

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

SCHYLER Z. GRODMAN, M.D.,

Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER,

Defendant.

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Civil Action No. 5:23-cv-00210-H

**PLAINTIFF’S REPLY IN SUPPORT OF MOTION FOR LEAVE
TO FILE FIRST AMENDED COMPLAINT**

Plaintiff Schyler Z. Grodman, M.D., (“Plaintiff” or “Grodman”) hereby files this Reply in Support of Motion for Leave to File First Amended Complaint (the “Reply”) pursuant to Fed. R. Civ. P. 15(a)(2) and Local Rule 15.1(b), and in support thereof shows as follows:

I. INTRODUCTION

On December 4, 2023, Grodman filed his Motion for Leave to File First Amended Complaint (the “Motion for Leave”) [ECF. No. 14] seeking leave to file an Amended Complaint including four claims against Texas Tech University Health Services Center (“Defendant” or “Texas Tech”) and a fifth claim against a past director of Texas Tech in his individual capacity. Texas Tech’s Response to Plaintiff’s Motion for Leave to File First Amended Complaint (the “Response”) challenges three of Grodman’s claims against Texas Tech. Specifically, Texas Tech’s Response challenges Grodman’s (1) claim for failure to accommodate and (2) discrimination under the Rehabilitation Act, and (3) Grodman’s procedural due process claim against Texas Tech. Texas Tech’s Response relies and cites to the standards under Fed. R. Civ. P. 8(a)(2) and 12(b)(6). *See* Response [ECF No. 16] at pg. 1-2.

As outlined in this Reply, Grodman requests that grant Grodman’s Motion for Leave as to each of these claims, as well as the other claims which are not addressed by Texas Tech’s Response, because this is Grodman’s First Amended Complaint, and because Grodman has pleaded sufficient factual allegations to meet the low pleading standard applicable at this procedural phase. Fed. R. Civ. P. 8(a)(2); 15(a)(2). Moreover, this Court has federal subject matter jurisdiction over all of Grodman’s claims arising under federal and constitutional law. *See* 28 U.S.C. §§ 1331 and 1343(a)(3)-(4).

II. PROCEDURAL HISTORY

On September 7, 2023, Plaintiff Grodman filed his Original Complaint [ECF No. 1], alleging violations of the Americans with Disabilities Act (“ADA”), Texas Commission on Human Rights Act (“TCHRA”), and Rehabilitation Act for various discriminatory improper acts by Defendant Texas Tech related to Grodman’s attention deficit hyperactivity disorder (“ADHD”), Autism Spectrum Disorder (“ASD”), depression, and social anxiety and for Texas Tech’s wrongful termination of Grodman. Texas Tech filed a Partial Motion to Dismiss on October 4, 2023 [ECF No. 5], alleging lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) for Grodman’s ADA and TCHRA claims based on sovereign immunity.

On December 4, 2023, Grodman then filed a Motion for Leave to File First Amended Complaint, seeking leave to file Grodman’s First Amended Complaint (the “Amended Complaint”) [ECF No. 14], which withdrew two claims for discrimination and retaliation under the ADA and TCHRA and added a Procedural Due Process claim (not a Substantive Due Process claim) against Texas Tech and against individual Dr. Samer Zaid-Kaylani (“Kaylani”) under 42 U.S.C. § 1983. Grodman’s Amended Complaint seeks reinstatement, expungement of probation, and release of academic records. *See* Am. Compl. [ECF No. 14-1] at 31.

III. STANDARD OF REVIEW

Federal Rule of Civil Procedure 15(a)(2)

Under Federal Rule of Civil Procedure 15(a)(2) a “court should freely give leave [to amend pleadings] when justice so requires.” Fed. R. Civ. P. 15(a)(2). This decision is within the “sound discretion” of the district court, but the request should not be denied under Rule 15(a) “unless there is a substantial reason to do so.” *Mailing and Shipping Sys, Inc. v. Neopost USA, Inc.*, 292 F.R.D. 369, 376 (W.D. Tex. 2013); *Leffall v. Dallas Indep. Sch. Dist.*, 28 F.3d 521, 524 (5th Cir. 1994)). As a matter of equity, Rule 15(a) favors giving leave to amend. *See Iron Oak Tech., LLC v. Dell, Inc.*, 2018 WL 1631396, at *2 (W.D. Tex. Apr. 4, 2018); *Lyn-Lea Travel Corp. v. Am. Airlines*, 283 F.3d 282, 286 (5th Cir. 2002).

Federal Rule of Civil Procedure 8(a)(2)

To state a claim upon which relief can be granted, a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The complaint must set forth enough facts to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007). A claim is factually plausible when the factual content 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). “Conclusory allegations, unwarranted factual inferences, or legal conclusions” are not accepted as true. *Plotkin v. IP Axxess Inc.*, 407 F.3d 690, 696 (5th Cir. 2005) (citing *Southland Sec. Corp. v. INSpire Ins. Solutions, Inc.*, 365 F.3d 353, 361 (5th Cir. 2004)).

Federal Rule of Civil Procedure 12(b)(6)

To the extent Texas Tech’s Response also moves to dismiss Grodman’s several of claims pursuant to Fed. R. Civ. P. 12(b)(6), Grodman provides the relevant standard here. Generally,

“[m]otions to dismiss under Fed. R. Civ. P. 12(b)(6) are viewed with disfavor and are rarely granted.” *Harbin v. Cmty. Educ. Ctrs., Inc.*, 2012 WL 3073752 (E.D. Tex. June 14, 2012) report and recommendation adopted, 2012 WL 3074686 (E.D. Tex. July 27, 2012) (citing *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5th Cir. 1982); *Sosa v. Coleman*, 646 F.2d 991, 993 (5th Cir.1981)). In order “to survive a defendant’s Rule 12(b)(6) arguments towards a motion to dismiss, a complaint ‘does not need detailed factual allegations,’ but must provide plaintiffs grounds for entitlement to relief—including factual allegations that when assumed to be true ‘raise a right to relief above the speculative level.’” *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (quoting *Twombly*, 550 U.S. 544). Further, a court must “construe [the] facts in the light most favorable to the nonmoving party, as a motion to dismiss under [R]ule 12(b)(6) ‘is viewed with disfavor and is rarely granted.’” *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011).

Therefore, a complaint need only “contain sufficient factual matter” accepted as true in the light most favorable to the nonmoving party, “to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. 662, 678 (quoting *Twombly*, 550 U.S. at 570). “Sufficient procedures are available to defendants to seek summary disposition of a lawsuit after a plaintiff has been afforded some opportunity to develop facts to support her complaint.” *Tinoco v. Raleeh*, 2006 WL 27287 at *1 (E.D. Tex. Jan. 5, 2006).

IV. ARGUMENTS AND AUTHORITIES

A. Grodman Sufficiently Pleads a Disability Discrimination Claim Under the Rehabilitation Act.

To plead a prima facie case of disability discrimination under the Rehabilitation Act, Plaintiff must plead (1) he is a qualified individual with a disability; (2) he suffered discrimination; and (3) the discrimination was due to his disability. *Melton v. Dallas Area Rapid Transit*, 391 F.3d

669, 676 n.8 (5th Cir. 2004); *Windham v. Harris Cnty., Tex.*, 875 F.3d 229, 235 (5th Cir. 2017).

Texas Tech challenges the sufficiency of Grodman's pleading only as to the third element, that the discrimination was due to his disability.

1. *Grodman has sufficiently pleaded that Texas Tech's discrimination was "solely" due to his disability.*

Grodman has sufficiently pleaded that Texas Tech's discrimination was "solely" due to his disability as required by *Soledad v. U.S. Dep't of Treasury*. 304 F.3d 500, 504 (5th Cir. 2002); *see also Windham v. Harris Cnty., Tex.*, 875 F.3d 229, 235 (5th Cir. 2017). Grodman alleges that due to his disabilities, Texas Tech viewed him as a "poison pill" to any program that would take Grodman after his graduation. Thus, Grodman alleges that Texas Tech came up with a plan to summarily terminate Grodman before he finished his last semester that included withdrawing all informal accommodations provided to Grodman:

"Defendant determined that even if Grodman was successfully placed into a fellowship program, Grodman's disabilities, and the manifestations of those disabilities, would somehow negatively affect Defendant's standing.

Defendant discontinued these accommodations knowing (and hoping) that it would negatively affect Grodman's ability to perform his obligations in the program, especially with all the additional stressors of Grodman's final year. Upon information and belief, Defendant withdrew the informal accommodations to manufacture a basis on which to terminate Grodman.

Am. Complaint at ¶¶ 31-34 [ECF No. 14-1]. In support, Grodman cites an internal email from Raphael Mattamal dated December 5, 2021, stating that Grodman would be a "***poison pill to any program that actually takes him*** for future [Texas Tech] residents.") (emphasis added). Dr. Mattamal's communications clearly show Defendant's motivation in using Grodman's disability as a basis to terminate him.

Taken as true, Grodman's Amended Complaint sufficiently pleads facts underlying a claim for discrimination. Indeed, the Amended Complaint alleges that Grodman's disabilities were the

reason Texas Tech regarded Grodman as a “poison pill” and in process of removing him, Texas Tech used Grodman’s disabilities to manufacture a cause of termination. *See, e.g.*, Am. Complaint [ECF No. 14-1] at ¶ 90 (“Grodman did, and still does, challenge the truth and integrity of Texas Tech’s termination process, which was spearheaded by Kaylani, and its dismissal recommendation by the Committee, which was made without the Committee even considering Grodman’s request for accommodations. As such, these actions were taken without cause and were arbitrary and capricious.”).

