

**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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CIVIL ACTION NO. 5:25-cv-00244-H-BV

DEFENDANTS’ MOTION TO DISMISS

TO THE HONORABLE DISTRICT COURT JUDGE:

NOW COME Defendants Texas Tech University Health Sciences Center (“TTUHSC”), Amanda McSween, individually and in her official capacity, Lauren Cobbs, individually and in her official capacity, Simon Williams, individually and in his official capacity, Tamara Mancini, in her official capacity, Mia Myers, in her official capacity, Lori Rice-Spearman, in her official capacity, Darrin D’Agostino, in his official capacity, Darren G. Gibson, in his individual capacity, Jennifer Wilson, in her individual capacity, and Rachel Forbes, in her individual capacity (the “Individual Defendants”) (collectively, “Defendants”) and move to dismiss Plaintiff’s First Amended Complaint (hereinafter, referred to as the “Complaint”) in its entirety under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and respectfully show the Court as follows:

This lawsuit seeks to transform academic and student-disciplinary decisions into federal constitutional and statutory claims. The Complaint is barred in significant part by sovereign immunity as to Plaintiff’s claims against TTUHSC and qualified immunity as to Plaintiff’s claims against the Individual Defendants. Independently, the Complaint fails to state any claim upon which relief may be granted. Accordingly, and for the reasons set forth more fully below, because

immunity is “an entitlement not to stand trial or face the other burdens of litigation,” *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009), dismissal at the pleading stage is required.

I. PRELIMINARY STATEMENT

Plaintiff sues a Texas state agency and numerous university officials—some in their official capacities, some in their individual capacities—asserting claims under 42 U.S.C. § 1983 for alleged constitutional violations, Title II of the ADA, and § 504 of the Rehabilitation Act. Plaintiff’s claims arise from TTUHSC’s response to his student misconduct and related administrative actions affecting Plaintiff’s enrollment status and educational record.

Even accepting Plaintiff’s allegations as true, this case fails as a matter of law. First, the Eleventh Amendment bars damages claims against TTUHSC and against officials in their official capacities. Second, qualified immunity bars the § 1983 damages claims against the Individual Defendants because Plaintiff does not plead a violation of clearly established federal law. Third, Plaintiff’s remaining statutory claims fail under Rule 12(b)(6) because the pleading does not plausibly allege the required elements, including intentional discrimination for monetary relief and a proper *Ex parte Young* basis for the extraordinary prospective injunctive relief requested. Because sovereign immunity and qualified immunity are threshold jurisdictional and quasi-jurisdictional defenses designed to spare public entities and officials from litigation burdens, these issues should be resolved at the pleadings stage.

Accordingly, all of Plaintiff’s claims should be dismissed as a matter of law.

II. FACTUAL BACKGROUND¹

Plaintiff challenges TTUHSC’s response to allegations and the outcome of student misconduct and related safety concerns. Complaint, ¶¶ 1, 34-35. In 2023, Plaintiff was a third-

¹ The factual background is drawn from the First Amended Complaint and the documents the Plaintiff referenced therein. “When reviewing a motion to dismiss, a district court must consider the complaint in its entirety, as well as

year medical student at TTUHSC. Between August 1, 2023 and October 27, 2023, three (3) Student Code of Conduct complaints were filed against Plaintiff, and Plaintiff lodged six (6) complaints against a number of TTUHSC employees. Given the overlapping facts and bases of the complaints lodged by and against Plaintiff, TTUHSC School of Medicine consolidated all allegations into a single hearing. Notice of the consolidated hearing was provided to Plaintiff on November 9, 2023. *See* Notice of Consolidation of Outstanding Student Matters, dated November 9, 2023, attached as Exhibit 1. That notice informed Plaintiff that he would be “afforded maximum due process” and that the consolidated hearing would follow the procedures outlined in TTHHSC Handbook, Part II, Code of Conduct. *See id.* On November 16, 2023, Plaintiff was notified by the TTUHSC School of Medicine of the date, time, and location of the hearing, as well as the Student Conduct Board members pursuant to the TTUHSC Handbook, Part II, F.4.b. *See* Hearing Notice, dated November 16, 2023, attached as Exhibit 2, at p. 1.

That notice also outlined four complaints filed against the Plaintiff and the “Below Expectations” evaluations he received for professionalism during his clerkships.² *See id.*, at p. 5. The four complaints of misconduct included: (1) unprofessional conduct by expressing romantic feelings toward a resident, (2) unprofessional conduct by sending photos of his own diarrhea and vomit to the clerkship director and Assistant Vice Dean, (3) unprofessional conduct by entering into a personal relationship with a patient during his Psychiatry clerkship, and (4) unprofessional conduct by posting a message on social media on November 3, 2023, that represented a perceived threat to the TTUHSC community. Specifically, that message read in part, “Each and every one

other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference and matters of which a court may take judicial notice.” *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011). This may include “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). Defendants do not concede the accuracy of Plaintiff’s allegations.

² The November 9, 2023 Hearing Notice informed Plaintiff of a fourth allegation that pertained to a November 3, 2023 unprofessional post by Plaintiff on social media.

of us is going to be dead someday very, very soon. [...] These other people, too, are going to be dead very, very, soon.” *Id.*, at pp. 3-17.

On Friday, December 8, 2023, at 2:19 PM, one (1) business day before the consolidated hearing, Plaintiff submitted an online disability services application. He requested “accommodation generally, but in particular concerning a student conduct hearing scheduled for Dec.11 at 8am.” *See* Disability Services Application Submission, dated December 12, 2023, attached as Exhibit 3, at p. 2. Plaintiff asserted he had never before used classroom accommodations or assistive technology while at TTUHSC. His application was routed to the Student Disability Services (SDS) Office. In accordance with TTUHSC’s accommodations policy, TTUHSC OP 77.14, SDS is the only office authorized to grant student requests for Letters of Accommodation (“LOAs”) for disabilities. TTUHSC OP 77.14 states the process may take up to two (2) weeks and “No requirement exists that accommodation be made prior to completion of the approved university process.” *See* TTUHSC OP 77.14, Establishing Reasonable Accommodations for Students with Disabilities, attached as Exhibit 4, at pp. 1-2. Only after an LOA is issued, may a student avail himself of the approved accommodation. No LOA was ever issued to Plaintiff.

The following Monday, December 11, 2023, Plaintiff appeared at the dismissal hearing with his attorney. All parties were provided the “Hearing Process and Rules of Decorum” by the Hearing Officer. *See* TTUHSC’s Hearing Process and Rules of Decorum, dated December 11, 2023, attached as Exhibit 5. Plaintiff asked the Hearing Officer for the same accommodations he requested, but which had not been approved by the SDS. The Hearing Officer explained he did not have the authority to grant disability accommodations but permitted portions of the neuropsychological evaluation to be admitted that pertained to potential explanations for Plaintiff’s behavior at issue in the hearing. Other portions related to Plaintiff’s request for accommodations,

which was before the SDS, were redacted as being “outside the Board’s scope.” *See* Complaint, ¶ 26; Neuropsychological Evaluation, dated December 6, 2023, attached as Exhibit 6 (redacted).³

The hearing proceeded for approximately 14 hours following the procedures outlined in Part II of the TTUHSC Handbook. After the hearing concluded, the Student Conduct Board went into closed deliberations.

On December 27, 2023, the Student Conduct Board issued its Findings and Recommendations (“Report”) and provided a copy to Plaintiff. *See* Findings and Recommendations of Student Conduct Board, dated December 27, 2023, attached as Exhibit 8. The Report summarized the allegations made by and against Plaintiff and the substandard evaluations. It documented the dismissal hearing process, Plaintiff’s request for accommodations, and his attempt to submit untimely evidence consisting of the neuropsychological evaluation. The Report also noted the Hearing Officer admitted portions of the evaluation, despite the untimely submission. *See id.*

The Board found, by unanimous vote, that Plaintiff violated the Code of Conduct for each of the four (4) allegations against him. The Board agreed, by unanimous vote, that the six (6) substandard evaluations Plaintiff received constituted a further basis of action against Plaintiff. The Board found, by unanimous vote, the six (6) grievances made by Plaintiff against TTUHSC personnel were unsubstantiated. *Id.*, at pp. 11-12. The Board’s final unanimous recommendation was that Plaintiff “be dismissed as a student from the TTUHSC School of Medicine.” *Id.*, at p. 12. Specifically, the Board recommended, “Non-Academic Dismissal from the TTUHSC School of Medicine, without the option to apply for readmission, with a notation on Dr. Bass’s transcript

³ Exhibit 7 is the unredacted Neuropsychological Evaluation submitted by Plaintiff.

reflecting the nature of the dismissal (i.e. Non-Academic Dismissal – Ineligible to Re-Enroll), as described in the Code of Conduct, Part II.G.2.g.” *Id.*, at p. 13. The Board specifically noted:

In making these recommendations, the Board considered all the evidence presented, including the neuropsychological evaluation and diagnosis submitted by Dr. Bass. The Board determined that Dr. Bass’s diagnosis, which was not disclosed until the morning of the hearing, was not a proper basis for retroactive leniency for Dr. Bass, particularly given that Dr. Bass had been provided numerous opportunities to remedy his behavior, had been provided the professionalism resources of Dr. Erwin, and had been advised to see medical professionals in the months he was exhibiting unprofessional behavior and leading up to his November 3, 2023 tweet.

Id.

Pursuant to the Code of Conduct, Part II.F.4.o, the Report was then forwarded to the Dean of the School of Medicine, Dr. John DeToledo. *See* TTUHSC Student Handbook, Code of Professional Conduct, 2024-2025, attached as Exhibit 9, at p. 17. On December 29, 2023, Dean DeToledo notified Plaintiff that he reviewed the Report, the video recording of the hearing, and all supporting evidence. After a thorough review, Dean DeToledo, supported the Board’s recommendation and upheld the dismissal. The notification informed Plaintiff that he may appeal any claim of procedural deviation that substantially affected the outcome or present new information to the Provost within five (5) business days. *See* Dismissal Letter, dated December 29, 2023, attached as Exhibit 10. Plaintiff appealed. On January 11, 2024, the Vice Provost notified Plaintiff his appeal was denied. The Vice Provost determined no “procedural deviation occurred that substantially affected the outcome” and that no “new information exists to sufficiently alter the findings reviewed in the original hearing.” *See* Letter re: Appeal of Dismissal, dated January 11, 2024, attached as Exhibit 11. Plaintiff’s dismissal became effective January 11, 2024. *See* Dismissal Memorandum, dated January 12, 2024, attached as Exhibit 12. Additionally,

after submitting the initial Disability Services Application to the SDS on December 8, 2023, Plaintiff never again inquired about the application's status.

III. ARGUMENT AND AUTHORITIES

A. Legal Standard.

Eleventh Amendment immunity is jurisdictional and deprives federal courts of subject-matter jurisdiction over claims against a State, its agencies, and state officials sued in their official capacities for damages. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100-01 (1984); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54-55 (1996). A plaintiff bears the burden of establishing a clear waiver of immunity or a valid congressional abrogation. *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 675-76 (1999).

Qualified immunity shields government officials from damages unless a plaintiff plausibly alleges that (1) the defendant violated a constitutional right and (2) the right was clearly established at the time of the challenged conduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Courts may resolve cases on either prong or may dismiss solely on the clearly-established-law prong. *Id.* at 236. A right is clearly established only if existing precedent places the constitutional question beyond debate. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). The inquiry must be conducted in the specific factual context, not at a high level of generality. *Mullenix v. Luna*, 577 U.S. 7, 12 (2015).

To survive a Rule 12(b)(6) motion, a complaint must plead sufficient factual matter to state a claim that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). Courts disregard legal conclusions and conclusory allegations unsupported by well-pleaded facts. *Iqbal*, 556 U.S. at 678-79. Where a complaint fails to allege facts supporting each element of a claim, dismissal is required.

B. Plaintiff Fails to State a Claim Under the Rehabilitation Act (Count 1).

1. Plaintiff does not plausibly plead exclusion/denial of benefits “by reason of” disability.

To state a § 504 claim, a plaintiff must plausibly allege (1) he has a disability; (2) he is otherwise qualified; (3) he was excluded from participation in, denied the benefits of, or subjected to discrimination under a federally funded program; and (4) the exclusion or discrimination was by reason of (and in this Circuit, in many formulations, “solely by reason of”) disability. *Delano-Pyle v. Victoria Cty.*, 302 F.3d 567, 574 (5th Cir. 2002). To establish actionable disability discrimination, a plaintiff must show denial of “meaningful access” to the benefits of the program, not merely dissatisfaction with the procedures used or disagreement with the outcome. *See Alexander v. Choate*, 469 U.S. 287, 301 (1985); *Cadena v. El Paso County*, 946 F.3d 717, 724 (5th Cir. 2020).

Even accepting Plaintiff’s allegations, he pleads that he participated in the disciplinary hearing (indeed, he alleges it lasted roughly 14 hours and involved extensive witness testimony), was represented by counsel, and presented his position. *See* Complaint, ¶¶ 25-30, 42. Additionally, the Hearing Officer admitted, over the TTUHSC representative’s objection, a redacted version of Plaintiff’s untimely-submitted neuropsychological evaluation by Dr. Wierzchowski, which the Board specifically considered. Exhibit 8, at pp. 6, 13. Those facts negate a plausible inference that TTUHSC denied him “meaningful access” to the proceeding because of his alleged disability, with the only plausible inference being that TTUHSC applied neutral procedural limits in a disciplinary process addressing alleged conduct and safety concerns. *See* Complaint, ¶¶ 31-31C (describing “direct threat” framing) and ¶¶ 27-29 (procedural rules disputes). Additionally, Plaintiff was offered and accepted the opportunity to appeal the Dean’s decision regarding the Board’s recommendation. *See* Exhibit(s) 8, p. 13 and 10.

2. Damages require intentional discrimination; Plaintiff pleads, at most, a disagreement about process and preferred accommodations.

