

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

KEVIN N. BASS,

Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER, et al.,

Defendants.

No. 5:25-CV-244-H

ORDER

The plaintiff, Kevin Bass, proceeding pro se, filed a renewed motion for leave to file a second amended complaint (Dkt. No. 57). Bass filed the motion in response to the Findings, Conclusions, and Recommendations (FCR) of United States Magistrate Judge Amanda ‘Amy’ R. Burch (Dkt. No. 54). Judge Burch recommended that the Court grant the defendants’ motion to dismiss all claims (Dkt. No. 27) and deny the plaintiff’s pending motion for leave to amend his complaint (Dkt. No. 43) because the proposed amendments are futile.¹

Bass amended his complaint once as of right (Dkt. No. 14) and has sought leave to amend three times prior to his current request. *See* Dkt. Nos. 26; 32; 43. In the instant motion for leave to amend (Dkt. No. 57), Bass submits yet another proposed amended complaint with more-detailed factual allegations than his operative pleading. Because the Court has twice denied the plaintiff leave to amend and because his proposed amendments are futile, the Court denies the motion.

¹ The Court, by separate order, overrules Bass’s objections and adopts the FCR in full. Dkt. No. 60. For brevity’s sake, the Court incorporates the factual background and procedural history in that order and does not recount it here. *See id.* at 2–6.

1. Federal Rule of Civil Procedure 15 Legal Standard

Federal Rule of Civil Procedure 15(a)(1) allows a party to amend a pleading “once as a matter of course” within 21 days of serving the pleading or receiving the opposing party’s responsive pleading or motion. Fed. R. Civ. P. 15(a)(1). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). When evaluating whether to allow leave to amend under Rule 15, “[t]he court should freely give leave when justice so requires.” *Id.* The Rule 15 standard favors granting leave to amend, and a district court must have a “substantial reason” for denying leave. *Marucci Sports, LLC v. Nat’l Collegiate Athletic Ass’n*, 751 F.3d 368, 378 (5th Cir. 2014) (quoting *Jones v. Robinson Prop. Grp., LP*, 427 F.3d 987, 994 (5th Cir. 2005)). In deciding whether to allow amendment of the complaint, a district court may consider factors such as “undue delay, [the movant’s] bad faith or dilatory motive, repeated failures to cure deficiencies by amendments . . . , undue prejudice to the opposing party . . . , and futility of the amendment.” *Id.* (quoting *Jones*, 427 F.3d at 994).

2. Analysis

Because the plaintiff has previously failed to cure the defects in his pleading and because his proposed amendments are futile, the Court denies the motion.

A. The plaintiff has repeatedly failed to cure deficiencies by previous amendments.

“The district court is entrusted with the discretion to grant or deny a motion to amend and may consider a variety of factors including ‘. . . repeated failures to cure deficiencies by amendments previously allowed.’” *Marucci Sports*, 751 F.3d at 378 (quoting *Jones*, 427 F.3d at 994). This is Bass’s fifth attempt to amend his complaint since filing suit. *See* Dkt. Nos. 14; 26; 32; 43; 57. The magistrate judge previously denied leave to amend for

failure to comply with Federal Rule of Civil Procedure 8 and because Bass's proposed amendments would be futile. Dkt. No. 42. Following this order, Bass again moved for leave to amend and submitted a proposed amended complaint. Dkt. Nos. 43; 43-1. He "[gave] no indication that he did not plead his best case in his [proposed] complaint." *Brewster v. Dretke*, 587 F.3d 764, 768 (5th Cir. 2009). The magistrate judge and this Court again found the proposed amended complaint futile. Dkt. Nos. 54; 60. Accordingly, the Court is "justified to dismiss [Bass's] claims without providing another opportunity for [him] to amend [his] complaint after [he] failed to follow the pleading requirements for the second time." *McZeal v. Deutsche Bank Nat'l Tr. Co.*, 726 F. App'x 968, 971 (5th Cir. 2018); *see also Body by Cook, Inc. v. State Farm Mut. Auto. Ins.*, 869 F.3d 381, 391 (5th Cir. 2017) (determining a district court did not abuse its discretion when denying a plaintiff leave to amend a complaint for a third time). Denial of leave to amend is appropriate on this basis alone.

B. The plaintiff's proposed amendments are futile.

Although the Court can deny the plaintiff's request to amend based only on his repeated failure to cure, because the plaintiff is proceeding pro se, the Court has evaluated each added factual allegation in the most recent proposed amended complaint (Dkt. No. 57-2). *Cf. Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002) (quoting *Miller v. Stanmore*, 636 F.2d 986, 988 (5th Cir. Unit A Feb. 1981) ("It is well-established that 'pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers.'")). Even so, a pro se plaintiff is not excused from the requirements to "properly plead sufficient facts that, when liberally construed, state a plausible claim to relief" *EEOC v. Simbaki, Ltd.*, 767 F.3d 475, 484 (5th Cir. 2014), *as revised* (Sept. 18, 2014). The Court again

concludes that the proposed amendments are futile. *See Marucci Sports*, 751 F.3d at 378 (stating that a proposed amendment is futile if it would not survive a Rule 12(b)(6) motion to dismiss).

