

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

KEVIN N. BASS,

Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER, *et al.*,

Defendants.

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No. 5:25-CV-244-H-BV

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pro se Plaintiff Kevin Bass was a medical student at Texas Tech University Health Sciences Center (TTUHSC). *See* Dkt. No. 14 at 7.¹ He apparently engaged in objectionable conduct, and after making a social media post that TTUHSC staff and students perceived as threatening, the university commenced disciplinary action. *Id.* at 7–10. Following a lengthy hearing at which he was represented by counsel, Bass was dismissed from medical school. *Id.* He now sues TTUHSC and others for disability discrimination and civil-rights violations. *Id.*

Defendants move to dismiss Bass’s claims, asserting sovereign and qualified immunity. Dkt. No. 27. They also assert that Bass has failed to state a claim. *Id.* Bass responded and seeks leave to amend his complaint in the event the Court finds his pleading deficient. Dkt. Nos. 33, 43.

¹ Bass did not paginate his filing, so the page numbers herein refer to the electronically assigned page number in the Court’s ECF system.

For the reasons discussed below, the undersigned recommends that the United States District Judge **GRANT** Defendants' motion to dismiss. The undersigned further recommends that the district judge **DENY** Bass leave to file a second amended complaint because amendment would be futile.

1. Background

A. Factual Allegations

Bass's operative pleading is his first amended complaint. Dkt. No. 14. But this pleading lacks basic facts, making it difficult to construct a narrative. *See id.* Although the extraneous information submitted by the parties provides factual context for the events forming the basis of Bass's lawsuit, the Court has not relied on that information for the reasons explained below. Instead, the undersigned relies on the well-pleaded facts in Bass's first amended complaint. *See id.*

Bass was a medical student at TTUHSC and has "a neurodevelopmental disability with associated anxiety." *Id.* at 6, 7, 9. On November 3, 2023, he made a social-media post that he describes as "a short philosophical reflection on mortality" and another criticizing COVID-19 policies. *Id.* at 8–9. But TTUHSC believed at least one post to be a potential threat because it prompted some faculty and students to "report[a] concern for personal safety[.]" *Id.* at 8; *see also id.* at 8–9 (asserting that TTUHSC's framing of the post as a violation of the student conduct code was unreasonable given that the post was philosophical and did not identify a plan, weapon, or target).

Shortly thereafter, TTUHSC initiated disciplinary proceedings against Bass and issued an Emergency Removal and Criminal Trespass Warning that prohibited him from

being on campus pending a hearing scheduled for December 11, 2023. *Id.* at 7–8, 10. On November 4, 2023, Defendant Rachel Forbes, Assistant Vice Dean for Student Affairs, emailed representatives of Covenant medical facilities and others, including some “non-TTUHSC clinical-affiliate personnel,” that Bass was not to be permitted in the facilities. *Id.* at 10–11.

Three calendar days before the December 11 hearing—but only one business day prior—Bass submitted an accommodation request for his disability to the TTUHSC Student Disability Services (SDS).² *Id.* at 6–7. Bass’s accommodation request was based on a neuropsychological evaluation and included “communication supports” like “limited attorney-assisted questioning to cue/clarify.” *Id.* at 6. SDS did not issue a letter of accommodation before the hearing, nor does Bass allege it acknowledged his request. *See id.* But Bass infers that individuals at his hearing knew of his request because “[o]fficials acknowledged the SDS process on the record.” *Id.* at 7.

On December 11, 2023, TTUHSC conducted the disciplinary hearing, which lasted about fourteen hours and involved eleven witnesses, including Bass. *Id.* at 7. At the hearing, officials apparently considered numerous issues, including the alleged code-of-conduct violation based on Bass’s social media posts, professionalism complaints against Bass, and Bass’s grievances against TTUHSC staff. *See id.* at 7–8, 10–11. “[A]n outside hearing officer”—Defendant Darren Gibson—conducted the proceedings, and a

² Bass contends he submitted his accommodation request to SDS on December 8, 2023, which was a Friday. Dkt. No. 14 at 6. The hearing took place the following Monday, December 11. *Id.* Bass does not allege that he ever notified SDS or TTUHSC about his disability or the need for accommodation prior to this date. *See id.*

Student Conduct Board (Board) issued findings regarding the allegations. *Id.* at 5, 7, 11–12. The Board was chaired by Dr. Felix Morales, Associate Dean of Admissions, and included four additional voting members—two faculty physicians and two fourth-year medical students. *Id.* at 12. Bass was represented by counsel at the hearing. *See id.* at 7.

Weeks before the hearing, Dr. David Trotter, a student conduct administrator, told Bass that the Board would begin by considering Bass’s grievances against TTUHSC staff, followed by deliberation of “conduct complaints and negative evaluations” against Bass. *Id.* But Gibson and/or the Board did not follow this agenda and instead “stacked hours of adverse testimony and conduct allegations before allowing any meaningful opportunity for [Bass] to present his grievances or a coherent response.” *Id.*

Bass contends that Gibson was not a neutral party, as evidenced by his procedural decisions during the hearing. *Id.* Bass alleges that although Gibson admitted a redacted version of the neuropsychological evaluation, Gibson did not adopt the recommended accommodations and “barred [Bass’s] counsel from questioning witnesses directly even as a communication aid.” *Id.* Gibson also prohibited “contemporaneous objections; required counsel’s questions to be submitted in writing; asserted unilateral authority to limit [Bass’s] questioning for ‘relevance’; and applied time limits and sequencing asymmetrically against [Bass], contrary to the published rules promising equal time limits.” *Id.* In addition, Bass asserts that Gibson denied his request for separate hearings, restricted defense witnesses, and permitted late/redacted evidence from TTUHSC but not from Bass. *Id.* at 8, 11–12.

The Board unanimously recommended that Bass be non-academically dismissed from TTUHSC. *Id.* at 12. As a result, Bass’s transcript notes an “Administrative Dismissal Effective 01-11-2024.” *Id.* at 9.

After the hearing, Forbes allegedly emailed Bass’s class “stating that the class was ‘one student lighter’ and directing recipients to ‘check his Twitter.’” *Id.* at 9, 11. Bass also contends there was “a January 1, 2024 public post stating ‘we did it, Kevin Bass’ medical committee voted to expel him,’” but Bass does not specify who made that post or on what platform. *Id.* at 9.

B. Procedural History

Bass filed suit in November 2025, and before Defendants were served, he filed a first amended complaint. Dkt. Nos. 1, 14. His complaint alleges violations of: (1) the Rehabilitation Act of 1973 (RA) against TTUHSC; (2) the Americans with Disabilities Act (ADA) against Defendants Doe, the ADA coordinator, Amanda McSween, Lauren Cobbs, Simon Williams, Tamara Mancini, Mia Myers, Lori Rice-Spearman, and Darrin D’Agostino, all in their official capacities; (3) 42 U.S.C. § 1983, by violating his procedural due-process rights under the Fourteenth Amendment, against Cobbs, Williams, Gibson, and Does 2–10, in their individual capacities; (4) the Fourteenth Amendment due-process protections on a “stigma-plus” theory against McSween, Forbes, and Does, in their individual capacities; and (5) 42 U.S.C. § 1983, by retaliating in violation of the First Amendment, against Cobbs, Williams, Gibson, Wilson, Forbes, and Does 2–10, in their individual capacities. *Id.* at 13–19. Bass seeks injunctive and declaratory relief and money damages. *Id.* at 19–20.

Defendants move to dismiss Bass's claims under Rules 12(b)(1) and (6). Dkt. No. 27. Defendants argue that all claims should be dismissed with prejudice because (1) Bass has failed to plead sufficient facts to state a claim, (2) sovereign immunity bars some claims, and (3) the individual-capacity Defendants are entitled to qualified immunity on the § 1983 claims. *Id.* at 1–2, 20–21.

The Court granted Bass leave to file an out-of-time response, to which Defendants have replied. *See* Dkt. Nos. 29, 31, 33, 38, 52. Both parties filed extraneous documents in support of the motion and opposition that they want the Court to consider in reviewing the motion to dismiss. *See* Dkt. Nos. 27-1–12, 33-1–2. Bass also moves for leave to file a second amended complaint—a request Defendants oppose. Dkt. Nos. 33, 43, 48, 49. The motions to dismiss and for leave to amend are now ripe for consideration.

2. Legal Standards

A. Motion to Dismiss under Rule 12(b)(1)

Under Rule 12(b)(1), a party may move to dismiss claims for lack of subject-matter jurisdiction. “Dismissal under Rule 12(b)(1) is appropriate if a claim is barred by state sovereign or Eleventh Amendment immunity.” *Shaikh v. Tex. A&M Coll. of Med.*, 739 F. App'x 215, 217 (5th Cir. 2018) (per curiam) (citations omitted). The party asserting jurisdiction bears the burden of demonstrating its existence. *Id.* (citation omitted). “A court may dismiss under Rule 12(b)(1) on any one of three separate bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.” *Id.* at 217–18 (citation and internal quotation marks

omitted). “When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits.” *Id.* at 218 (citation omitted).

B. Motion to Dismiss under Rule 12(b)(6)

To survive a Rule 12(b)(6) motion, a plaintiff must allege sufficient facts “to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see Colony Ins. Co. v. Peachtree Constr., Ltd.*, 647 F.3d 248, 252 (5th Cir. 2011). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In considering 12(b)(6) motions, courts must accept well-pleaded facts—but not conclusory allegations—as true and view them in the light most favorable to the plaintiff. *Twombly*, 550 U.S. at 555 (explaining that a plaintiff must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do”); *Snow Ingredients, Inc. v. Snowizard, Inc.*, 833 F.3d 512, 520 (5th Cir. 2016) (stating that courts accept all well-pleaded facts as true, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements’ cannot establish facial plausibility” (quoting *Iqbal*, 556 U.S. at 678)). A plaintiff’s “[f]actual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 555 (internal citations omitted). “The court’s review is limited to the complaint, any documents attached to the complaint, and any documents attached to the motion to

dismiss that are central to the claim and referenced by the complaint.” *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010).

3. Discussion

A. The undersigned has not considered materials attached to the parties’ motion and response.

Both parties cited and attached documents to their filings that they use to support their respective positions. The parties do not supply the documents to assist the Court in evaluating the Rule 12(b)(1) motion. Instead, they argue that because the documents are “central to” Bass’s first amended complaint, the Court should consider them in evaluating whether Bass has pleaded sufficient facts to state a claim. *See, e.g.*, Dkt. Nos. 27 at 2–3 n.1; 33 at 12. This is an overbroad reading of a narrow exception.

When evaluating a Rule 12(b)(6) motion, “a district court must [typically] limit itself to the contents of the pleadings, including attachments thereto.” *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000). The district court can also take judicial notice of “of directly relevant public records.” *Biliouris ex rel. Biliouris v. Patman*, 751 F. App’x 603, 604 (5th Cir. 2019) (per curiam) (citing *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011)).

“Although the district court may not go outside the complaint, th[e] [Fifth Circuit] has recognized one limited exception.” *Scanlan v. Tex. A&M Univ.*, 343 F.3d 533, 536 (5th Cir. 2003). “When a defendant attaches documents to its motion that are referred to in the complaint and are central to the plaintiff’s claims, the court may also properly consider those documents.” *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 735

(5th Cir. 2019); *see also Meyers v. Textron, Inc.*, 540 F. App'x 408, 409 (5th Cir. 2013) (per curiam) (“[A] district court may take into account documents incorporated into the complaint by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned.”).

The Fifth Circuit has not set forth a test for determining whether a document is “central” to a plaintiff’s claims, but “case law suggests that documents are central when they are necessary to establish an element of one of the plaintiff’s claims.” *Kaye v. Lone Star Fund V (U.S.), L.P.*, 453 B.R. 645, 662 (N.D. Tex. 2011); *see Payne v. City of Houston*, No. 24-20150, 2025 WL 999085, at *2 (5th Cir. Apr. 3, 2025) (“For a document to be ‘central’ to a plaintiff’s claims, th[e] [Fifth Circuit] has indicated that it must be evidence the plaintiff substantially relies on to prove their claims.”). Conversely, when a document “is merely evidence of an element of the plaintiff’s claim, then the court may not incorporate it into the complaint.” *Kaye*, 453 B.R. at 662 (citing *Scanlan*, 343 F.3d at 536–37). Regardless, “when matters outside the pleading are presented with a motion to dismiss under Rule 12(b)(6), a district court has complete discretion to either accept or exclude the evidence.” *Gen. Retail Servs., Inc. v. Wireless Toyz Franchise, LLC*, 255 F. App'x 775, 783 (5th Cir. 2007) (internal quotation marks and citation omitted).

The materials cited by the parties were not attached to Bass’s first amended complaint, nor are they central to his claims. *See* Dkt. No. 14. In fact, some of the documents are not even referenced in Bass’s pleading, *see, e.g.*, Dkt. Nos. 27-10; 27-11,

27-12, and he blended summaries, demonstratives, and legal arguments into “evidence.” See Dkt. Nos. 33-1, 33-2. The parties rely on this information to provide context and evidence regarding Bass’s claims, which is not permissible at this stage. See *Neukranz v. Conestoga Settlement Servs., LLC*, No. 3:19-CV-1681-L, 2022 WL 19518462, at *11 (N.D. Tex. Nov. 23, 2022) (explaining the court would not consider documents that provided context for plaintiffs’ claims but were not necessary to establish an element of their claims), *R. & R. adopted by* 2023 WL 2555551 (N.D. Tex. Mar. 16, 2023); *Douglas v. Dorchester Props. Ltd.*, No. 3:22-cv-100-K-BN, 2023 WL 5156337, at *3 (N.D. Tex. May 17, 2023) (declining to consider emails attached to plaintiff’s complaint and in defendant’s appendix to motion to dismiss because they were evidence of, not central to, plaintiff’s claims), *R. & R. adopted by* 2023 WL 5155287 (N.D. Tex. Aug. 9, 2023).

In effect, the parties seem to want the Court to improperly evaluate Bass’s pleading under a summary-judgment standard at the motion-to-dismiss stage. However, even if the parties had moved to convert Defendants’ motion to one for summary judgment, the undersigned would recommend denial of that request given the case’s early stage. See *Isquith ex rel. Isquith v. Middle S. Utils., Inc.*, 847 F.2d 186, 193 n.3 (5th Cir. 1988) (explaining that a district court has “complete discretion to determine whether or not to accept any material beyond the pleadings” and that consideration of non-pleading materials converts the motion to one for summary judgment (citations omitted)). Thus, the undersigned has not considered any of the attachments in evaluating Defendants’ Rule 12(b)(6) motion.

B. Bass has not stated a claim against TTUHSC under the RA for discrimination and/or failure-to-accommodate.

The Fifth Circuit has recognized that “[j]urisprudence interpreting either [the ADA or RA] is applicable to both.” *Hainze v. Richards*, 207 F.3d 795, 799 (5th Cir. 2000). This is because “the rights and remedies afforded plaintiffs under Title II of the ADA are almost entirely duplicative of those provided under § 504 of the Rehabilitation Act.” *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454 (5th Cir. 2005). Thus, the undersigned relies on cases discussing both statutes in evaluating whether Bass has pleaded sufficient facts to state an RA claim.³

Bass’s pleading does not make clear whether he is asserting an RA claim for failure-to-accommodate, disability discrimination, or both. *See* Dkt. No. 14 at 13 (reciting elements for disability discrimination but complaining about lack of accommodation). Regardless, TTUHSC contends that Bass’s claim fails for two reasons: (1) he has not shown that he was excluded from the disciplinary hearing “by reason of” his disability; and (2) he is not entitled to money damages because he has not pleaded facts showing intentional discrimination. Dkt. No. 27 at 8–10.

To establish a *prima facie* case for disability discrimination, a plaintiff must demonstrate that he was: “(1) an individual with a disability; (2) otherwise qualified for

³ TTUHSC moves for dismissal of Bass’s RA claim under Rule 12(b)(6). *See* Dkt. No. 27 at 8–10. In reply, however, it argues that “all claims against TTUHSC . . . should be dismissed for lack of subject-matter jurisdiction” because they are barred by sovereign immunity. Dkt. No. 38 at 2–3. But a state’s receipt of federal funds waives sovereign immunity as to discrimination claims arising under Section 504 of the RA. *See Miller v. Tex. Tech Univ. Health Scis. Ctr.*, 421 F.3d 342, 345 (5th Cir. 2005). Defendants make no argument that TTUHSC does not accept federal funding. Thus, the undersigned has only considered whether Bass’s allegations state a plausible claim for relief under the RA.

the program; and (3) excluded from, denied the benefits of, or otherwise subjected to discrimination under the program solely by reason of . . . his disability.” *Shaikh*, 739 F. App’x at 219 (internal quotation marks omitted) (quoting 29 U.S.C. § 794(a)).

To show exclusion from “ a program solely by reason of . . . his disability,” a plaintiff must allege: “(1) there is a causal connection between his disability and the discriminatory action; and (2) his disability was the only cause of the discriminatory action.” *Id.* at 222 (internal quotation marks and citation omitted). “The causal connection between the individual’s disability and the discriminatory action ‘need not be direct’ in order to satisfy the ‘sole reason’ requirement: it is sufficient that the disability caused the individual to do or not do something, which, in turn, caused the discriminatory action.” *Id.* (internal quotation marks and citation omitted). But to meet the “the ‘solely’ part of the ‘solely by reason of’ element, the disability must have been the *only* cause of the . . . conduct that triggered the discriminatory action.” *Id.* (brackets, and citation omitted).

As for a claim based on a failure to accommodate, Title II of the ADA and the RA do not expressly codify such a theory, but the Fifth Circuit has adopted the standard used in Title I cases. *See Windham v. Harris Cnty.*, 875 F.3d 229, 235 (5th Cir. 2017) (explaining that Fifth Circuit case law “recognize[s] that a public entity’s failure reasonably to accommodate the known limitations of persons with disabilities can also constitute disability discrimination under Title II” and citing cases in support); *Campbell v. Lamar Inst. of Tech.*, 842 F.3d 375, 380 (5th Cir. 2016) (explaining that in evaluating an RA claim, “[d]iscrimination includes a failure to make reasonable accommodations”).

“A claim for failure to accommodate under the ADA [or RA] has the following elements: (1) the plaintiff is a qualified individual with a disability; (2) the disability and its consequential limitations were known by the covered institution; and (3) the covered institution failed to make reasonable accommodations for such known limitations.” *Choi v. Univ. of Tex. Health Scis. Ctr. at San Antonio*, 633 F. App’x 214, 215 (5th Cir. 2015) (per curiam).

By reason of: Bass alleges that he was excluded from participating in the disciplinary hearing when Gibson did not permit accommodation, “applied time limits and filters asymmetrically,” and “refused modest schedule/format modifications.” Dkt. No. 14 at 13. TTUHSC argues that Bass “participated in the disciplinary hearing . . . , was represented by counsel, and presented his position.” Dkt. No. 27 at 8. “Additionally, [Gibson] . . . admitted, over the TTUHSC representative’s objection, a redacted version of [Bass’s] untimely-submitted neuropsychological evaluation . . . , which the Board specifically considered.” *Id.* Thus, Bass was not “denied . . . ‘meaningful access’ to the proceeding because of his alleged disability.” *Id.*

The undersigned agrees that Bass has not pleaded facts showing TTUHSC denied him participation in the disciplinary hearing solely by reason of his disability. Bass’s own allegations show that he attended the hearing and was represented by counsel. Dkt. No. 14 at 6–8. That is, Bass had someone present to represent his interests and arguably was not excluded from the hearing.

Moreover, Bass attributes his denial of meaningful participation in the hearing to much more than his disability. Bass complains that Gibson’s purported bias influenced

his procedural determinations. *Id.* at 7. Further, Bass suggests that TTUHSC's actions (via Gibson) were at least in part motivated by disagreement with Bass's social media posts. *See id.* at 11. That is, Bass asserts that Gibson and/or TTUHSC acted for reasons other than Bass's disability, and those actions impacted his ability to participate.

Because Bass has not alleged facts showing TTUHSC excluded him from the disciplinary hearing solely by reason of his disability, Bass's disability discrimination claim under the RA fails.⁴ *See, e.g., Shaikh*, 739 F. App'x at 222 (explaining that "to satisfy the solely part of the solely by reason of element, the disability must have been the *only* cause of the conduct that triggered the discriminatory action" (internal quotation marks, alterations, and citation omitted)); *Johnson v. Forney Indep. Sch. Dist.*, No. 3:23-CV-2010-B, 2024 WL 5089565, at *2 (N.D. Tex. Dec. 12, 2024) (granting defendant's motion to dismiss plaintiff's ADA and RA claims where plaintiff "offer[ed] no allegations to support any plausible connection between the [defendant's] conduct and" plaintiff's disability); *Wren v. Midwestern State Univ.*, No. 7:18-cv-00060-O-BP, 2019 WL 501920, at *9 (N.D. Tex. Jan. 23, 2019) (recommending dismissal of plaintiff's RA claim based on allegation that university dismissed her from nursing program based on her disability, where plaintiff's allegations showed her disability was "not the only cause

⁴ Bass's allegations blur the line between claims for disability discrimination and failure-to-accommodate. He identifies a lack of accommodation as the way in which Defendants discriminated. Under a failure-to-accommodate theory, the cause of the discrimination is irrelevant, so the sole-causation requirement does not apply. *Harmon v. Collier*, 158 F.4th 595, 608 (5th Cir. 2025). However, because Bass recites the elements of a disability-discrimination claim, and TTUHSC moves for dismissal on the "by reason of" element, the undersigned has considered whether Bass states such a claim.

of [d]efendants’ allegedly discriminatory conduct”), *R. & R. adopted by* 2019 WL 499571 (N.D. Tex. Feb. 8, 2019).

Similarly, any failure-to-accommodate claim must be dismissed. TTUHSC only expressly mentions Bass’s accommodation claim in its reply. *See* Dkt. Nos. 27 at 8–10; 38 at 8 (arguing that Bass’s failure-to-accommodate claim “fails on its face” because Bass submitted a request for accommodation only one business day prior to the disciplinary hearing). However, the Fifth Circuit “has explained that a plaintiff can establish the third prong of the prima facie case—discrimination ‘by reason of his disability’—by showing that the defendants have failed to make reasonable accommodations.” *Valentine v. Collier*, 993 F.3d 270, 290 (5th Cir. 2021) (citation omitted). Because TTUHSC generally moves to dismiss on this third element, and Bass had notice of the potential dismissal as reflected by his response to the motion, the undersigned construes TTUHSC’s motion as challenging the failure-to-accommodate claim. *See* Dkt. No. 33 at 12 (responding that he has stated a plausible accommodation claim because he was not given accommodation at the hearing and citing ¶¶ 25–26 of the first amended complaint in support), 13–14 (alleging TTUHSC had knowledge of his disability but failed to engage in an interactive process).

Bass alleges that one business day prior to the hearing, he submitted an accommodation request to SDS for “limited attorney-assisted questioning to cue/clarify” at the disciplinary hearing. Dkt. No. 14 at 6; *see also id.* at 13 (stating that TTUHSC should have also accommodated him by applying equal time limits and permitting formatting modifications), 14 (asserting that TTUHSC should provide “limited attorney-

assisted questioning as a communication aid, predictable breaks, CART/closed captioning, and written copies of verbal information” at any hearing in the future). Bass does not explain what his requested accommodation even means, but his own allegations demonstrate that his attorney was permitted to submit written questions. *Id.* at 7. Bass was also permitted to question witnesses, *id.* at 7, 11, and he does not contend that his attorney was prevented from helping Bass with that questioning. *See id.* Thus, it appears TTUHSC provided the preferred accommodation, which means Bass cannot establish element three of a failure-to-accommodate claim.

Bass’s claim also fails at elements two and three for other reasons. “To satisfy the knowledge requirement [of a failure-to-accommodate claim], the entity must understand the limitations a plaintiff experienced *as a result* of his disability.” *Valentine*, 993 F.3d at 290. “The burden falls on the plaintiff to identify the disability, the limitation, and to request an accommodation in ‘direct and specific’ terms.” *Id.* (citation omitted). “When a plaintiff fails to request an accommodation in this manner, he can prevail only by showing that the disability, resulting limitation, and necessary reasonable accommodation were open, obvious, and apparent to the entity’s relevant agents.” *Id.* (internal quotation marks and citation omitted).

Bass alleges that TTUHSC had the requisite knowledge because he (1) submitted a request to SDS one business day before the hearing and (2) submitted a neuropsychological report to Gibson the day of the hearing. *See* Dkt. No. 14 at 6–7. Even assuming Bass’s submission to SDS—the centralized entity tasked with processing such requests, *id.* at 14—notified TTUHSC of Bass’s disability and accommodation request,

Bass pleads no facts showing he notified TTUHSC of his disability's limitations. *Id.* at 6 (indicating only that the neuropsychological evaluation, which he submitted with his request, recommended certain communication supports—not that it explained Bass's limitations due to his disability), 12 (stating that SDS's Director, Tamara Mancini, was aware of his "SDS notice and requests" for "auxiliary aids" but failing to include any allegation that he notified her of his limitations).

Nor has Bass shown that TTUHSC failed to accommodate him. The provision of reasonable accommodations is "an interactive process that includes the input of the [plaintiff] as well as the [entity]." *Pickett v. Tex. Tech Univ. Health Scis. Ctr.*, 37 F.4th 1013, 1033 (5th Cir. 2022) (internal quotation marks and citation omitted). This is because "[t]he objective of the reasonable-accommodation requirement is to find a solution that works for both parties." *Id.*

Bass's last-minute submission prevented SDS from engaging in this interactive process. Bass had been enrolled in medical school for some time without ever having notified TTUHSC of his disability, its limitations, or need for accommodation. *See* Dkt. No. 14 at 6, 9, 13. Yet, he waited until the last moment—the last business day before his disciplinary hearing—to request accommodation at the hearing for a previously undisclosed disability, which strains the bounds of what can reasonably amount to a denial of accommodation. If Bass's allegation is that SDS and/or TTUHSC should have continued the hearing to consider his accommodation request, Bass does not allege that he asked for a continuation. *See id.* at 6–7. In any event, the undersigned finds no controlling authority to support the conclusion that these circumstances amount to a

failure to accommodate. *Cf. Trahan v. Wayfair Maine, LLC*, 957 F.3d 54, 65 (1st Cir. 2020) (explaining that an accommodation request lodged after misconduct “is better understood as a plea either for forgiveness or for a second chance”); *Cutrer v. Bd. of Supervisors of La. State Univ.*, 429 F.3d 108, 112 (5th Cir. 2005) (explaining in the Title I context that “when an employer’s unwillingness to engage in a good faith interactive process leads to a failure to reasonably accommodate an employee, the employer violates the ADA”); *Grodman v. Tex. Tech Univ. Health Scis. Ctr.*, 816 F. Supp. 3d 602, 613, 619–20 (N.D. Tex. 2025) (Hendrix, J.) (holding that medical resident’s accommodation request submitted the same day a board voted to terminate him based on incidents that happened before the request did not trigger TTUHSC’s obligation to engage in interactive process).

As for Bass’s purported request the morning of the hearing, Gibson “is an attorney who served as the outside hearing officer,” and Bass makes no allegation that Gibson or the Board are associated with SDS such that TTUHSC can be charged with knowledge. Dkt. No. 14 at 5 (cleaned up). The undersigned reaches this conclusion based on the Fifth Circuit’s holding in *Pickett*. There, the plaintiff alleged that TTUHSC failed to accommodate her when her advisor did not modify deadlines. *Pickett*, 37 F.4th at 1032. However, the plaintiff “did not tell [TTUHSC’s] ADA Office that she needed those deadlines extended.” *Id.* The Fifth Circuit concluded that the plaintiff failed to state a claim against TTUHSC because she did not ask the ADA office for accommodation but only asked her advisor, who was not the appropriate person for evaluating accommodation requests. *Id.* at 1033.

Here, too, Bass’s requests for accommodation at the hearing to officials unaffiliated with the ADA office—i.e., SDS—does not impute knowledge to TTUHSC. This is because Bass “did not ensure, in ‘direct and specific terms,’ that” his limitations were ‘known by the covered entity.’” *Id.* (quoting *Smith v. Harris Cnty.*, 956 F.3d 311, 317 (5th Cir. 2020)).

In sum, Bass has failed to plead sufficient facts establishing an RA claim under either a discrimination or failure-to-accommodate theory.

Intentional discrimination: Bass “seeks economic damages” and “nominal damages,” as well as declaratory relief, in connection with his RA claim. Dkt. No. 14 at 13. Bass wants the Court to “declare that Defendants violated [his] rights under” the RA. *Id.* at 19 (cleaned up). TTUHSC moves to dismiss Bass’s RA claim for monetary damages because Bass has not pleaded facts showing TTUHSC intentionally discriminated. Dkt. No. 27 at 9–10.

“Even when plaintiffs successfully prove a disability-discrimination or a failure-to-accommodate claim, they may only recover compensatory damages upon a showing of intentional discrimination.” *Smith*, 956 F.3d at 318 (internal quotation marks and citation omitted). The Fifth Circuit has “not delineated the precise contours of this showing,” but it has “relied on the widely accepted principle that intent requires that the defendant at least have actual notice.” *Id.* (internal quotation marks, alterations, and citation omitted). Deliberate indifference is not enough. *Id.*

Bass alleges that TTUHSC knew he needed “limited attorney-assisted questioning” and that the failure to provide such would deny Bass the opportunity to

participate in the disciplinary hearing. *See* Dkt. No. 14 at 6, 13. As discussed above, however, Bass’s attorney was permitted to submit written questions. *Id.* at 7. And even assuming that Bass is a qualified individual and that he requested reasonable accommodations, he still fails to allege any facts showing that TTUHSC had actual knowledge that failing to provide those accommodations would cause Bass to be effectively “excluded” from participating in his own hearing. In sum, Bass’s allegations do not show TTUHSC knew that he needed accommodation beyond his attorney submitting written questions or that TTUHSC had “actual knowledge that” the other accommodations were necessary. *Smith*, 956 F.3d at 319.

Because Bass fails to adequately allege facts showing intentional discrimination, he cannot recover compensatory damages on his RA claims. *Delano-Pyle v. Victoria Cnty.*, 302 F.3d 567, 574 (5th Cir. 2002). Further, although the Fifth Circuit has not determined whether a claim for nominal damages requires a showing of intentional discrimination, at least one district court has held that it does. *See Lockwood v. Our Lady of the Lake Hosp., Inc.*, 467 F. Supp. 3d 435, 438 (M.D. La. 2020); *see also Francois v. Our Lady of the Lake Hosp., Inc.*, 8 F.4th 370, 381 (5th Cir. 2021) (affirming application of the intentional-discrimination standard to a nominal-damages claim where plaintiff never argued in the district court or on appeal that a different standard should apply); *cf. Tolbert v. Queens Coll.*, 242 F.3d 58, 70–74, 78 (2d Cir. 2001) (holding there was sufficient evidence to support a jury finding that plaintiff suffered intentional racial discrimination in violation of Title VI and awarding nominal damages). Applying this standard makes sense because “a person who is awarded nominal damages receives relief

on the merits of his claim and may demand payment for nominal damages no less than he may demand payment for millions of dollars in compensatory damages.” *Uzuegbunam v. Preczewski*, 592 U.S. 279, 290–91 (2021) (internal quotation marks and citation omitted) (defining nominal damages as “the damages awarded by default until the plaintiff establishes entitlement to some other form of damages, such as compensatory or statutory damages”). Thus, the undersigned recommends dismissal of Bass’s RA claims for nominal and compensatory damages because he has failed to plead facts showing intentional discrimination.

Related to the RA claims, Bass also seeks declaratory relief, which does not require a showing of intentional discrimination. *Francois*, 8 F.4th at 379 n.7 (observing that “[a] claim for declaratory relief is equitable in nature and not subject to the intentional-discrimination standard”). But Bass’s claims for declaratory relief fail because he wants retrospective relief. Dkt. Nos. 14 at 19 (asking for a declaration “that Defendants violated Plaintiff’s rights under § 504” of the RA); 27 at 10–12. Without demonstrating that TTUHSC is likely to again violate Bass’s rights under the RA, the mere declaration of a past wrong is not a viable form of declaratory relief because it will not remedy the violation that has already occurred. *See, e.g., Waller v. Hanlon*, 922 F.3d 590, 603–04 (5th Cir. 2019); *Malik v. U.S. Dep’t of Homeland Sec.*, 619 F. Supp. 3d 652, 657–59 (N.D. Tex. 2022).

In sum, the undersigned recommends that the district judge dismiss Bass’s RA claims for monetary damages for failure to state a claim and for declaratory relief for lack of subject-matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3)* (stating that “[i]f the court

determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”).

C. Bass’s ADA claim seeking injunctive relief must be dismissed.

Bass seeks prospective injunctive relief against certain Defendants in their official capacities in connection with his Title II ADA claim. Dkt. No. 14 at 13–15, 19. He asks the Court to grant injunctive relief by: (1) designating an ADA coordinator as the centralized point of contact; (2) preserving and allowing access to files; (3) imposing “FERPA-aligned protections”; (4) ensuring “transcript notations and status communications are generated, maintained, and communicated in a manner consistent with Title II going forward”; (5) requiring TTUHSC to comply with Title II if it conducts a new disciplinary hearing; and (6) requiring Rice-Spearman and D’Agostino to comply with TTUHSC policy regarding records. *Id.* Defendants seek dismissal of the ADA claim, alleging first that Bass has not established Article III standing because he seeks to remedy past wrongs. Dkt. No. 27 at 10–11. Defendants further maintain that *Ex parte Young*’s exception does not apply because Bass seeks an injunction against officials who cannot enforce it, and the relief is primarily retrospective in nature. *Id.* at 11–12; Dkt. No. 38 at 2–3. Thus, Defendants assert that they are entitled to sovereign immunity.

“Standing is a component of subject matter jurisdiction.” *James v. Hegar*, 86 F.4th 1076, 1081 (5th Cir. 2023) (citing *Ortiz v. Am. Airlines, Inc.*, 5 F.4th 622, 627 (5th Cir. 2021)). “[T]o demonstrate that a case or controversy exists to meet the Article III standing requirement when a plaintiff is seeking injunctive or declaratory relief, a plaintiff must allege facts from which it appears there is a substantial likelihood that he

will suffer injury in the future.” *Waller*, 922 F.3d at 603 (citation omitted). “To obtain [declaratory or injunctive] relief for past wrongs, a plaintiff must demonstrate either continuing harm or a real and immediate threat of repeated injury in the future.” *Id.* (citation omitted); *accord James*, 86 F.4th at 1081 (same). A plaintiff “must demonstrate standing for each claim that [he] presses against each defendant, and for each form of relief that [he] seeks.” *Greenwald v. Murrill*, No. 24-30661, 2026 WL 500139, at *3 (5th Cir. Feb. 23, 2026) (per curiam) (internal quotation marks, brackets, and citation omitted) (cleaned up).

“Article III standing analysis and *Ex parte Young* analysis significantly overlap.” *James*, 86 F.4th at 1081 (internal quotation marks, brackets, and citation omitted). Under *Ex parte Young*, courts recognize an exception to the general rule that the Eleventh Amendment bars private suits against a non-consenting state in federal court. *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 471 (5th Cir. 2020); *see also McCarthy ex rel. Travis v. Hawkins*, 381 F.3d 407, 417 (5th Cir. 2004) (holding that the Eleventh Amendment does not bar Title II suits for prospective injunctive relief against state officers in their official capacities under *Ex parte Young*). Under this exception, a plaintiff may sue for prospective relief against a state official who is violating federal law. *Id.* “The *Ex parte Young* exception is ‘focused on cases in which a violation of federal law by a state official is ongoing as opposed to cases in which federal law has been violated at one time or over a period of time in the past.’” *Williams ex rel. J.E. v. Reeves*, 954 F.3d 729, 737 (5th Cir. 2020) (quoting *Papasan v. Allain*, 478 U.S. 265, 277 (1986)).

Here, Bass does not allege an ongoing violation of the ADA, and the injunctive relief he seeks relates to past wrongs. The disciplinary hearing has concluded, and Bass was dismissed from TTUHSC. *See* Dkt. Nos. 14 at 7, 9; 33 at 7. Bass pleads no facts showing that TTUHSC continues to violate his rights under the ADA. Instead, Bass complains of an ongoing injury from the transcript notation regarding his dismissal and damage to his reputation, as well as TTUHSC's failure to rescind the notice to Covenant. Dkt. No. 33 at 14, 25. While these may be continuing injuries, they stem from an alleged violation of the ADA that occurred in the past and are not themselves violations of the ADA. "The residual effects of a prior [violation] do not constitute an ongoing violation for *Ex parte Young* purposes," nor do they confer standing. *Ambriz v. Hancock*, No. 23-50582, 2025 WL 2945681, at *3 (5th Cir. Oct. 17, 2025) (per curiam) (citing *Papasan*, 478 U.S. at 277–78); *James*, 86 F.4th at 1082 (holding plaintiffs lacked standing based on allegation that government took their property and rejecting argument that the continued retention of the property amounted to an ongoing violation). Absent an allegation that there is a substantial risk of an ADA injury in the future or that Defendants are currently violating the ADA, Bass lacks standing.

Moreover, some of the relief Bass seeks is retrospective. Although Bass does not expressly ask this Court to vacate the disciplinary finding and dismissal, that would be a prerequisite to granting some of the relief he seeks. *See* Dkt. No. 14 at 14 (asking for injunctive relief in the event TTUHSC conducts a "renewed adjudication," which would necessarily require invalidation of the first hearing), 20 (asking for an "interim annotation/issuance of a corrected transcript pending the name-clearing hearing . . . and,

upon final judgment for Plaintiff on . . . [the] ADA/§ 504 claims, expunge or amend the” transcript notation). “[I]njunctive relief that are packaged as prospective relief but require ‘the voiding of a final state’ official’s action are ‘quintessentially retrospective and thus out of bounds under *Young*.’” *Fisher v. Campbell*, No. 5:26-CV-0073-X, 2026 WL 1298072, at *4 (N.D. Tex. May 12, 2026) (quoting *Green Valley*, 969 F.3d at 473).

Finally, some of Bass’s proposed injunctive relief merely requires TTUHSC to comply with the ADA and the Family Educational Rights and Privacy Act (FERPA)—something the law already requires. *See* Dkt. No. 14 at 14, 19–20 (asking for “FERPA-aligned protections” and TTUHSC’s compliance with the ADA if it conducts another disciplinary hearing and when making transcript notations).

In sum, even if Bass seeks injunctive relief against the appropriate officials, he “allege[s] no impending future injury,” so he does not have standing to obtain this relief. *James*, 86 F.4th at 1082. Similarly, the *Ex parte Young* exception does not apply because he fails to allege an ongoing violation of the ADA, and he seeks retrospective relief. Thus, the Court lacks subject-matter jurisdiction, and Bass’s claims are barred by sovereign immunity.

D. Bass’s RA and ADA retaliation and interference claims must be dismissed.

Bass asserts claims for retaliation and interference under the ADA and RA. Dkt. No. 14 at 18. He seeks damages against TTUHSC under the RA and prospective relief

against the official-capacity Defendants under the ADA. *Id.* Defendants assert they are entitled to sovereign immunity. Dkt. No. 27 at 20.⁵

Regarding the ADA retaliation and interference claims, Bass asks for “prospective injunctive relief under Count 2 to prevent further retaliation or interference and to require Title II compliant processes going forward.” Dkt. No. 14 at 18 (cleaned up). That is, Bass seeks the same injunctive relief as in Count 2, as well as an order requiring Defendants to comply with the ADA. *See id.* For the same reasons discussed in Section 3.C above, the undersigned concludes Defendants are entitled to sovereign immunity on Bass’s ADA interference and retaliation claims. Bass does not have standing, and the *Ex parte Young* exception does not apply.

But Defendants are not entitled to sovereign immunity on the RA claims. “[A] State is amenable to suit where it operates a program in violation of the Rehabilitation Act and accepts federal financial assistance for that state program.” *Sullivan v. Tex. A&M Univ. Sys.*, 986 F.3d 593, 597 (5th Cir. 2021) (citing *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 288–89 (5th Cir. 2005) (en banc)). Defendants do not challenge Bass’s allegation that TTUHSC accepts federal funding. *See* Dkt. Nos. 14 at 18; 27. Thus, sovereign immunity does not bar retaliation and interference claims under the RA.

This conclusion could end the inquiry. But Bass addresses the sufficiency of his allegations in his response, which shows he has notice. Dkt. No. 33 at 21–22. Moreover,

⁵ Confusingly, Defendants refer to these claims as Counts 6 and 7. Dkt. No. 27 at 20. Bass, however, labels them together as Count 6. Dkt. No. 14 at 18. Bass then contributes to the confusion, referring to a Count 7 “Name-Clearing Hearing” in his response, Dkt. No. 33 at 22, but there is no Count 7 in the first amended complaint. *See* Dkt. No. 14 at 18. The undersigned relies on the labels Bass assigned to claims in the first amended complaint and has only considered the claims expressly raised.

the Court can “dismiss a claim sua sponte after giving the adverse party notice and an opportunity to respond.” *Jones v. City of Dallas*, No. 24-10803, 2025 WL 2491127, at *6 (5th Cir. Aug. 29, 2025). These findings, conclusions, and recommendation (FCR) will also give Bass the requisite notice and an opportunity to respond. *Id.* (recognizing that “[a] magistrate judge’s report and recommendation constitutes sufficient notice and opportunity, as the parties can submit objections to the recommended findings and conclusions.”). Thus, the undersigned evaluates whether Bass has pleaded sufficient facts to state a claim.

The RA prohibits “retaliation for opposing any practice made unlawful” under the act. 29 C.F.R. § 1614.101(b). To state a claim, a plaintiff must show that: “(1) [t]he engaged in a protected activity; (2) [t]he suffered a materially adverse action, and (3) a causal connection exists between the protected activity and the adverse action.” *Jeudy v. Hous. Cmty. Coll.*, No. 4:23-CV-4758, 2026 WL 675683, at *4 (S.D. Tex. Mar. 2, 2026) (applying elements to nursing student’s RA retaliation claim).

Bass alleges that his accommodation request to SDS on December 8, 2023, prompted the retaliation. Dkt. No. 14 at 18. Requesting a reasonable accommodation “constitutes participating in an activity protected under the [RA].” *Way v. City of Mo. City*, 133 F.4th 509, 522 (5th Cir. 2025) (internal quotation marks, brackets, and citation omitted) (discussing retaliation claim made by employee). However, Bass has not pleaded any facts showing that Defendants retaliated because of the accommodation request—i.e., a causal connection. Bass claims that the “interim removal, selective rule enforcement, gating of the accommodations content, and status-affecting transcript

notations . . . are causally connected.” Dkt. No. 14 at 18. This is a conclusory allegation because Bass includes no well-pleaded facts showing how TTUHSC’s actions are connected to his request.

The factual allegations he does make do not add up. For example, his “interim removal” from campus happened before he made the accommodations request, making it impossible for the request to be the cause of his removal. *Id.* at 8, 10. Additionally, Gibson—the alleged perpetrator of the “selective rule enforcement”—is not affiliated with SDS, so even assuming Bass’s accommodation request to SDS or Gibson constituted protected activity, Bass has not pleaded facts showing any causal link—i.e., that Gibson made the procedural decisions because of the protected activity. *See id.* at 5, 7, 9, 11–12 (indicating that Gibson helped TTUHSC and acted because of Bass’s social media commentary). Bass’s contention that TTUHSC “gat[ed] . . . accommodations content” is vague and devoid of factual support, but assuming it is a reference to Gibson’s redaction of the neuropsychologist’s recommendation, it fails for the same reason. *Id.* at 18. Finally, the transcript notation appeared only after the Board found Bass violated the student conduct code for posting a threat and recommended dismissal on that basis. *See id.* at 8–9, 12. Bass has not alleged TTUHSC made the notation because of his protected activity. Thus, Bass’s retaliation claim under the RA fails.

Similarly, Bass cannot state an interference claim. To start, it is unclear whether Bass intends to raise such a claim. He makes no attempt to address the elements in either his first amended complaint or his response to the motion to dismiss. Dkt. Nos. 14 at 18; 33 at 21–22. Moreover, the RA does not expressly prohibit interference with an

individual's exercise of a disability right (unlike the ADA), *see* 29 U.S.C. § 794, and the law is unsettled as to whether a plaintiff can assert such a claim, much less one outside the employment context. *Compare Frakes v. Peoria Sch. Dist. No. 150*, 872 F.3d 545, 550 (7th Cir. 2017) (explaining that "Section 504 employment discrimination is controlled by the standards of the ADA and a claim for 'interference' pursuant to Section 504 is established pursuant to the standards of the ADA"), *with Smith v. Mich. Dep't of Corr.*, 159 F.4th 1067, 1079, 1082 (6th Cir. 2025) (observing that the RA "contains no express anti-retaliation provision" and therefore holding that it "does not provide a private right of action for retaliation"—a holding that would seemingly also apply to an interference claim given the lack of an anti-interference provision in the RA).

Setting these issues aside, Bass has not alleged facts showing that TTUHSC interfered with a right protected under the RA. *Strife v. Aldine Indep. Sch. Dist.*, 138 F.4th 237, 251 (5th Cir. 2025) (explaining that although Fifth Circuit has no "articulated test for evaluating ADA interference claims," it has at least three elements based on statutory language). Bass complains that SDS did not process his accommodations request before the disciplinary hearing. But the purported failure to process a request in less than one business day can hardly be categorized as "interference." *See, e.g., Huber v. Blue Cross & Blue Shield of Fla., Inc.*, No. 20-3059, 2022 WL 1528564, at *6 (E.D. La. May 13, 2022) (defining interference by its "dictionary definition, i.e., 'the act of meddling in or hampering an activity or process'" (quoting *Walker v. City of Lakewood*, 272 F.3d 1114, 1128 (9th Cir. 2001))). Thus, Bass has failed to state a claim, even if he can raise one under the RA.

In sum, Defendants are entitled to sovereign immunity on Bass's retaliation and interference claims under the ADA. And he fails to state claims for interference and retaliation under the RA. Thus, all these claims should be dismissed.

E. The individual Defendants are entitled to qualified immunity on Bass's § 1983 claims.

Bass asserts the following § 1983 claims against Defendants in their individual capacities: (1) procedural due process under the Fourteenth Amendment; (2) "stigma plus" due process violation; and (3) retaliation in violation of the First Amendment. Dkt. No. 14 at 15–18. Defendants assert they are entitled to qualified immunity. Dkt. No. 27 at 12–19.

"Qualified immunity protects public officials from suit unless their conduct violates a clearly established constitutional right." *Brumfield v. Hollins*, 551 F.3d 322, 326 (5th Cir. 2008) (citation omitted). When a public official raises the affirmative defense of qualified immunity, a court conducts a two-step analysis to determine whether (1) the plaintiff has demonstrated that an official's conduct violated a constitutional or statutory right, and (2) the right was "clearly established" at the time of the violation. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). A court may address these prongs in the order it deems appropriate based on the circumstances particular to the case. *Id.* at 236; *see Lytle v. Bexar Cnty.*, 560 F.3d 404, 409 (5th Cir. 2009) (noting that the "rigid 'order of battle'—requiring courts to always address the constitutional issue of whether alleged conduct violated the constitution—is now advisory under *Pearson*").

A plaintiff bears the burden of negating a properly asserted qualified-immunity defense. *Brumfield*, 551 F.3d at 326. When a defendant raises qualified immunity in a motion to dismiss, “it is the defendant’s conduct as alleged in the complaint that is scrutinized for ‘objective legal reasonableness.’” *Behrens v. Pelletier*, 516 U.S. 299, 309 (1996) (emphasis omitted); see *McClendon v. City of Columbia*, 305 F.3d 314, 323 (5th Cir. 2002) (per curiam).

Procedural Due Process: Bass alleges that Defendants violated his rights to procedural due process by deviating from TTUHSC policies and applying rules inequitably during the disciplinary hearing. Dkt. No. 14 at 15–16. He asserts that he has a liberty interest in his good name and reputation, which was harmed by his improper dismissal from medical school. *Id.* at 15. He further contends that he has a state-created property interest in his continued enrollment at TTUHSC. *Id.* According to Bass, it was clearly established at the time of the incident that public universities must give notice and a meaningful opportunity to be heard before a disciplinary dismissal and that “officials may not employ arbitrary hearing restrictions.” *Id.* at 16.

To state a procedural due process claim, a plaintiff must show “that (1) he was deprived of a life, liberty, or property interest (2) without the process that was due.” *Saucedo-Falls v. Kunkle*, 299 F. App’x 315, 319 (5th Cir. 2008) (per curiam). The Supreme Court and the Fifth Circuit have assumed that students have a liberty or property interest in graduate higher education. See, e.g., *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 84–85 (1978) (assuming existence of a liberty or property interest in higher education and concluding medical student was “awarded at least as much due

process as the Fourteenth Amendment requires” before her academic dismissal); *Shaikh*, 739 F. App’x at 225 (assuming student possessed a property interest in higher education); *Davis v. Mann*, 882 F.2d 967, 97 (5th Cir. 1989) (“Like the Supreme Court in . . . *Horowitz*, we need not decide what type of interest [dental school resident] had in the [residency] program, because even assuming the existence of a liberty or property interest, [resident] received all the process he was entitled to under the Fourteenth Amendment” (internal quotation marks omitted)). The Fifth Circuit has also recognized a student’s “cognizable liberty interest in seeking to restore his reputation and clear his student disciplinary record.” *Van Overdam v. Tex. A&M Univ.*, 43 F.4th 522, 529 (5th Cir. 2022) (per curiam).

Defendants do not argue Bass lacks a protected liberty or property interest. *See* Dkt. No. 27 at 13–15. Therefore, consistent with higher courts, the undersigned assumes he possesses such an interest. Nevertheless, Bass’s claim fails because he pleads no facts showing he received constitutionally inadequate process.

“[D]ue process requires notice and some opportunity for hearing before a student at a tax-supported college is expelled for misconduct.” *Plummer v. Univ. of Hous.*, 860 F.3d 767, 773 (5th Cir. 2017) (citation omitted). When a student faces disciplinary—as opposed to academic—sanctions, “due process requires an ‘oral or written notice of the charges against him and, if he denies them, an explanation of the evidence . . . and an opportunity to present his side of the story.’” *Babinski v. Sosnowsky*, 79 F.4th 515, 521 (5th Cir. 2023) (quoting *Goss v. Lopez*, 419 U.S. 565, 581 (1975)). Courts should

evaluate whether a university afforded sufficient process in a disciplinary proceeding “based on a sliding scale that considers three factors,” known as the *Mathews* factors:

(a) the student’s interests that will be affected; (b) the risk of an erroneous deprivation of such interests through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (c) the university’s interests, including the burden that additional procedures would entail.

Plummer, 860 F.3d at 773 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

TTUHSC notified Bass approximately one month in advance of the disciplinary hearing, and Bass asserts no facts in his first amended complaint disputing that he received notice. *See* Dkt. No. 14 at 7 (indicating that as of November 2023 he was aware of an upcoming hearing), 15–16 (alleging that the procedures were inadequate but making no allegation he did not have notice of the hearing). Bass claims in his response that ¶¶ 27 and 29 of the first amended complaint show that he in fact challenges notice. But those paragraphs contain no allegations regarding deficient notice and instead relate to his dissatisfaction with the procedures employed during the hearing, and in particular, his complaint that he relied on a prior conversation about the hearing format to prepare for the hearing. *Id.* at 7–8. Dissatisfaction with the hearing format does not equal a lack of notice, and absent any specific argument to the contrary, the undersigned recommends that the district judge find that Bass received adequate notice.

Turning then to the *Mathews* factors, Bass’s dismissal “could have a substantial lasting impact on [his] personal [life], educational and employment opportunities, and reputation[] in the community.” *Plummer*, 860 F.3d at 773 (internal quotation marks omitted). “On the other hand, [TTUHSC] has a strong interest in the educational process,

including maintaining a safe learning environment for all its students, while preserving its limited administrative resources.” *Id.* (internal quotation marks and citation omitted).

On balance, the first and third factors do not tip the scale in either direction.

Regarding the second factor, Bass lodges several complaints about the disciplinary hearing’s procedures: deviations from “written rules”; consolidating hearings on Bass’s grievances and TTUHSC’s disciplinary charges; denial of “attorney-led cross examination” or “attorney-assisted questioning”; no contemporaneous objections; “asymmetric time limits and surprise witnesses”; “favoring administrative evidence while gating defense evidence”; and “restricting and delaying access to a complete, continuous record” after the hearing. *Id.* at 7–8, 15–16. Bass attributes many of these purported deviations to Gibson, who Bass claims “lacked neutrality and operated under constraints that materially favored the administration.” *Id.* at 7.

Gibson conducted the hearing and apparently controlled its procedures, but he did not make a recommendation concerning Bass’s enrollment. *Id.* at 5, 11. The Board made the recommendation for dismissal. *Id.* at 12. Bass pleads no facts showing that the Board—an associate dean, two students, and two professors—would have reached a different result but for Gibson’s allegedly “asymmetric” application of rules. *Id.*

Moreover, other than the fact that TTUHSC “retained” Gibson to conduct the hearing, Bass pleads no facts connecting Gibson’s procedural decisions to any improper agenda or bias, nor does he allege that TTUHSC’s payment to Gibson was contingent on a particular outcome. *See id.* at 5; *see also* Dkt. No. 33 at 16 (referencing Gibson’s pay). “Alleged prejudice of university hearing bodies must be based on more than

mere speculation and tenuous inferences.” *Walsh v. Hodge*, 975 F.3d 475, 482–83 (5th Cir. 2020) (citation omitted); *see Pham v. Blaylock*, 712 F. App’x 360, 363 (5th Cir. 2017) (per curiam) (explaining that “[a] decisionmaker is unconstitutionally biased when he has a pecuniary interest in the outcome or has been the target of personal abuse or criticism from the party under scrutiny” (internal quotation marks and citation omitted)). “To prove bias, [Bass] must overcome a presumption of honesty and integrity in those serving as adjudicators.” *Pham*, 712 F. App’x at 364 (internal quotation marks, brackets, and citation omitted). Bass’s conclusory allegations of Gibson’s alleged bias do not overcome this presumption, particularly given that Gibson was not the decisionmaker.

The other allegedly unlawful procedures also fail to demonstrate a due process violation. Defendants’ failure to follow written school policies is insufficient to show a constitutional violation. *See id.* at 363 (quoting *Levitt v. Univ. of Tex. at El Paso*, 759 F.2d 1224, 1231 (5th Cir. 1985)); *Shah v. Univ. of Tex. Sw. Med. Sch.*, 54 F. Supp. 3d 681, 695 n.15 (N.D. Tex. 2014) (citation omitted). Regarding witnesses and evidence, the only information Bass contends was excluded was testimony from Bass’s neuropsychologist and portions of the neuropsychologist’s report making recommendations on accommodations for Bass’s disabilities, as well as testimony from Dr. Trotter. *See* Dkt. No. 14 at 7–8, 12. But Bass does not allege that Dr. Trotter or his neuropsychologist had any personal knowledge of Bass’s conduct violations or grievances against TTUHSC staff, which were the bases for the hearing. *See id.* at 6–7 (stating that his neuropsychologist opined on “communication supports”), 7 (alleging that Dr. Trotter, a student conduct administrator, advised Bass about the format of the hearing

in November 2023, but Gibson did not follow that format). In short, Bass has not pleaded facts showing how the exclusion of this testimony or evidence contributed to an erroneous dismissal from TTUHSC for violations of the student code of conduct.

Similarly, Bass has not linked his remaining criticisms of the procedures to any erroneous dismissal or shown that additional safeguards would have altered the outcome. *Cf. Plummer*, 860 F.3d at 774–75 (holding that plaintiffs did not meet their summary judgment burden on second *Mathews* factor where there was no evidence that “further procedural safeguards would not have lessened the risk of an erroneous deprivation of [plaintiffs’] . . . interests or otherwise altered the outcome”). Bass disagrees with the procedural decisions, but he has not shown that they were constitutionally defective. To the contrary, his own allegations show that he was afforded many of the same procedural protections as those the Fifth Circuit has concluded satisfy the Constitution. In *Van Overdam*, for example, the Court held that where a plaintiff received advanced notice of the allegations against him, “was permitted to call witnesses and submit relevant, non-harassing evidence of his innocence to a neutral panel of administrators,” “was represented by counsel throughout the entirety of his disciplinary proceeding[,]” “had the benefit of listening to [his accuser’s] description of the allegations directly[,]” and was able, with counsel, “to submit an unlimited number of questions to the disciplinary panel[,]” there was no due process violation. *Van Overdam*, 43 F.4th at 530.

Here, Bass received advanced notice of the allegations, was represented by counsel, listened to the accusations against him, was able—with counsel—to submit relevant questions for the witnesses, although perhaps not in the format or with the

extensiveness that Bass preferred, and was able to testify on his own behalf. *See* Dkt. No. 14 at 7, 11–12 (stating that his counsel was able to submit written questions and that Bass questioned witnesses, although some questions were excluded based on relevance). The hearing spanned fourteen hours, suggesting that it was sufficiently thorough to allow the Board to hear the arguments of both sides in detail. *Id.* at 5. At least one of the infractions related to Bass’s social-media post, which the Board could have evaluated on its face to determine whether it was “disruptive and reasonably perceived as a potential threat to members of the TTUHSC community.” *Id.* at 8. Finally, the recommendation for dismissal was made by the Board—an associate dean, two students, two professors—not by Gibson, who merely managed the proceeding. *Id.* at 12. Bass does not allege that the Board acted improperly. *See id.* These procedures, akin to the ones approved by the Fifth Circuit in *Van Overdam*, are sufficient to ensure that Bass received due process.

In sum, Bass’s conclusory allegations reflect his mere disagreement with the procedures employed. But “[a] university is not a court of law, and it is neither practical nor desirable it be one.” *Plummer*, 860 F.3d at 773 (citation omitted). Thus, the Court “must focus on ensuring the presence of fundamentally fair procedures to determine whether the misconduct has occurred.” *Id.* (internal quotation marks and citation omitted). And here, Bass has not pleaded facts showing that additional procedural safeguards would have lessened the risk of an erroneous deprivation or that they would have altered the outcome of the hearing. He has also failed to even hint that these procedures were somehow fundamentally unfair. Bass has therefore failed to plead an actionable due process violation.

Even if Bass had done so, however, Defendants would be entitled to qualified immunity because it was not clearly established that their conduct was unconstitutional. Bass argues that his right to notice and a meaningful opportunity to be heard was clearly established under *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961) and *Mathews*, 424 U.S. 319. Dkt. No. 14 at 16; *see also* Dkt. No. 33 at 15–16, 22 (citing three other 5th Circuit cases). While he is correct that these cases stand for the general proposition that due process requires notice and an opportunity to be heard, he is mistaken about the breadth of the application of these cases here.

In *Mathews*, the Supreme Court determined that a social security claimant received adequate due process under then-existing administrative procedures. 424 U.S. at 323. But the adequacy of those administrative procedures in the disability-benefits context says very little about the adequacy of the procedures employed by TTUHSC except to the extent that both the Social Security Administration and TTUHSC provided the impacted individual with notice and an opportunity to be heard. *See id.* at 344–46 (discussing claimant’s opportunity to answer a questionnaire, submit medical information, and challenge the accuracy of medical information in his case file). Indeed, from Bass’s own pleadings, it appears that TTUHSC provided *more* opportunity to be heard than was provided to the claimant in *Mathews* because Bass was given a 14-hour hearing before being deprived of any protected interest.

Bass’s reliance on *Dixon* is also inapt. There, a university expelled students who had engaged in protests or demonstrations without providing specific notice of the charges or giving them hearings prior to their expulsion. 294 F.2d at 152–54. The Fifth

Circuit held that students are entitled to notice of the specific grounds justifying expulsion, the presentation of evidence, and an opportunity to be heard before they are suspended or expelled—the same process Bass’s own allegations show he received. *Id.* at 158.

Thus, while the cases support that university students have a right to due process before expulsion and identify factors the courts should consider in evaluating whether any process received was sufficient, these cases do not demonstrate that Defendants were “on notice” regarding the particular alleged deficiencies in Bass’s disciplinary hearing. Indeed, Fifth Circuit precedent—by which this Court is bound—“forecloses [Bass’s] argument that the mere existence of his right to due process provides fair warning to [Defendants] for all conduct that he alleges might violate that right.” *Babinski*, 79 F.4th at 523; *see* Dkt. No. 33 at 22 (arguing that the Fifth Circuit incorrectly held in *Babinski* that “there must be adequate authority at a sufficiently high level of specificity” to constitute clearly established law).

The other cases Bass cites fare no better. *Van Overdam* involved a student accused of sexual assault and required the court to determine whether due process required the opportunity for attorney-led cross-examination of the student’s accuser. 43 F.4th at 526. Bass does not contend that his disciplinary charges involved sexual assault, nor does he allege he lacked an opportunity to question the individuals who lodged complaints against him. Moreover, the Fifth Circuit held that the student’s due process rights were not violated by the lack of attorney-led cross-examination, and Bass does not

make such a claim here. *Id.* at 529; *see* Dkt. No. 14 at 15 (confirming that “Plaintiff does not claim a categorical right to attorney-led cross examination”).

Similarly, *Doe v. William Marsh Rice University* did not involve a due process claim. 67 F.4th 702, 705 (5th Cir. 2023). And in *Walsh*, the plaintiff was a university professor who was terminated for sexually harassing several students in violation of policy. 975 F.3d at 478–80. The Fifth Circuit rejected the plaintiff’s argument that his due process rights were violated because one member of the committee was biased. *Id.* at 482–83. That court also held that “due process in the university disciplinary setting requires some opportunity for real-time cross-examination, even if only through a hearing panel.” *Id.* at 485 (internal quotation marks and citation omitted). But here, Bass does not contend that he was wholesale denied the opportunity for real-time cross-examination. *See* Dkt. No. 14 at 7, 11 (stating that counsel was permitted to submit written questions and that both Bass and TTUHSC administration were permitted to ask questions), 15–16 (making no mention of a cross-examination issue).

These cases do not show Defendants were on notice that their actions—including barring contemporaneous objections and counsel’s verbal questions, as well as “imposing asymmetric time limits and [allowing] surprise witnesses”—violated the law. Dkt. No. 14 at 15. Because Bass has failed to point to “an appropriately analogous case of greater specificity,” he has not shown the law was clearly established. *Babinski*, 79 F.4th at 523. Defendants are entitled to qualified immunity, and the district judge should dismiss Bass’s claim.

Stigma-Plus: “To make out a stigma-plus claim, a plaintiff must demonstrate that (1) he has suffered a stigma from some government action, plus (2) he experienced the extinguishment of a right of status previously recognized by state law.” *Id.* at 519 n.3. “To fulfill the stigma aspect of the equation, a claimant must prove that the stigma was caused by a false communication.” *San Jacinto Sav. & Loan v. Kacal*, 928 F.2d 697, 708 (5th Cir. 1991) (internal quotation marks and citation omitted). The Fifth Circuit “has found sufficient ‘stigma’ only in concrete, false factual representations or assertions, by a state actor, of wrongdoing on the part of the claimant.” *Id.* (citation omitted). “To establish the infringement portion . . . , a claimant must establish that the state sought to remove or significantly alter a life, liberty, or property interest recognized and protected by state law or guaranteed by one of the provisions of the Bill of Rights that has been incorporated.” *Id.*

Bass identifies several communications that he believes were false: (1) the “campus-wide and affiliate-hospital BOLO/ban”; (2) “a January 7, 2024 class-wide broadcast stating that the class was ‘one student lighter than last week’ and directing recipients to ‘check his Twitter’”; and (3) the transcript notation reflecting his non-academic dismissal as of January 11, 2024. Dkt. No. 14 at 16. However, Bass has not shown how these communications were false. A directive that Bass not be permitted on campus or allowed to badge-in at clinics or hospitals, standing alone, contains no false statement—he was, indeed, banned from these facilities pending his hearing. *See id.* at 10 (alleging that the message to hospitals stated, “do not allow Kevin Bass into the Covenant Branch office nor badge him in at any of the hospitals, pending further notice”

(internal quotation marks omitted)). And Bass was, in fact, dismissed from medical school for non-academic reasons, so nothing about the transcript notation or the January 7, 2024 student-body email was false, even though some may find the email distasteful or unprofessional. *Id.* at 12. Bass even acknowledges the lack of false statements, arguing that the materials “insinuated” or “suggested” that he was dangerous—not that they actually said that. *See id.* at 16; Dkt. No. 33 at 17.

Bass’s claim fails as a matter of law, and Defendants are entitled to qualified immunity. The undersigned recommends that the district judge dismiss this claim.

Retaliation: To state a viable First Amendment retaliation claim, a plaintiff must demonstrate the following: “(1) [he was] engaged in constitutionally protected activity, (2) the defendants’ actions caused [him] to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) the defendants’ adverse actions were substantially motivated against the plaintiff[’s] exercise of constitutionally protected conduct.” *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002).

Bass argues that his social-media commentary and grievances about TTUHSC staff were constitutionally protected activities. *See* Dkt. Nos. 14 at 17; 33 at 18–19. Bass does not, however, have a constitutional right to engage in speech that is “reasonably understood by school officials to threaten, harass, and intimidate [the school community], even when such speech originated, and was disseminated, off-campus without the use of school resources.” *Bell v. Itawamba Cnty. Sch. Bd.*, 799 F.3d 379, 396 (5th Cir. 2015). Bass apparently engaged in speech that TTUHSC staff and students perceived as

threatening, but because Bass elected not to include the specific language of his post, the undersigned cannot evaluate it. *See* Dkt. No. 14 at 8 (characterizing the post as “a short philosophical reflection on mortality” and asserting that the Board’s treating it was a “threat of harm was unreasonable” given that others only “perceived” it as a threat).

Bass also fails to describe the nature of his other social media posts, as well as his grievances against staff. *See, e.g., id.* at 9 (“Plaintiff publicly criticized COVID19 [sic] policies and filed grievances—speech and petitioning on matters of public concern.”), 10 (stating officials encouraged him “to curtail protected online speech” without describing it), 11 (asserting generally that the grievances related to “learner mistreatment”).

Grievances can be constitutionally protected, but the content of them is relevant to determining whether they are protected. *See, e.g., Davis v. Angelina Coll. Bd. of Trs.*, No. 9:17-CV-00179, 2018 WL 10111001, at *6–8 (E.D. Tex. June 1, 2018) (concluding student’s grievances were not protected speech because they were not matters of public concern and disrupted institution and invaded rights of staff); *see also* Dkt. No. 14 at 11 (indicating that some of his grievances were denied because they “violated policy”). Bass’s failure to plead adequate facts showing that his speech was protected means he has not established the first retaliation element. *See Chhim v. Univ. of Tex. at Aus.*, 836 F.3d 467, 469 (5th Cir. 2016) (per curiam) (emphasizing that “pro se plaintiffs must still plead factual allegations that raise the right to relief above the speculative level”).

Bass’s conclusory allegations also fail to show causation. “[A] plaintiff must establish a causal connection between the government defendant’s retaliatory animus and the plaintiff’s subsequent injury.” *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019) (internal

quotation marks and citation omitted). “It is not enough to show that an official acted with a retaliatory motive and that the plaintiff was injured—the motive must *cause* the injury.” *Id.* “Specifically, it must be a ‘but-for’ cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive.” *Id.* at 399.

Bass acknowledges that Defendants acted at least in part because of his November 2023 post that others perceived as threatening. *See* Dkt. No. 14 at 8 (explaining that the November 2023 post was “the catalyst for the Emergency Removal and Criminal Trespass Warning” and that he was dismissed for, among other reasons, the post, which the Board found was a violation of the student conduct code), 9 (opining that his social media presence “contributed to [Defendants’] decision to characterize his November 3, 2023 post as a ‘threat’”). Even if Defendants were partially motivated by their disagreement over Bass’s COVID-19 posts or filing of grievances, they imposed the campus and hospital ban and initiated disciplinary charges only after the post that others perceived as threatening, and Bass was dismissed based on the Board’s finding that the November 2023 post violated the code of conduct.⁶ He also indicates that he was facing other “conduct complaints and negative evaluations.” *Id.* at 7; *see also id.* at 10 (alleging that Wilson “filed multiple professionalism complaints against him” and thereafter advocated for imposition of the campus ban). Because Bass’s first amended complaint

⁶ Bass’s reference in his response to material outside the pleadings to support his causation argument is not properly before the Court, so the undersigned has not considered it. *See* Dkt. No. 33 at 19–20 (referencing conversation with TTUHSC’s general counsel, who was never mentioned in complaint, and arguing that TTUHSC “deliberately bypass[ed] the statutory framework governing speech-based threats”).

shows that Defendants' retaliatory animus was not the but-for cause of their actions, Bass cannot establish causation.

Finally, Bass has failed to meet his burden of showing that the law was clearly established. He cites general cases regarding retaliation. *See* Dkt. Nos. 14 at 18; 33 at 18–23. But he points to no case giving Defendants “fair warning” that they could not lawfully discipline a medical student who was facing conduct complaints and negative evaluations at the same time the student was making controversial social media posts and who then made a post that the school community perceived as threatening. *Babinski*, 79 F.4th at 524.

Defendants are entitled to qualified immunity on Bass's retaliation claim because he has not met his burden on either prong. The undersigned recommends the district grant Defendants' motion to dismiss on this claim.

F. Bass has pleaded his best case, and his motion to amend should be denied as futile.

Bass asks that in the event the Court finds his pleading deficient that he be granted leave to amend. Dkt. No. 33 at 29, 31. He has also filed a motion for leave to amend with a proposed second amended complaint. Dkt. No. 43. Defendants oppose Bass's motion, arguing that amendment would be futile. Dkt. Nos. 38 at 8–9; 48.

“[D]istrict courts often afford plaintiffs at least one opportunity to cure pleading deficiencies before dismissing a case, unless it is clear that the defects are incurable or the plaintiffs advise the court that they are unwilling or unable to amend in a manner that will avoid dismissal.” *Great Plains Tr. Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d

305, 329 (5th Cir. 2002); *see Brewster v. Dretke*, 587 F.3d 764, 767–68 (5th Cir. 2009) (per curiam) (“[A] *pro se* litigant should be offered an opportunity to amend his complaint before it is dismissed.”). However, a court need not grant leave “if allowing an amendment would be futile.” *Marucci Sports, L.L.C. v. Nat’l Collegiate Athletic Ass’n*, 751 F.3d 368, 378 (5th Cir. 2014). “An amendment is futile if it would fail to survive a Rule 12(b)(6) motion.” *Id.* Thus, a proposed amended complaint should be evaluated “under the same standard of legal sufficiency as applies under Rule 12(b)(6).” *Id.* (internal quotation marks and citation omitted).

Bass moves to amend “to comply with Rule 8, add [David] Trotter [as a defendant], and present each claim with the legal specificity that Rule 8’s ‘short and plain statement’ requires.” Dkt. No. 43 at 3. But “[t]he claims asserted are the same statutory and constitutional theories already at issue in the operative complaint.” *Id.* at 2–3.

Bass’s proposed amendment recites the facts in chronological order and contains detail that his operative pleading omitted, making it easier to understand. Yet, Bass’s proposed amendments still fail to cure the deficiencies identified in Defendants’ motion to dismiss, as the undersigned discusses below.

RA: The factual allegations underpinning Bass’s RA claim remain essentially unchanged. *See* Dkt. No. 43-1 at 10–12. He does add that sometime between May and October 2023, his professionalism coach “assessed [him] as having characteristics consistent with a neurodevelopmental condition,” but “TTUHSC made no referral to a specialist, no accommodation inquiry, and no interactive process determination despite this clinical assessment.” *Id.* at 6. Bass additionally claims that he “had a pre-existing

ADHD diagnosis known to TTUHSC,” but he does not explain when or how TTUHSC became aware of the diagnosis or whether he requested accommodations related to the diagnosis. *Id.* Unlike his operative pleading, his proposed amendment appears to assert only a claim for failure-to-accommodate. *See id.* at 17–18.

Bass contends that “TTUHSC’s conduct constitutes intentional discrimination because the Board (a) received the disability documentation, (b) considered it, and (c) consciously rejected accommodation, characterizing it as ‘retroactive leniency.’” Dkt. No. 43-1 at 18. In Bass’s view, “[w]here accommodation is required and the entity simply denies it, the entity is liable.” *Id.* He further claims that “TTUHSC’s denial of required hearing accommodations was the sole cause of [his] inability to meaningfully participate in the proceeding that determined his dismissal.” *Id.*; *see also id.* at 12 (alleging that “[t]he denial of accommodations produced the harm” and that “by the final hours, Plaintiff was unable to follow the majority of proceedings and could not formulate adequate cross-examination”).

Bass’s proposed amendments do not cure the deficiencies identified by Defendants’ motion and discussed herein. First, unlike his first amended complaint, Bass does not specify what accommodations he allegedly requested either from SDS or on the morning of his disciplinary hearing. *See id.* at 10, 18. Thus, he has not pleaded facts showing that his requested accommodations were reasonable—a necessary element. *See Bennett-Nelson*, 431 F.3d at 455 (explaining that “the existence of a violation depends on whether under . . . the [RA] . . . , the demanded accommodation is in fact reasonable and therefore required”); *Smith*, 956 F.3d at 317 (observing that “[t]o succeed on a failure-to-

accommodate claim, a plaintiff must prove [that] . . . the entity failed to make reasonable accommodations” (citation omitted)).

Moreover, Bass wants to hold TTUHSC liable for its alleged failure to accommodate based on the Board’s and/or Gibson’s decision not to consider Bass’s neuropsychologist’s report, which included recommended accommodations. Dkt. No. 43-at 10, 18. But still, Bass pleads no facts showing that he timely submitted his request or that Gibson and the Board were the proper authorities for reviewing and approving accommodation requests. *Id.*; *see Pickett*, 37 F.4th at 1032–33 (explaining that covered institution cannot be charged with knowledge when plaintiff submits accommodation request to incorrect person). And even if they were, Bass pleads no facts showing that he “requested an accommodation in direct and specific terms.” *Smith*, 956 F.3d at 317; *see* Dkt. No. 43-1 at 11 (indicating that he gave Gibson a copy of his neuropsychologist’s report that included “accommodation recommendations” but failing to describe what accommodations were recommended and giving no indication that he communicated his limitations to Gibson along with a specific accommodation request).

Bass’s attempt to blame TTUHSC related to the accommodation process also fails. At most, Bass alleges TTUHSC suspected he was autistic and had an ADHD diagnosis. Dkt. No. 43-1 at 6, 17. “Mere knowledge of the disability is not enough” to state a claim. *Windham*, 875 F.3d at 236. The plaintiff must “specifically identify the disability and resulting limitations, and . . . request an accommodation in direct and specific terms.” *Id.* at 237 (internal quotation marks and citations omitted); *see Choi*, 633 F. App’x at 216 (affirming dismissal of plaintiff’s failure-to-accommodate claim because he never alleged

that he informed university of limitations resulting from his disability—he only informed school of his diagnosis). Bass pleads no facts showing that he made TTUHSC aware of his disability or any resulting limitations or made a request for accommodation prior to December 8, 2023—one business day before the hearing. *Id.* at 10.

Alternatively, Bass has not alleged that his mental disabilities, “resulting limitations, and necessary reasonable accommodation[s] were open, obvious, and apparent to the entity’s relevant agents” such that TTUHSC had an obligation to accommodate despite Bass’s failure to request accommodation prior to December 8. *Smith*, 956 F.3d at 318 (internal quotation marks and citation omitted) (acknowledging that if the plaintiff does not specifically request accommodation, he can only prevail if he meets the “open, obvious, and apparent” exception).

Thus, Bass’s failure-to-accommodate claim boils down to a single allegation that TTUHSC should have delayed the disciplinary hearing to consider Bass’s December 8 accommodation request. Dkt. No. 43-1 at 10. As discussed above, TTUHSC’s lack of action in the hours between Bass’s eleventh-hour request and the start of the disciplinary hearing do not, standing alone, show that TTUHSC failed to engage in the interactive process and refused to accommodate Bass. Nor has Bass alleged that he asked for a delay of the hearing as an accommodation or that any delay would have been reasonable given Bass’s lack of accommodation request in the one month leading up to the hearing or at any time during his tenure in medical school.

Further, Bass’s proposed amendment is deficient because he has not established that he is a qualified individual with a disability. Construing his amendment liberally,

Bass *may* have autism and ADHD. *See id.* at 6. However, Bass pleads no facts showing that those potential disabilities “substantially limit[] one or more of [his] major life activities.” *See* 29 U.S.C. § 705(20)(B); 42 U.S.C. § 12102(1)(A). Bass does not explain how his disabilities limit a life activity. *See* Dkt. No. 43-1. If anything, Bass claims that he was not limited by his disabilities. *Id.* at 6 (alleging that he “performed competently in clinical rotations, with supervising physicians assessing his clinical skills as meeting expectations”), 17 (asserting that “[h]e performed competently in clinical rotations before the events described above”).

Finally, unlike his first amended complaint, Bass only seeks compensatory damages for TTUHSC’s purported RA violation. *Id.* at 18. *But see id.* at 25 (including a request for declaratory relief that defendants violated the RA). However, like his operative complaint, the proposed amendment fails to plead facts showing that TTUHSC intentionally discriminated. *See id.* at 17–18 (alleging that the Board intentionally discriminated, which does not impute the requisite knowledge to TTUHSC). Therefore, even if he had stated an RA violation, his claim would fail.

For all these reasons, amendment would be futile as the proposed amendment would not survive a Rule 12(b)(6) motion to dismiss.

ADA: Bass’s proposed amendment does not cure the deficiencies identified in Defendants’ motion to dismiss or this FCR. *See* Dkt. No. 43-1 at 18–19. He lacks standing and seeks injunctive relief to remedy past harms, despite his labeling of the relief as prospective. *Id.* Amendment would therefore be futile.

ADA and RA Retaliation and Interference: Bass adds two new allegations in his proposed amendment. First, he says that “Cobbs directed [Bass’s] professionalism coach to cease all contact with [Bass], terminating his only support relationship during the critical pre-hearing period,” because Bass filed a state lawsuit. *Id.* at 24. Next, he attributes “escalation” of his student-loan debt to his public information requests. *Id.*

Neither of these new allegations overcome Defendants’ assertion of sovereign immunity as to claims under the ADA, for the same reasons discussed above.

As for the RA claims, the new allegation that Bass’s professionalism coach could not talk to him because of a pending lawsuit fails to show that action was materially adverse. *See Higbie v. Kerry*, 605 F. App’x 304, 308 (5th Cir. 2015) (per curiam) (describing “[a]n adverse employment action [a]s one that ‘a reasonable employee would have found . . . materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination’” (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006))); *cf.* *Hamilton v. Dallas Cnty.*, 79 F.4th 494, 497 (5th Cir. 2023) (holding that for Title VII claims, a materially adverse action is one related to the “hiring, firing, compensation, or the ‘terms, conditions, or privileges’ of [plaintiff’s] employment”). Bass has not alleged that the lack of communication with his coach dissuaded him from filing complaints about disability discrimination.

Moreover, Bass has not shown that a public information request—even if it involved documents related to his ADA and RA claims—is protected by the RA. Thus, his claim fails at the first element. *See* 29 C.F.R. § 1614.101(b); *Jeudy*, 2026 WL

675683, at *4. It also fails at the third element because Bass has not pleaded facts showing that but for his protected activity, TTUHSC would not have escalated his debt. *See* Dkt. No. 43-1 at 16–17 (alleging that he did not make a payment for fifteen months).

For these reasons, Bass’s proposed amendments would be futile.

Procedural Due Process: Bass’s allegations remain essentially unchanged. *See id.* at 19–20. He does, however, include additional facts about the purported misconduct of certain individuals—Gibson, Lauren Cobbs, Simon Williams, and Trotter. Bass says that in addition to Gibson serving as the hearing officer, he “remained in the deliberation room during the Board’s deliberations and authored the Board’s determination letter.” *Id.* at 11. According to Bass, Gibson has a contract with TTUHSC that “requires him to ‘represent’ the university and to ‘keep [the] Agency fully informed about all material matters.’” *Id.*

As for Cobbs, Bass alleges that she “participated in the complaint process at every stage, blocked an investigator from obtaining evaluations, and developed a documented strategy to use professionalism standards as a basis for action against [Bass’s] protected speech.” *Id.* at 19. Williams purportedly “predetermined the process by drafting the Dean’s appeal response on the same day [Bass] prevailed in a prior internal proceeding,” and Trotter “abandoned the negotiated hearing structure without notice and altered the procedural framework to [Bass’s] detriment.” *Id.* at 20.

Bass’s proposed amendment emphasizes Gibson’s alleged bias, along with the alleged misconduct of others involved in the disciplinary process. Missing from Bass’s new allegations, however, are facts showing that he did not receive an adequate hearing

or that he was denied the opportunity to tell his side of the story. *Babinski*, 79 F.4th at 521. Bass's allegations about Gibson—that he has a contract with TTUHSC to represent it and that he participated in the deliberations—do not overcome the presumption of integrity. *Pham*, 712 F. App'x at 364. Bass does not allege, for example, that Gibson's salary was contingent upon a particular outcome; he merely alleges TTUHSC paid Gibson for his time and in return, Gibson represented the university and kept it informed. *See* Dkt. No. 43-1 at 11.

Bass's allegations against the other Defendants fail to show that the outcome of the hearing would have been different. Bass indicates that due to “double-counting and undisclosed evaluations,” “formal proceedings” were triggered, which eventually led to the disciplinary hearing. Dkt. No. 43-1 at 12–14. However, it was Bass's November 2023 post that prompted TTUHSC officials to take immediate action. *See id.* at 8–9. Bass was dismissed in part because the Board found that post violated the student conduct code. The Dean affirmed the Board's recommendation, and Bass's appeal of that affirmation was denied. *Id.* at 15.

Bass disputes the characterization of the post as a threat, but he does not otherwise assert that he did not receive a fair hearing as to that infraction. *See id.* at 8–15. Nor does he plead facts showing that the Dean's affirmance or the appeal was tainted. *See id.* at 15; *see also id.* at 13–14 (asserting that Williams participated in the appeal process of a sexual misconduct allegation, not that Williams was involved in the disciplinary appeal).

Finally, even if Bass's proposed amendment stated a viable procedural due process claim, he fails to cite any case showing that the law was clearly established that Defendants' conduct was unlawful. *Id.* at 19–20. He only points to cases standing for general propositions of law. *Id.* at 20. Bass's proposed amendment would not survive a motion to dismiss, so amendment would be futile.

Stigma-Plus: Bass attempts to show that TTUHSC's publications were false because some people felt he was not a threat. *Id.* at 21. But the proposed amendment still fails to identify any false information. *See id.* at 21–22. Amendment would be futile.

Retaliation: Bass tries to establish a causal connection by alleging that he posted about “matters of public concern . . . and published writings on public health policy.” *Id.* at 22. Thereafter, “Defendants took adverse action against Plaintiff: emergency removal, campus ban, criminal trespass warning, BOLO distribution, disciplinary hearing, and dismissal.” *Id.* The alleged adverse actions, however, were in response to Bass's post that members of the TTUHSC community perceived as threatening—unprotected speech. *See id.* at 8–9 (asserting that “[w]ithin 24 hours” of his November 2023 post, officials entered an emergency removal and soon thereafter also issued the trespass warning and BOLO). Moreover, Bass still fails to explain the content of his other posts, so his legal conclusion that the posts were of “public concern” is unsupported by fact. Similarly, he does not discuss the contents of his grievances.

Finally, even if he engaged in protected speech, his proposed amendment includes no facts showing that Defendants would not have taken the allegedly adverse actions but

for their retaliatory motive. *See id.* at 22–23. Bass faced numerous professionalism complaints and made what others perceived as a threatening post. *Id.* at 8–9, 12–15. He has not shown that any protected speech was the “but for” cause of Defendants’ actions.

Moreover, even if Bass had made such a showing, he has not identified a case showing that the law was clearly established that Defendants’ conduct was unlawful in similar circumstances. *See id.* at 23. Thus, his proposed amendment would be futile.

Count 7: Bass adds a Count 7 to his proposed amended complaint. *Id.* at 24. He sues Gibson in his individual capacity for a due process violation based on his alleged misconduct. *Id.* The claim, however, is based on the same conduct discussed in connection with Bass’s procedural due process claim. For the same reasons discussed above, amendment to include a new count would be futile.

In sum, Bass has had ample opportunity to plead his best case. He amended his complaint once. And despite being put on notice of deficiencies in his first amended complaint via Defendants’ motion to dismiss, Bass’s proposed second amended complaint does not cure those deficiencies. As discussed above, granting Bass leave to file a second amended complaint would be futile, and Bass has not shown that he can plead sufficient facts to overcome the deficiencies such that he should be permitted to amend further. *Norman v. Apache Corp.*, 19 F.3d 1017, 1021 (5th Cir. 1994) (providing that granting leave to amend under Rule 15(a) “is entrusted to the sound discretion of the district court”); *Schiller Physicians Res. Grp. Inc.*, 342 F.3d 563, 566 (5th Cir. 2003) (providing that in deciding whether to grant leave, a court may consider factors including

“repeated failures to cure deficiencies by amendments previously allowed . . . and futility of the amendment”).

4. Recommendation

For the foregoing reasons, the undersigned recommends that the United States District Judge **GRANT** Defendants’ motion to dismiss and dismiss without prejudice Bass’s ADA claims and claim for declaratory relief under the RA. All other claims should be dismissed with prejudice. Finally, the undersigned recommends that the district judge **DENY** Bass’s motion for leave to file a second amended complaint because amendment would be futile. Dkt. No. 43.

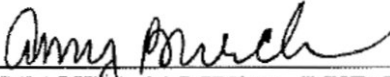
5. Right to Object

A copy of these findings, conclusions, and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1) (2016); Fed. R. Civ. P. 72(b). To be specific, an objection must identify the specific finding, conclusion, or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge’s Findings, Conclusions, and Recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the

district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto.*

Ass'n, 79 F.3d 1415, 1417 (5th Cir. 1996).

Dated: July 14, 2026.



AMANDA 'AMY' R. BURCH
UNITED STATES MAGISTRATE JUDGE