Monetary damages under § 504 require “intentional discrimination,” which in this Circuit is satisfied—if at all—by deliberate indifference: actual knowledge of a substantial likelihood of a statutory violation and a deliberate choice not to act. *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454-55 (5th Cir. 2005); *Cadena*, 946 F.3d at 724-27. But there was no statutory or policy violation by the Defendants. It was the Plaintiff who deviated from the process. Plaintiff was first notified of the consolidated board hearing on November 9, 2023 and a week later he received a second hearing notice informing him the hearing would be held on December 11. *See* Exhibit(s) 1 and 2. Arguably Plaintiff had three years to request disability accommodations but specifically, he was on notice of the consolidated hearing for four weeks, ample time for him to submit his accommodation request and for the SDS to complete its process. But Plaintiff failed to act until one business day prior to the hearing date.

Plaintiff provides no evidence or claim that prior to submitting his request to SDS in the late afternoon on Friday, December 8, 2023 that anyone—and specifically Mancini, Cobbs, Williams, and Gibson—had any knowledge about his alleged disability. Plaintiff’s eleventh-hour request prevented Defendants from completing the interactive process contemplated by federal law and TTUHSC policy, which requires documentation review and individualized assessment before accommodations are approved. *See Shurb v. Univ. of Texas Health Sci. Ctr. at Houston-Sch. of Med.*, 63 F. Supp. 3d 700, 709 (S.D. Tex. 2014) (citing *Aragona v. Berry*, 3:10-CV-1610-G, 2012 WL 467069, at *10 (N.D. Tex. Feb. 14, 2012)).

Plaintiff’s Count 1 theory is that TTUHSC should have provided his preferred method of participation (e.g., “limited attorney-assisted questioning”) and other format adjustments at the eleventh hour without SDS verifying his disability and engaging in an interactive process with

Plaintiff, in accordance with TTUHSC policy. *See* Complaint, ¶¶ 45-48. But the Rehabilitation Act does not create liability merely because the Plaintiff prefers a different procedure, different accommodation, or approval timeline than that which is established under policy and comports with the law. And Plaintiff’s *own* allegations—including that officials acknowledged the disability-services process and SDS’s authority and proceeded with the hearing—do not plausibly show the kind of deliberate, knowing refusal required for damages. *See* Complaint, ¶¶ 25-27, 40, 42.

Because Plaintiff has not plausibly alleged intentional discrimination, Count 1 should be dismissed under Rule 12(b)(6).

C. Plaintiff Fails to State (and Lacks Standing for) Title II Prospective Relief (Count 2).

1. Plaintiff does not allege a real and immediate threat of future injury; the requested injunction is aimed at past events or speculative future proceedings.

Article III requires that a plaintiff seeking injunctive relief plausibly allege a real and immediate threat of future injury—past exposure to alleged illegality is not enough. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105-06 (1983). Count 2 is expressly framed as “prospective relief,” but the relief Plaintiff requests is largely tethered to the already-completed December 2023 hearing and the consequences of his dismissal (record preservation, transcript practices, and procedures “in any renewed adjudication”). *See* Complaint, ¶¶ 52-52A.⁴

Further, Plaintiff does not plausibly allege that TTUHSC is about to convene a new dismissal hearing or imminently subject him to the same process again. To be certain, Plaintiff exhausted the administrative appeal process afforded to him. *See* Exhibit 11. At most, Count 2

⁴ Notably, after filing the First Amended Complaint, Plaintiff affirmatively withdrew “any request for temporary or preliminary injunctive relief,” including the request embedded in the Complaint. *See* Plaintiff’s Response to the Findings, Conclusions, and Recommendation, ECF No. 24 at 1–2. Plaintiff further stated that he “is not seeking a TRO or a preliminary injunction at this time” and does not presently pursue expedited discovery. *Id.* This withdrawal confirms that Plaintiff does not allege a real and immediate threat of future injury—as required for injunctive relief—and independently defeats standing for prospective relief under Article III and *Ex parte Young*.

seeks court supervision of how TTUHSC would conduct hypothetical *future* proceedings. That is not a justiciable basis for injunctive relief, and therefore, Count 2 should be dismissed.

2. *Ex parte Young* is not satisfied as pleaded: generalized “supervisory” authority is not an enforcement connection.

Even when a plaintiff seeks prospective relief, *Ex parte Young* applies only where the named officials have “some connection” to the enforcement of the challenged act—general supervisory authority is not enough. *Ex parte Young*, 209 U.S. 123 (1908); *Okpalobi v. Foster*, 244 F.3d 405, 414-16 (5th Cir. 2001) (en banc).

Here, Plaintiff sues a wide array of officials—up to and including the President and Provost—based on broad descriptions of institutional oversight. *See* Complaint, ¶¶ 20A-20B, 51. That is precisely the sort of generalized connection Fifth Circuit precedent rejects. *See City of Austin v. Paxton*, 943 F.3d 993, 1001-02 (5th Cir. 2019). Courts likewise reject *Ex parte Young* claims against senior university administrators based solely on institutional oversight where the official lacks direct enforcement authority over the challenged disciplinary decision. *See Morris v. Livingston*, 739 F.3d 740, 746-47 (5th Cir. 2014).

Count 2 therefore fails to invoke a valid *Ex parte Young* pathway and should be dismissed.

3. Much of the requested relief is retrospective in substance (therefore barred), even if labeled “prospective”.

The Court should look to the substance of the requested relief. Relief that is retrospective—seeking to remedy past alleged wrongs—does not fit *Ex parte Young* even if styled as an injunction. *See Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645-46 (2002) (*Young* applies only to ongoing violations and prospective relief); *Papasan v. Allain*, 478 U.S. 265, 277-78 (1986).

Here, Plaintiff’s requested injunction is aimed at undoing or re-litigating the consequences of a past disciplinary process and regulating past-publication fallout (transcript notations, record

access, and “corrective” processes). *See* Complaint, ¶¶ 52-52A, 52B. That relief is retrospective in substance and falls outside *Ex parte Young*. Accordingly, Count 2 should be dismissed.

D. Qualified Immunity Bars All § 1983 Claims Against the Individual Defendants (Counts 3-5).

Plaintiff’s constitutional claims attempt to recast routine academic discipline, campus-safety enforcement, and professionalism determinations as federal civil-rights violations. Qualified immunity exists to prevent precisely this type of litigation absent a clear showing that officials violated clearly established constitutional law. *Pearson v. Callahan*, 555 U.S. 223, 231–32 (2009).

To overcome qualified immunity, Plaintiff must plausibly allege both (1) the violation of a constitutional right and (2) that the right was clearly established at the time of the challenged conduct. *al-Kidd*, 563 U.S. at 735. This inquiry must be conducted at a high level of factual specificity—not by reference to abstract constitutional principles—and requires precedent placing the alleged violation “beyond debate.” *Mullenix v. Luna*, 577 U.S. 7, 12 (2015); *Babinski v. Sosnowsky*, 79 F.4th 515, 524 (5th Cir. 2023).

In the higher-education context, Fifth Circuit precedent affords substantial deference to university officials charged with maintaining campus safety, enforcing professionalism standards, and administering student disciplinary processes. Absent extraordinary circumstances, educators and administrators are entitled to qualified immunity unless no reasonable official could have believed the challenged conduct was lawful. *Brinsdon v. McAllen Indep. Sch. Dist.*, 863 F.3d 338, 347 (5th Cir. 2017) (citing *Morgan v. Swanson*, 659 F.3d 359, 370 (5th Cir. 2011)).

Here, Plaintiff fails to meet either prong of the qualified-immunity analysis for any of his § 1983 claims. As set forth below, Plaintiff’s own allegations demonstrate that he received constitutionally adequate process in connection with the disciplinary proceedings, and his

retaliation theory rests on vague and undefined speech allegations that are not clearly protected by controlling precedent. Because Plaintiff cannot identify any clearly established constitutional right violated by the Individual Defendants, Counts 3, 4, and 5 must be dismissed.

1. Procedural Due Process.

As for his Procedural Due Process claim (Count 3), Plaintiff's own allegations establish that he received notice of the charges, a 14-hour hearing, representation by counsel, and an opportunity to present evidence. *See* Complaint, ¶¶ 21-23. Furthermore, the Board's decision also makes clear that Defendants provided Plaintiff with more than sufficient due process. *See* Exhibit 8. The Fifth Circuit has repeatedly held that students facing discipline are entitled only to notice and an opportunity to be heard—not trial-like procedures. There is no clearly established right to attorney-led cross-examination, formal evidentiary rules, or any particular hearing format. At minimum, due process in the student disciplinary context requires only notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *See Goss v. Lopez*, 419 U.S. 565, 579 (1975); *Plummer v. Univ. of Houston*, 860 F.3d 767, 773-74 (5th Cir. 2017); *Van Overdam v. Texas A&M Univ.*, 43 F.4th 310 (5th Cir. 2022).

Here, Plaintiff affirmatively alleges that he was represented by counsel throughout the proceedings, submitted evidence, participated in a 14-hour hearing, and received the opportunity to appeal—facts that independently defeat any claim of constitutionally inadequate process. *See* Complaint, ¶¶ 21-23. Qualified immunity therefore applies.

For example, Plaintiff alleges that Defendant Gibson, in serving as the outside Hearing Officer, “barred real-time objections” and purportedly “organized the hearing in a manner contrary to the Student Handbook,” among other alleged slights to Plaintiff. *See* Complaint, ¶ 39A. However, Plaintiff has not presented any clearly established law that establishes a right for a

student to make “real-time objections” to evidence during the course of a student misconduct hearing, similar to objections lodged during a courtroom trial. Rather, “the Fifth Circuit has held that disciplinary proceedings do not require formal rules of evidence or all the procedural protections of a trial.” *Plummer*, 860 F.3d at 773-74; *see also Esfeller v. O’Keefe*, 391 F. App’x 337 (5th Cir. 2010) (holding that a state university which held a hearing in a student’s absence and barred his attorney from observing or participating in the hearing was nevertheless compliant with procedural due process because the student was otherwise heard on a number of occasions by different university officials).

Furthermore, even if the hearing did not comply with the procedures set forth in the Student Handbook (which it did), that does not constitute a violation of due process. Courts in the Fifth Circuit have made clear that “a University’s departure from its own rules and regulations does not, by itself, violate procedural due process unless the rule or regulation codifies the pertinent constitutional standard.” *Pham v. Univ. of La. Monroe*, 194 F.Supp.3d 534, 544 (W.D. La. 2016) (citing cases); *see also Levitt v. Univ. of Tex. at El Paso*, 759 F.2d 1224, 1230 (5th Cir. 1985) (holding that failure to follow internal university procedures does not itself establish a due process violation). “A plaintiff has no due process right to state-implemented procedures. The relevant inquiry at all times is whether or not a plaintiff has been afforded constitutionally adequate notice and a constitutionally adequate hearing.” *Pham*, 194 F.Supp.3d at 544. Accordingly, alleged violations of internal policy cannot transform routine disciplinary procedures into constitutional claims.

Here, the allegations indicate that Plaintiff was afforded constitutionally adequate notice and a constitutionally adequate hearing, and he has certainly not presented allegations reflecting a violation of any clearly established right by the Individual Defendants. Therefore, Count 3 of

Plaintiff's claims must be dismissed under Rule 12(b)(6) because qualified immunity applies. Because Plaintiff cannot identify any clearly established constitutional requirement governing the format, structure, or evidentiary rules of a university disciplinary hearing, his remaining constitutional theories likewise fail to overcome qualified immunity.

2. Stigma-Plus Due Process.

As for his Stigma-Plus Due Process claim (Count 4), Plaintiff alleges reputational harm based on transcript notations and communications. *See* Complaint, ¶¶ 34–35. He does not, however, plead the publication of a materially false statement by any specific Defendant, as required to state a stigma-plus claim. *Paul v. Davis*, 424 U.S. 693, 701-12 (1976). An accurate description of a student's enrollment status or disciplinary outcome—even if unfavorable—cannot constitute a false statement as a matter of law. *Hughes v. City of Garland*, 204 F.3d 223, 226-28 (5th Cir. 2000) (stigma-plus requires publication of false and stigmatizing charges in connection with a change of legal status; if the statement is not false, the claim fails); *see also Codd v. Velger*, 429 U.S. 624, 627-28 (1977) (no name-clearing hearing required absent a dispute that the stigmatizing information is false). Plaintiff also fails to plead a separate “plus” deprivation independent of the disciplinary action itself, which cannot serve as both the alleged stigma and the required alteration of legal status. *See Blackburn v. City of Marshall*, 42 F.3d 925, 936 (5th Cir. 1995). Accordingly, Count 4 fails as a matter of law and should be dismissed.

3. Plaintiff's Retaliation Claim Fails Because He Does Not Plead Clearly Protected Speech or a Clearly Established First Amendment Violation.

Just as Plaintiff cannot identify any clearly established procedural right governing the format or conduct of a university disciplinary hearing, he likewise fails to identify any clearly established First Amendment right that would have put reasonable university officials on notice that enforcing professionalism standards, addressing perceived safety concerns, or proceeding with

student discipline constituted unlawful retaliation. Plaintiff’s retaliation claim fails at the threshold because he does not plausibly allege that Defendants retaliated against constitutionally protected speech, much less speech protected by clearly established law. To state a First Amendment retaliation claim, a plaintiff must allege (1) engagement in protected activity, (2) an adverse action that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) a causal connection between the two. *Buchanan v. Alexander*, 919 F.3d 847, 852 (5th Cir. 2019). When qualified immunity is asserted, the burden rests on Plaintiff to show that the specific speech at issue was clearly protected and that existing precedent placed the alleged violation “beyond debate.” *al-Kidd*, 563 U.S. at 741.⁵

Here, Plaintiff’s own pleading fails to identify with any specificity what speech allegedly triggered the challenged disciplinary actions. Instead, the Complaint relies on vague references to “posts,” generalized policy criticism, and non-specific allegations that administrators urged Plaintiff to “stop posting online.” See Complaint, ¶¶ 32-33A. Such conclusory allegations are insufficient to establish protected activity or to overcome qualified immunity. See *Iqbal*, 556 U.S. at 678; *Babinski*, 79 F.4th at 524 (requiring a high degree of factual and legal specificity to defeat qualified immunity).

Moreover, Plaintiff affirmatively pleads that the conduct at issue included a mortality-themed social media post that was perceived as threatening by members of the university

⁵ Plaintiff’s own allegations demonstrate the absence of clearly protected speech. The Complaint references (i) a generalized comment about mortality that did not address any governmental policy, (ii) crude personal communications sent directly to faculty members involving bodily fluids, and (iii) vague criticism of COVID-19 vaccination policies without identifying the content, timing, or audience of the alleged statements. Speech consisting of personal workplace communications or ambiguous statements untethered to matters of public concern is not categorically protected by the First Amendment. See *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006) (not all speech by individuals interacting with government institutions is constitutionally protected); *Buchanan v. Alexander*, 919 F.3d 847, 852-53 (5th Cir. 2019) (context and manner of speech are critical to protected-speech analysis). To the extent Plaintiff relies on unspecified “posts” criticizing institutional vaccine policies, his failure to plead what was said, when it was said, or how it allegedly motivated the challenged actions is fatal at the Rule 12 stage and independently insufficient to overcome qualified immunity. See *Iqbal*, 556 U.S. at 678; *Babinski*, 79 F.4th at 524.

community, as well as unprofessional personal communications directed to faculty. *See* Complaint, ¶¶ 31A-31C; *see also* Exhibit 4, at pp. 3-17. Even accepting Plaintiff’s characterization of these communications, the Fifth Circuit has not clearly established that such speech—particularly in a professional academic setting governed by codes of conduct and safety obligations—is constitutionally protected. Because Plaintiff cannot identify clearly established precedent placing Defendants’ conduct outside the bounds of lawful disciplinary authority, qualified immunity bars Count 5 as a matter of law. Accordingly, Plaintiff’s retaliation claim should be dismissed.

In Count 5, Plaintiff alleges retaliation based on protected speech but pleads no facts plausibly showing that any Individual Defendant acted because of protected activity rather than alleged misconduct and safety concerns. *See* Complaint, ¶¶ 1, 34–35. To support such a claim, a plaintiff must plead a “causal connection” between the government defendant’s “retaliatory animus” and the plaintiff’s “subsequent injury.” *Nieves v. Bartlett*, 587 U.S. 391, 398-99 (2019) (citing *Hartman v. Moore*, 547 U.S. 250, 259 (2006)). 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. Stated differently, a plaintiff must show that they engaged in protected speech and that it is “plausible,” not merely possible, that the adverse act in question was driven by retaliatory animus for his protected speech and not by some other factor. Moreover, temporal proximity alone is insufficient, and no clearly established law prohibits academic discipline under these circumstances. *See Anderson v. Valdez*, 845 F.3d 580, 590–92 (5th Cir. 2016); *see also Strong v. Univ. Healthcare Sys., L.L.C.*, 482 F.3d 802, 808 (5th Cir. 2007) (holding that temporal proximity, without more, is insufficient to establish causation). Where independent disciplinary grounds exist, retaliation claims fail as a matter of law absent facts plausibly negating

legitimate non-retaliatory motives. *See Woods v. Smith*, 60 F.3d 1161, 1166 (5th Cir. 1995). Further, conclusory assertions of motive are insufficient to overcome qualified immunity. *Anderson*, 845 F.3d at 590-92 (First Amendment retaliation requires plausible allegations that protected speech was a substantial/motivating factor; conclusory assertions of retaliatory motive do not overcome qualified immunity); *see also Keenan v. Tejada*, 290 F.3d 252, 258-59 (5th Cir. 2002) (same elements; causation must be plausibly pleaded).

Here, there are no specific allegations that any of the individuals had any retaliatory animus against Plaintiff's allegedly protected speech. While Plaintiff alleges that the Individual Defendants were aware of his speech, he does not allege that the alleged retaliatory acts were taken "because of" his speech based on the defendant's purported retaliatory animus. *See, e.g.*, Complaint, ¶¶ 36, 36A, 37, 39A (no allegation Cobbs or Gibson acted out of retaliatory animus; conclusory allegation of intent against Wilson, Williams, and Cobbs). Rather, Plaintiff alleges that Defendants were aware of his speech and concludes, *ipse dixit*, that Defendants' actions related to his discipline hearing and dismissal must have been in retaliation to that speech. Such vague allegations are insufficient to defeat qualified immunity.

Furthermore, even if the Court were to find that Plaintiff's social media post constitutes speech protected by the First Amendment, Defendants would nevertheless be protected by qualified immunity, because such actions in response to Plaintiff's post would still be reasonable in light of the "foreseeable substantial disruption of or material interference with school activities." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 514 (1969). In *Tinker*, the Supreme Court recognized that a school official can regulate and prohibit student speech when "facts might reasonably have led school authorities to forecast [that the proscribed speech would cause] substantial disruption of or material interference with school activities." *Id.* The Court recognizes

that acts which “materially disrupts the classwork or involves a substantial disorder or invasion of the rights of others is . . . not immunized by the [First Amendment].” *Id.* at 513; *see also A.M. ex rel. McAllum v. Cash*, 585 F.3d 214, 221-22 (5th Cir. 2009) (applying *Tinker*, holding racial tension and hostility justified the defendants’ ban on display of the Confederate flag and did not constitute a First Amendment violation).

In short, *Tinker* governs a school’s content- or viewpoint-based restrictions, and the Fifth Circuit and other circuit courts have applied *Tinker* to First Amendment higher education cases.⁶ For example, in *Esfeller v. O’Keefe*, the Fifth Circuit held that the university’s Code of Conduct that limited speech that “intrudes upon . . . the rights of other students,” was not facially unconstitutional under *Tinker*. 391 F. App’x 337, 341 (5th Cir. 2010). As a result, Plaintiff cannot establish that the Individual Defendants personally violated clearly established law in taking action against Plaintiff due to his threatening social media post.

In sum, Plaintiff’s § 1983 claims rest on an effort to transform academic discipline and campus-safety decisions into constitutional violations. Fifth Circuit precedent does not clearly establish a right to trial-like disciplinary procedures, a right to dictate hearing format, or a right to engage in the types of speech alleged here without professional or institutional consequence. Because Plaintiff has failed to plausibly allege the violation of any clearly established constitutional right, all claims against the Individual Defendants are barred by qualified immunity. Counts 3, 4, and 5 should therefore be dismissed with prejudice.

⁶ *See Esfeller v. O’Keefe*, 391 F. App’x 337, 341-42 (5th Cir. 2010); *Shamloo v. Mississippi State Bd. of Tr. of Insts. of Higher Learning*, 620 F.2d 516, 521-24 (5th Cir. 1980); *Students for Justice in Palestine, at the University of Houston, et al. v. Abbott*, Case No. 1:24-cv-00523-RP, ECF 62, at 11 (W.D. Tex. Oct. 28, 2024) (applying *Tinker* to dismiss claims on qualified immunity grounds); *see also* Daniel B. Dreyfus, *A Common Judicial Standard for Student Speech Regulations*, 102 Tex. L. Rev. 1059, 1075 (2024) (citing circuit court cases that applied or confirmed *Tinker*’s applicability to First Amendment cases involving universities).

E. Sovereign Immunity Bars Claims Against TTUHSC (Counts 6-7).

TTUHSC is an arm of the State of Texas and is immune from suit absent waiver. Public medical universities qualify as arms of the state for Eleventh Amendment purposes. *See Raj v. LSU*, 714 F.3d 322, 328 (5th Cir. 2013). Section 1983 claims fail because states are not “persons” under the statute. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58 (1989). Plaintiff seeks monetary relief under Title II of the ADA and § 504 of the Rehabilitation Act. Although Congress has conditioned receipt of federal funds on a waiver of sovereign immunity for certain § 504 claims, monetary relief nevertheless requires a plausible allegation of intentional discrimination, which Plaintiff has not pleaded. *Delano-Pyle*, 302 F.3d at 574.

As to Title II, damages remain barred absent a pleaded constitutional violation or valid abrogation under *United States v. Georgia*, 546 U.S. 151, 159 (2006), which Plaintiff has not plausibly alleged. Here, Plaintiff alleges, at most, disagreement over accommodations, which is insufficient as a matter of law. *See* Complaint, ¶¶ 6–10.

Accordingly, Counts 6 and 7 must be dismissed.

IV. DISMISSAL WITHOUT/WITH PREJUDICE

Claims dismissed under Rule 12(b)(1) should be dismissed without prejudice, while claims dismissed on immunity and merits grounds under Rule 12(b)(6) should be dismissed with prejudice where amendment would be futile. *Block v. Tex. Bd. of Law Exam’rs*, 952 F.3d 613, 620 (5th Cir. 2020). But where, as here, claims fail as a matter of law and are independently barred by qualified immunity, dismissal with prejudice is appropriate because amendment would be futile. *Cox v. City of Dallas*, 430 F.3d 734, 748 (5th Cir. 2005).

V. PRAYER AND REQUEST FOR RELIEF

Based on the foregoing, Defendants respectfully request that the Court grant this Motion, dismiss all claims against all Defendants under Rules 12(b)(1) and 12(b)(6), dismiss claims barred by sovereign immunity or qualified immunity with prejudice where appropriate, and grant all further relief to which Defendants are justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on January 21, 2026, via the Court's ECF system to:

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