As discussed in more detail in the Court's order adopting the FCR, Bass's claims do not fail because his complaint is missing particular factual details. *See* Dkt. No. 60 at 28–29. Rather, as the defendants point out, Bass's claims are either barred by sovereign or qualified immunity or fail because, even if his proposed factual allegations are taken as true, they fail to state a claim for which relief may be granted. *See id.* at 8–27. In the instant motion for leave to amend, Bass lists the facts added to his proposed complaint in a table, *see* Dkt. No. 57-1 at 5–6, without explaining how the addition of each fact overcomes the legal deficiencies in his complaint. And the added factual allegations in the proposed complaint, even taken as true, do not state claims that would survive a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and are thus futile.

First, presumably in reference to his First Amendment retaliation claim, Bass includes the content of the social media post at issue and the allegation that the general counsel for the defendant Texas Tech University Health Sciences Center (TTUHSC) stated that Bass's removal from medical school was “prompted by [Bass's] Social Media post.” Dkt. Nos. 57-1 at 4; 57-2 ¶¶ 1, 31–32. But even if TTUHSC's general counsel made this statement, this allegation does not negate the legal conclusion that Bass failed to meet his burden to show that it was clearly established that the defendants' conduct was unconstitutional at the time of the disciplinary hearing. *See* Dkt. Nos. 54 at 45; 60 at 24–25. Bass's other allegations in the proposed complaint confirm that, when deciding the outcome of the disciplinary hearing, the defendants considered “professionalism concerns,” “the

comments of assessors in clinical clerkships,” and “complaints” about Bass’s behavior in addition to his social media posts. Dkt. No. 57-2 ¶ 34. Thus, the addition of the allegation regarding TTUHSC’s general counsel and the specific content of the social media post does not change the conclusion that “Bass ‘points to no case giving [the 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.’” Dkt. No. 60 at 25 (quoting Dkt. No. 54 at 45). These proposed amendments are accordingly futile.

As another example, in support of his failure-to-accommodate RA claim, Bass alleges that, even though “one partial business day existed” between the Friday he requested accommodations from TTUHSC’s Student Disability Services (SDS) and informed the Student Conduct Board of such request and the following Monday when the Board held its disciplinary hearing, “TTUHSC controlled the hearing date and chose not to postpone” *See* Dkt. No. 57-2 ¶ 37. But nothing in this allegation refutes the conclusions that “Bass’s last-minute submission prevented SDS from engaging in th[e] interactive process” required for reasonable accommodations, that Bass ever requested a continuation of the hearing, or that failure to continue the hearing after a last-minute request amounts to a failure to accommodate. *See* Dkt. No. 54 at 17–18 (collecting authorities). Therefore, the proposed amendment is futile.

Similarly, Bass includes new allegations about the conduct of his professionalism coach and states in his motion that the coach’s conduct dissuaded him from filing complaints. *See* Dkt. Nos. 57-1 at 6; 57-2 ¶ 30. But Bass’s retaliation claim in his proposed

complaint alleges that he engaged in a different protected activity—requesting accommodations, Dkt. No. 57-2 ¶ 95—and that a different individual—a defendant, Cobbs—engaged in retaliatory conduct by cutting off Bass’s communication with the professionalism coach, *id.* ¶ 97. These new factual details about the professionalism coach’s dissuading actions do not support Bass’s claim that Cobbs cutting off communication between Bass and his professionalism coach prior to Bass’s disciplinary hearing was a materially adverse action that would dissuade a student from requesting accommodations. *See* Dkt. No. 60 at 31. In short, Bass’s expanded narrative explanation of the events that led to his dismissal from medical school does not cure the legal deficiencies in his stated claims.

Elsewhere, Bass refers to his objections to the FCR in support of his argument that his amendments are not futile. Dkt. No. 57-1 at 6–7. But the Court has already evaluated and rejected each objection. *See* Dkt. No. 60.

Finally, Bass attempts to add Dr. David Trotter as a defendant, and the parties dispute whether such addition is timely. *See* Dkt. Nos. 57-1 at 7–8; 58 at 10–12; 59 at 7–9. But the Court need not evaluate the timeliness of this addition because the Court previously determined that Bass failed to state a procedural due process claim against Trotter and, in any event, Trotter is entitled to qualified immunity from such claim. *See* Dkt. No. 60 at 31–32. Neither Bass’s proposed addition of Trotter as a defendant nor his contention that the addition of a new defendant relates back to his original filing date alters this analysis.

3. Conclusion

In short, Bass’s most recent proposed complaint adds new details and convoluted arguments but fails, for the fifth time, to show how his proposed amendments overcome the defenses of sovereign or qualified immunity or sufficiently state the elements of his claims.

Because Bass has failed to cure the deficiencies through previous amendments and because the proposed amendments would be futile, the Court denies Bass's renewed motion for leave to file a second amended complaint (Dkt. No. 57).

So ordered on September 23, 2026.



JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE