotation process. The only format offered remains the escorted in-person sessions described in ¶ 20 under the conditions that prevented completion during January 5–8, 2026.

35. State-of-affairs on March 3, 2026 (filing of Fourth Amended Petition). As of March 3, 2026, Defendants had not arranged or implemented a workable inspection/review format and a reasonable, workable schedule reasonably calculated to complete the OP 77.13 record-access and correction/annotation process within OP 77.13's time limits. The 45-day window had expired. Defendants had not produced the records identified in Plaintiff's January 27 punch list. Defendants had not issued a written response to Plaintiff's January 26 Step-2 amendment request. Defendants had not proposed any alternative inspection format. The record-procedure required by § 559.004 and OP 77.13 remained incomplete on all three fronts.

E. Post-March 3, 2026 Developments

36. Continued non-performance through the date of this Petition. Between March 3, 2026 and the date of this Petition, Defendants have not, at any time:

    a. produced the education-records identified in Plaintiff's January 27, 2026 twenty-two-item written punch list;
    b. issued any written decision — granting, denying, or otherwise disposing — of Plaintiff's January 26, 2026 Step-2 amendment-annotation request;
    c. proposed any alternative inspection-and-review format to replace the escorted in-person format that prevented completion during January 5–8, 2026;
    d. identified in writing any policy basis for the denial of Plaintiff's requests for a third-party observer, an audio-visual record of the inspection, or his spouse's attendance under signed FERPA consent; or
    e. supplemented, corrected, or revised the inspection-format offerings previously made.

37. Continued use by counsel of direct-email channel in state case. Between March 3, 2026 and the date of this Petition, AAG Scott D. Smith used Plaintiff's correct direct-email address kbassphiladelphia@gmail.com for direct state-case correspondence on March 12, 2026 (regarding FERPA records), March 13, 2026 (regarding TTUHSC follow-up),

and — following the March 26, 2026 Order and the April 2, 2026 Notice of Judgment — on April 15, 2026 (Karla Gutierrez on behalf of AAG Smith transmitting Defendants' April 14 Response in Opposition to Plaintiff's Motion for New Trial). AAG Smith also used the same channel for direct correspondence in the parallel federal case on March 22, 2026 and March 30, 2026. Through this entire period, AAG Smith's January 26, 2026 acknowledgment that "Service via this email is fine" in this state case remained uncorrected, unretracted, and unmodified.

38. Number of days the § 559.004 / OP 77.13 procedure has remained incomplete. As of the date of this Petition, more than one hundred and ten (110) days have elapsed since Plaintiff's December 30, 2025 request; more than sixty-five (65) days have elapsed since the February 13, 2026 expiration of the forty-five-day OP 77.13 window; and more than eighty-three (83) days have elapsed since Plaintiff's January 27, 2026 punch list. Defendants' non-performance of the ministerial procedure steps identified above is continuing.

39. Defendants' March 18, 2026 Reply in Support of Plea. On March 18, 2026, Defendants filed a Reply in Support of Plea to the Jurisdiction (Envelope ID 112584730) introducing for the first time three arguments that had not appeared in the December 30, 2025 Plea: (i) that the academic-deference line of cases (Ewing, Than, Alcorn) extends from the merits of academic and disciplinary decisions to the administration of education records (Reply § II.D); (ii) that OP 77.13's access language should be narrowly construed by analogy to FERPA (Reply § II.E); and (iii) that further amendment of Plaintiff's pleading would be "futile" under Miranda (Reply § II.G). Because the Reply was filed through the eFileTexas system's truncated "kbassphiladelphi@gmail.com" address with service status SENT to a nonexistent recipient, Plaintiff did not receive the Reply and did not learn of these new arguments until on or about April 2–3, 2026. Plaintiff addresses each of the three new arguments in the jurisdictional allegations that follow and in his companion Reply in Support of Sworn Motion Under Rule 306a(5) and Motion for New Trial.

V.

JURISDICTIONAL ALLEGATIONS IN RESPONSE TO DEFENDANTS' MARCH 18, 2026 REPLY

A. Section 559.004 Imposes Ministerial Duties Within the Heinrich Framework

40. Mandatory language. Tex. Gov't Code § 559.004 provides, in relevant part, that a state governmental body "shall establish a reasonable procedure" under which an individual

is entitled to have the body correct information about the individual that is incorrect, and that the procedure "may not unduly burden" an individual using the procedure. The Legislature's use of "shall" and "may not" imposes non-discretionary obligations on the responsible officials. The Texas Supreme Court has repeatedly held that "shall" in a state statute expresses a mandatory, not directory, command unless context compels otherwise. See Helena Chem. Co. v. Wilkins, 47 S.W.3d 486, 493 (Tex. 2001).

41. Distinction between design-discretion and implementation-compliance. Plaintiff does not contend that § 559.004 dictates a specific procedure or forecloses reasonable institutional design choices. That is the discretionary layer. Plaintiff contends — and alleges — that once a state governmental body has published its own procedure to implement § 559.004 (here, OP 77.13), the specific time limits, mandatory steps, and written-response obligations set out in that published procedure become ministerial compliance obligations on the specific officials whose role the procedure identifies. That is the ministerial layer. Heinrich's Prong 2 (failure to perform ministerial duties) reaches that ministerial layer. See Hall v. McRaven, 508 S.W.3d 232, 239 (Tex. 2017) (recognizing that ultra vires suits lie where officials fail to perform acts the law clearly requires).

41-A. Hensley confirms the ministerial layer is enforceable. Hensley v. State Commission on Judicial Conduct, 692 S.W.3d 184 (Tex. 2024), confirms that where a governing legal source imposes specific constraints on the exercise of official authority, failure to comply with those constraints is ultra vires. Defendants' March 18 Reply (at 2 n.1) attempts to distinguish Hensley on the ground that § 559.004 employs "broadly worded procedural language." That framing misidentifies the relevant text. The ministerial obligations Plaintiff seeks to enforce are not the general "reasonable procedure" language of § 559.004 standing alone; they are the specific, enumerated steps that TTUHSC itself adopted in OP 77.13 to implement § 559.004 — a forty-five-day inspection-and-review window, a written-response obligation on amendment/annotation requests, and a dispute-statement maintenance obligation. None of those requirements is broadly worded; each has an objective completion criterion within OP 77.13's own framework. Hensley's principle therefore applies a fortiori: where the governmental body has itself published specific procedural constraints on its officials' exercise of authority, non-compliance with those constraints is the ministerial failure Heinrich's Prong 2 reaches.

42. OP 77.13's ministerial steps. OP 77.13, as TTUHSC has published it, imposes the following ministerial steps that the identified officials must perform:

    a. Upon receipt of a written inspection request, the records custodian must arrange access for inspection and review within forty-five (45) days and notify the student of the time and place for inspection.

b. Upon receipt of a written amendment-annotation request identifying the part of the record at issue, the identified official must process the request and issue a written response.
c. Upon receipt of a written post-decision dispute statement, the records custodian must maintain the statement with the contested portion and disclose it whenever the contested portion is disclosed.
d. Upon receipt of a written EVPA-assistance request, the EVPA must provide the written assistance described in OP 77.13 identifying the appropriate custodial office(s).

None of these steps requires the Court to direct the substantive outcome of any correction or annotation; each is a procedural step with identifiable completion criteria within OP 77.13's own framework.

43. Anderson not controlling. Defendants' March 18 Reply cites Anderson v. City of Seven Points, 806 S.W.2d 791 (Tex. 1991), for the proposition that 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." Id. at 793. OP 77.13's forty-five-day inspection window, its written-response requirement, and its dispute-statement maintenance requirement all satisfy Anderson's standard: each is spelled out in the published procedure, each has a clear time or content criterion, and none depends on the exercise of discretion at the level Plaintiff seeks to compel. Defendants' reliance on Anderson conflates design-discretion (not challenged) with implementation-compliance (challenged).
44. Houston Belt controls. Houston Belt & Terminal Ry. Co. v. City of Houston, 487 S.W.3d 154, 163–64 (Tex. 2016), held that an ultra vires claim lies where officials act in violation of predicate facts that condition the exercise of discretion. Defendants distinguish Houston Belt on the ground that it involved a municipal ordinance rather than an internal university policy. That distinction has no legal significance. Houston Belt's operative principle is that published constraints on the exercise of discretion become enforceable through the ultra vires framework. That principle applies to any governmental body with a published procedure constraining officials' discretion, whether a city, a state agency, or a state university.

44-A. Southwestern Bell v. Emmett does not govern. Defendants cite Southwestern Bell Telephone, L.P. v. Emmett, 459 S.W.3d 578 (Tex. 2015), for the proposition that statutory "shall" language does not eliminate discretion where implementation requires judgment. Emmett does not control here. Emmett addressed mandatory language accompanying an inherently discretionary fact-weighing function — a determination that necessarily required the weighing of competing con-

siderations. The duties Plaintiff seeks to compel are not fact-weighing duties; they are completion-criterion duties: arrange an inspection-and-review opportunity within OP 77.13's forty-five-day window, issue a written response to a timely amendment/annotation request, and maintain a dispute statement with the contested portion of the record. Each step has an objective completion criterion within OP 77.13's published framework. Emmett stands for the limited proposition that "shall" accompanying an inherently discretionary determination does not convert the determination into a ministerial one; it does not — and cannot — displace Heinrich's Prong 2 where the governmental body itself has published specific time-limited steps and then failed to complete them. Defendants' invocation of Emmett conflates the design-discretion layer (not challenged) with the implementation-compliance layer (challenged).

B. The Academic-Deference Line Does Not Reach Records Administration

45. Scope of academic deference. Regents of the University of Michigan v. Ewing, 474 U.S. 214 (1985), addresses the merits of an academic dismissal decision; University of Texas Medical School at Houston v. Than, 901 S.W.2d 926 (Tex. 1995), addresses the merits of a dismissal proceeding; Alcorn v. Vaksman, 877 S.W.2d 390 (Tex. App.—Houston [1st Dist.] 1994, writ denied), addresses the merits of a PhD candidate's reinstatement challenge. None of these decisions addresses the procedural administration of education records after a dismissal has issued. None immunizes a state educational body from an ultra vires claim arising from its failure to follow its own published record-administration procedure. The three cases speak to academic judgment — the merits of the underlying decision. They do not speak to records administration — the mechanics of inspection, amendment-annotation processing, and dispute-statement maintenance governed by § 559.004 and OP 77.13.
46. Plaintiff's express disclaimer. Plaintiff has expressly disclaimed any challenge to the merits of any academic or disciplinary decision. Petition ¶ 10 (NO MERITS / NO ACCURACY). The Proposed Fifth Amended Petition seeks only prospective procedural relief compelling completion of specific ministerial steps set out in OP 77.13 and § 559.004. Under Plaintiff's disclaimer, the academic-deference line is not reached because this Court is not being asked to review any academic decision.
47. No Texas Supreme Court extension. Defendants cite no decision of the Texas Supreme Court extending academic deference from the merits of academic decisions to the administration of education records. That absence is dispositive of Defendants' proposed extension: ultra vires doctrine is a creature of Texas Supreme Court decisions (Heinrich, Houston Belt, Hall v. McRaven), and no decision of that Court has limited those holdings by reference to academic deference in the records-administration context.

C. Section 559.004 Is Not Displaced by FERPA Analogy; the OP 77.13 Window Has Closed

48. FERPA is federal. The Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and its implementing regulations at 34 C.F.R. Part 99, are federal legislation conditioning federal funding. They do not displace Texas Government Code § 559.004 as a source of ministerial duties enforceable in state court against state officials. Plaintiff asserts state-law claims. Plaintiff does not seek FERPA enforcement.

49. No construction rule for § 559.004 derived from FERPA. Defendants' March 18 Reply § II.E suggests that OP 77.13's "opportunity to inspect and review" language should be narrowly construed by analogy to 34 C.F.R. § 99.10 and that FERPA's generalized-opportunity standard governs. That construction rule has no basis in Texas statutory law. Texas courts construe Texas statutes according to the Legislature's ordinary-meaning intent, see Tex. Gov't Code § 311.011, not by analogy to a federal funding statute addressing a different subject at a different level of government.

50. The forty-five-day window is a final position. Defendants cite Texas Dep't of Protective & Regulatory Servs. v. Mega Child Care, Inc., 145 S.W.3d 170 (Tex. 2004), for the proposition that ripeness requires a final and definitive position. That standard is satisfied on Plaintiff's allegations. OP 77.13's forty-five-day inspection-and-review window expired on February 13, 2026 without completion. Mega Child Care's final-position requirement is not a fixed-step-count requirement; it is a requirement that the governmental body's position become definite. By the expiration of OP 77.13's own window, Defendants' position that the procedure they offered satisfied § 559.004 became final and definitive: either they treat the January 5–8 in-person sessions as compliant (which forecloses any further window) or they do not (which requires further action they have not taken). Either way, the controversy is ripe.

51. Confirmation by Defendants' continued non-action. The continued non-performance alleged at ¶ 36, extending now to more than sixty-five days beyond the forty-five-day window, confirms the finality. A governmental body that has taken no corrective action for more than sixty-five days after expiration of its own published time limit has, by any reasonable measure, reached a final position on the sufficiency of its offered procedure.

51-A. The "hours-of-access" framing does not answer the Mega Child Care question. Defendants' March 18 Reply characterized the January 5–8, 2026 sessions as "more than forty hours of access across seven days over a three-month period." Reply at 6. That characterization measures clock-time presence; it does not measure the opportunity OP 77.13 and § 559.004 require. The conditions of access imposed by TTUHSC's Registrar's office (¶¶ 20–22) — escorted presence at all times, handwritten notes only, no copies, no audio or video recording, no third-party observer or

spouse under signed FERPA consent, mandatory laptop surrender upon each restroom break, and an express forfeiture threat for non-compliance — applied to the review of more than 1,600 PDF documents containing a substantially larger number of embedded individual records (¶ 24) and to a separate 14-hour hearing video (¶ 25). The Mega Child Care ripeness inquiry, 145 S.W.3d at 198, asks whether the governmental body's position on the sufficiency of the procedure offered has become definite. That inquiry is not resolved by tallying hours spent in a room under conditions that prevented completion; it is resolved by asking whether Defendants have proposed any alternative format, modality, or schedule reasonably calculated to allow completion within OP 77.13's stated time limits. Defendants have not. ¶¶ 34, 36(c). The position is final.

D. Miranda's "Affirmatively Negate" Standard Is Not Met

52. Miranda standard. Miranda, 133 S.W.3d at 226–27, holds that dismissal on a plea to the jurisdiction is proper only where the pleadings "affirmatively negate the existence of jurisdiction." Where the pleadings do not negate, "the issue is one of pleading sufficiency and the plaintiffs should be afforded the opportunity to amend." Id. at 226–27. When the plea challenges the existence of jurisdictional facts, the court considers relevant evidence submitted by the parties on those facts. Id. at 227.

53. Non-negation by the face of this Petition. This Proposed Fifth Amended Petition does not contain any allegation that negates subject-matter jurisdiction. To the contrary, taking its allegations as true for purposes of Miranda's first step:

    a. § 559.004 imposes mandatory procedural duties on state governmental bodies (¶ 40);
    b. TTUHSC is a state governmental body that has published OP 77.13 to implement § 559.004 for education records (¶ 13, 15);
    c. OP 77.13 itself imposes specific time limits and mandatory steps (¶ 15, 42);
    d. Defendants D'Agostino and McSween have specific ministerial roles in implementing those time limits and steps (¶¶ 2, 42);
    e. Those ministerial roles have not been performed within the time limits or steps OP 77.13 itself sets out (¶¶ 26, 32–36); and
    f. Plaintiff seeks only prospective official-capacity relief compelling performance of the ministerial steps, and expressly disclaims any challenge to the merits of academic or disciplinary decisions (¶¶ 9–12, 46).

Taking those allegations as true, jurisdiction is established under Heinrich's Prong 2 and Houston Belt. No allegation within this Petition affirmatively negates jurisdiction. Miranda's first step does not support dismissal.

54. Jurisdictional-facts evidence. To the extent the Court considers jurisdictional-facts evidence under Miranda's second step, the factual allegations of this Petition are supported by the companion Reply in Support of Sworn Motion Under Rule 306a(5) and Motion for New Trial and the exhibits to that Reply (Exhibits A through K). Plaintiff stands ready to tender additional evidence at any evidentiary hearing the Court may set.

55. Non-futility. Miranda directs that amendment be permitted unless "it affirmatively appears no amendment could cure" the jurisdictional defect. See Miranda, 133 S.W.3d at 230–32. This Proposed Fifth Amended Petition is itself the demonstration that amendment is not futile. It adds particularized allegations on the ministerial-versus-discretionary distinction (¶¶ 40–44), on the scope of academic deference (¶¶ 45–47), on the inapplicability of FERPA analogy and the finality of the OP 77.13 window (¶¶ 48–51), and on Miranda's negation standard (¶¶ 52–54). Each of these amendments is a concrete factual and legal pleading addition, not a hypothetical possibility. Defendants' Miranda-futility argument fails because the amendment exists on paper as Plaintiff tenders this Petition.

VI.

CLAIMS FOR PROSPECTIVE RELIEF (OFFICIAL-CAPACITY ONLY; NO DAMAGES)

COUNT 1 — Ultra Vires Injunctive Relief (Prospective Only)

56. Structure. Count 1 is pleaded in four elements: (1) duty source — Tex. Gov't Code § 559.004 as implemented through OP 77.13; (2) who owes what — each Defendant's ministerial role in providing a workable inspection/review and written-response procedure; (3) breach — the procedure as implemented has not been workable within the policy's time-limit structure; and (4) prospective remedy — an order requiring a workable procedure without directing record content.

57. Duty source. Tex. Gov't Code § 559.004 requires a state governmental body to establish a reasonable procedure under which an individual is entitled to have the body correct information about the individual that is incorrect, and the procedure may not unduly burden an individual using the procedure. The statute's mandatory "shall" and "may not" language imposes non-discretionary duties on the responsible officials. TTUHSC has published HSC OP 77.13 as its student education-records procedure implementing those duties for education records. This Court need not determine whether any information is inaccurate; only whether Defendants maintain and implement a reasonable, non-unduly burdensome procedure for Plaintiff's request.

58. Scope of relief requested. Plaintiff seeks only prospective relief compelling performance of ministerial, non-discretionary steps — i.e., a reasonable procedure that may not unduly burden an individual and that is workable in practice so inspection/review and the written-response step can be completed within OP 77.13's stated time limits. Plaintiff does not ask the Court to design TTUHSC's policies or to dictate discretionary operational details beyond requiring a workable, non-unduly burdensome opportunity and a reasonable schedule. Defendants may select any reasonable format, modality, and scheduling method that satisfies OP 77.13's stated time limits and § 559.004's "may not unduly burden" requirement; Plaintiff seeks only an order that the procedure be workable in practice and timely implemented, not an order dictating particular dates, times, or modalities. Plaintiff seeks no order directing the substantive outcome of any correction/annotation decision.

59. Ministerial duties pleaded. Defendants, as the officials responsible for implementing § 559.004's mandatory procedure requirements through OP 77.13 within their respective roles, have non-discretionary duties to:

    a. arrange an inspection and review opportunity that is workable and not unduly burdensome in the sense that it permits completion of the inspection/review step within OP 77.13's stated time limits, in a format and on a schedule reasonably calculated to allow completion, including through the University Registrar for transcript-related inspection/review logistics;
    b. if a student is uncertain where the requested education records are maintained and submits a written request for assistance under OP 77.13, provide the written EVPA assistance described by OP 77.13 identifying the appropriate custodial office(s) and how to direct amendment/annotation requests;
    c. accept and process amendment/annotation requests and complete the procedure through issuance of a written response within a reasonable time consistent with OP 77.13's stated time limits after a workable inspection/review opportunity; and
    d. if the OP 77.13 process results in no change and the student submits a written dispute statement, maintain the dispute statement in the education record as contemplated by OP 77.13, without expanding any disclosure obligations beyond OP 77.13.

60. Breach. Section 559.004 requires a procedure that is reasonable and may not unduly burden an individual. A procedure that, as implemented, prevents completion of inspection/review in time to proceed through the written-response step is unreasonable and unduly burdensome on its face and as applied. The forty-five-day window expired

on February 13, 2026. As of the date of this Petition, Defendants have had more than one hundred and ten (110) days since Plaintiff's December 30, 2025 request and have not implemented a workable procedure. Defendants' specific acts and omissions constituting breach include:

(1) limiting inspection/review access to the escorted-session format described in ¶ 20 under conditions — including mandatory laptop surrender for restroom breaks, a forfeiture threat, and prohibition of any documentation method other than handwritten notes — that prevented Plaintiff from completing review of more than 1,600 PDF documents (containing a substantially larger number of embedded individual records) and a 14-hour hearing video within the four-day window;

(2) failing to produce records identified in Plaintiff's January 27 punch list that were referenced in or by other records produced during the January 5–8 inspection but not themselves produced;

(3) rejecting Plaintiff's initial amendment/annotation submission without substantive guidance and failing to issue a written decision on Plaintiff's January 26 Step-2 amendment request;

(4) failing to implement and adhere to a reasonable, workable schedule reasonably calculated to allow completion within OP 77.13's stated time limits; and

(5) failing, between March 3, 2026 and the date of this Petition, to take any of the actions identified in ¶ 36(a)–(e) above.

61. Prospective remedy. Plaintiff seeks only prospective relief requiring performance of ministerial steps and compliance with the established record-procedure. Plaintiff does not seek, and expressly disclaims, any adjudication of whether the contested record content is true or false and does not seek any order directing the substantive outcome of TTUHSC's internal decision on any requested correction or annotation.

62. Adequacy of remedy at law. Plaintiff has no adequate remedy at law for Defendants' ongoing failure to implement and timely operate the non-discretionary record-procedure steps pleaded above, and Plaintiff seeks no damages. Without prospective injunctive relief compelling timely procedure compliance, Plaintiff will remain unable to complete the inspection/review and written-response steps necessary to use the OP 77.13 / § 559.004 procedure.

COUNT 2 — Statutory Duty (Tex. Gov't Code § 559.004) (Alternative / Supporting Basis for Prospective Ultra Vires Relief)

63. In addition to and in support of Count 1, Plaintiff pleads § 559.004 as an independent statutory source of the non-discretionary duty to maintain and implement a reasonable, non-unduly burdensome correction/annotation procedure. Any order entered in this action should be limited to compelling performance of ministerial procedure steps and should not be construed as a determination of the correctness of any contested education-record item or the justification for any underlying decision referenced in the record.
64. Relief under Count 2. Defendants' failure to provide and implement a workable, timely correction/annotation procedure for Plaintiff's December 30, 2025 request warrants prospective injunctive relief directing implementation of a reasonable procedure, including (if the OP 77.13 process results in no change and Plaintiff submits a dispute statement) maintenance of any dispute statement in the education record as contemplated by OP 77.13, without expanding any disclosure obligations beyond OP 77.13.

VII.

PRAYER (Conditional upon Granting of New Trial and Rule 63 Leave)

Subject to the Court's granting of Plaintiff's Motion for New Trial and entry of leave to amend under Texas Rule of Civil Procedure 63, and upon the filing of this document as the operative petition of this cause, Plaintiff will pray as follows:

65. Plaintiff prays that Defendants be cited to appear and answer and that, after notice and hearing, the Court grant prospective injunctive relief compelling implementation and timely operation of the reasonable, non-unduly burdensome procedure required by Tex. Gov't Code § 559.004, as implemented through TTUHSC's published OP 77.13 process, including orders requiring Defendants to perform the non-discretionary, ministerial procedural steps described in TTUHSC's published OP 77.13 process (as referenced in this Petition) and required by Tex. Gov't Code § 559.004, without directing the substantive outcome of any record-content dispute.
66. If temporary injunctive relief is sought or granted (temporary restraining order or temporary injunction), Plaintiff requests that any order comply with Tex. R. Civ. P. 683 and that the Court fix the amount of security required by Tex. R. Civ. P. 684.
67. Plaintiff requests that the Court order Defendants to:
    a. Provide Plaintiff a meaningful opportunity to inspect and review the responsive education records under OP 77.13 by a method of Defendants' choosing, so long as the method is not unduly burdensome; at minimum, the inspection/review opportunity shall include:

i. A written inspection schedule issued within seven (7) days of the Court's order (or such other deadline as the Court sets), with sufficient sessions and duration to permit completion of inspection/review of the responsive set within OP 77.13's stated time limits (or within a Court-set completion deadline);
ii. An organized presentation of the responsive set (electronically or in a single, paginated binder or equivalent) sufficient to allow Plaintiff to identify specific pages/items "as precisely as possible" for an amendment/annotation request;
iii. Permission for Plaintiff to take notes during inspection/review in a non-disruptive manner (handwritten or typed), and to record page/item identifiers (e.g., Bates/page numbers) necessary to prepare an OP 77.13 amendment/annotation request; and
iv. Reasonable continuity of access (i.e., sessions not repeatedly canceled or postponed without reasonable alternative dates) such that the inspection/review step can be completed;

b. If Plaintiff is uncertain where the requested education records are maintained and submits a written request for assistance under OP 77.13, provide the written EVPA assistance described by OP 77.13 identifying the custodial office(s) maintaining the relevant education records and written instructions for directing amendment/annotation requests to the appropriate custodians;
c. Accept, docket, and process Plaintiff's OP 77.13 amendment/annotation request(s) in accordance with the published procedure, and complete the procedure through issuance of the required written response within a reasonable time — and in any event within twenty-one (21) days after receipt of Plaintiff's amendment/annotation request(s) submitted following completion of inspection/review — without ordering any particular substantive amendment, correction, or annotation outcome;
d. If and only if the OP 77.13 process results in no change and Plaintiff submits a written dispute statement pursuant to OP 77.13, maintain and associate the dispute statement with the contested portion of the education record and include it with any disclosure of the contested portion to the extent OP 77.13 itself requires, without expanding any disclosure obligations beyond OP 77.13;
e. Provide Plaintiff, at or before the first inspection session, a simple written inventory of the responsive set sufficient to identify categories and approx-

imate volume (e.g., a table of contents or folder list), solely to enable completion of inspection/review and preparation of an amendment/annotation request;

f. Produce for inspection/review the records identified in Plaintiff's January 27, 2026 punch list that were referenced in or by other records produced during the January 5–8 inspection but were not themselves produced;

g. File a short compliance notice with the Court within ten (10) days after the Court's order stating (i) the inspection method selected, (ii) the inspection schedule, and (iii) the name/title of the official responsible for implementing OP 77.13 logistics for Plaintiff's request;

h. Provide that Defendants shall not deny, refuse, or deem untimely any OP 77.13 amendment/annotation request or follow-on step on the ground that any OP 77.13 time window elapsed where the inability to complete inspection/review or identify items "as precisely as possible" resulted from Defendants' inspection format, postponements, or other undue burdens; any internal time periods that would otherwise run against Plaintiff are tolled until completion of the Court-ordered inspection/review opportunity; and

i. Preserve the responsive set and maintain it in the organized format used for inspection (including pagination/Bates identifiers) during the pendency of the OP 77.13 / § 559.004 procedure; any later-located responsive items shall be logged and added to the inventory and responsive set in a way that allows Plaintiff to identify them with stable page/item identifiers.

68. Plaintiff requests that any relief granted be expressly limited to ministerial, procedure-only compliance with OP 77.13 and Tex. Gov't Code § 559.004 and entered without any finding regarding the truth, falsity, or correctness of any record content and without ordering any substantive change to any transcript or education record. Plaintiff further requests that any implementation mechanism ordered by the Court be administered in a manner that protects confidential student information (including through redaction, protective order, or in camera procedures as appropriate), solely as needed to implement the ministerial record-procedure compliance relief requested herein and without expanding the scope of the education records at issue.

69. Plaintiff respectfully requests an expedited hearing setting at the Court's earliest practical availability consistent with notice requirements, in order to allow the prospective procedural relief requested to operate within the time limits referenced in the published OP 77.13 process described in this Petition.

70. If the Court determines any pleading deficiency regarding jurisdiction or proper parties, Plaintiff requests leave to amend to cure any curable defect.

Respectfully submitted,

/s/ Kevin N. Bass
KEVIN N. BASS
Pro Se Plaintiff
[redacted]
Telephone: (512) 333-4092
Email: kbassphiladelphia@gmail.com

VERIFICATION / 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]

I am the Plaintiff in Cause No. DC-2025-CV-1817. I have read the foregoing Proposed Fifth Amended Verified Original Petition. The factual statements contained therein are within my personal knowledge and are true and correct.

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

Executed in Lubbock County, State of Texas, on the 23rd day of April, 2026.

/s/ Kevin N. Bass
KEVIN N. BASS

Note on service. This proposed form of Fifth Amended Verified Original Petition is tendered as a companion exhibit to Plaintiff's Reply in Support of Sworn Motion Under Rule 306a(5) and Motion for New Trial. It is not separately served; service of this exhibit is accomplished by service of the companion Reply, the Certificate of Service for which appears on the Reply and covers this exhibit. No separate certificate of service is appended here because no independent filing of this document has been made.

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: 114002990
Filing Code Description: RSPN - Response
Filing Description: Plaintiff's Reply in Support of Sworn Motion Under Rule 306a(5) and Motion for New Trial Under Rule 329b (with Exhibits A-L)
Status as of 4/23/2026 9:18 AM CST

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