2. *Grodman’s asserts a variety of other allegations that support an inference that his disabilities were the “sole cause” of his termination.*

The following allegations are also present in Grodman’s Amended Complaint [ECF No. 14-1], which taken together, also support a finding that Texas Tech’s motive and reason for terminating Grodman was based on his disabilities, and not on his alleged performance or conduct:

First, the Amended Complaint alleges that Texas Tech extremely expedited Grodman’s termination over the period of winter break, a period when Texas Tech knew Grodman was adjusting the dosage of his medication used to treat his disabilities. *See, e.g.*, Am. Complaint at ¶¶ 24, 50 (“Under [Texas Tech’s] procedures, a resident is required to be given at least sixty days (60) after probation before termination is considered so that the resident can show improvement. Here, [Texas Tech] terminated Grodman only **18 days** after placing Grodman under Probation, completely ignoring Grodman’s request for accommodations due to his disability (a fact which [Texas Tech] has admitted).”) (emphasis added); Ex. A (Dec. 5, 2021 email from Director of Texas Tech requesting “immediate placement on probation status with possible eventual decision for termination.”); *id* at ¶ 60 (“Defendant was aware that, at this point, Grodman was adjusting his ADHD medications”).

Second, the Amended Complaint alleges, and attaches internal communications, showing that Texas Tech deliberately based its decision to terminate Grodman on his disabilities and the burden of providing Grodman informal accommodations. *See, e.g.*, Am. Complaint, Ex. C (Bhaskaran’s response to Kaylani’s request to initiate disciplinary proceedings stating “I vote Yes to proceed with probation/termination. We have made enough and more accommodations for him than any program would have.” (emphasis added)); *see also* Ex. D (“I second Dr. Bhaskaran’s comment”).

Third, Grodman’s Amended Complaint alleges sufficient facts to establish that Texas Tech avoided the opportunity for Grodman to request accommodations and deliberately and improperly refused to consider Grodman’s requests for accommodations and medical leave before terminating Grodman. *See, e.g.*, Am. Complaint at ¶ 43. In fact, Texas Tech admits that its termination decision would have been the same.

Fourth, the Amended Complaint alleges, and attaches evidence showing, that Texas Tech did not follow its own standards in terminating Grodman, and greatly deviated from its standard disciplinary and academic protocol. *See* Am. Complaint at ¶ 50 (“Under Defendant[’s] procedures, a resident is required to be given at least sixty days (60) after probation before termination is considered so that the resident can show improvement.”). Here, Texas Tech terminated Grodman only **18 days** after allegedly placing Grodman under Probation and completely ignoring Grodman’s request for accommodations due to his disability (a fact which Defendant has admitted).

Fifth, the Amended Complaint alleges that even the actual reasons cited by Texas Tech in connection to its termination (and by Texas Tech’s Response [ECF No. 16] at pg. 3) can be directly traced to symptoms of Grodman’s disabilities—symptoms Texas Tech was aware about but had

previously told Grodman “not to worry” about. Am. Complaint at ¶ 41 (“In fact, Defendant’s January 4, 2022, termination letter admits that Defendant’s decision was based on Grodman’s conduct arising from his disabilities.”); *id* at ¶ 24 (“Defendant, by and through Kaylani, represented to Grodman that no such accommodations were necessary, and that the results of the internal examinations were for educational purposes only and that those scores “would never be used against [Grodman].”).

Sixth, the Amended Complaint alleges that the prior observation period taken against Grodman was based solely on his disabilities. *See* Ex. H to Am. Compl. [ECF No. 14-1]. Moreover, this prior (resolved) probation was wrongfully used in connection with Grodman’s termination. *See, e.g.*, Am. Complaint at Ex. I (Letter removing Grodman from Observation); *see id* at ¶ 42 (“Moreover, Defendant falsified the documentation relating to Grodman’s ultimate termination, omitting the important fact that Grodman had been removed from a prior observation over 18 months prior to his probation.”); *see also* Exs. H-I, M-N.

Finally, Texas Tech repeatedly misrepresented and hid the ongoing termination proceedings from Grodman, and ultimately the basis of his termination. *See* Am. Complaint at ¶ 38 (“Defendant deliberately and willfully ignored Grodman’s disabilities, requests for accommodations, and had predetermined to terminate Grodman almost two weeks before ever placing Grodman under probation[.]”).

As outlined here, Grodman’s Amended Complaint asserts more than sufficient facts, and attaches sufficient evidence, that would allow for the reasonable inference that Grodman’s disability was the *sole reason* Texas Tech terminated Grodman. Accordingly, the Court should find that Grodman pleaded sufficient facts to state a discrimination claim under the Rehabilitation Act, especially to survive the low pleading standard applicable at this procedural phase.

B. Grodman Sufficiently Pleads a Failure to Accommodate Claim Under The Rehabilitation Act.

The prima facie case for Plaintiff's failure to accommodate claim under the Rehabilitation Act entails showing that (1) Plaintiff is an otherwise qualified individual with a disability; (2) the disability and its limitations were known by Defendant; and (3) Defendant failed to make reasonable accommodations for Plaintiff's known limitations. *Feist v. La., Dep't of Justice, Office of the Attorney Gen.*, 730 F.3d 450, 452 (5th Cir. 2013).

1. *Grodman has sufficiently pleaded that he is an otherwise qualified individual with a disability and that his disability was known by Texas Tech.*

An "otherwise qualified" individual with a disability means: (1) an individual with a disability who can perform the essential functions of the job in question with or without reasonable accommodations. *Shaikh v. Tex. A&M Univ. College of Med.*, 739 Fed. Appx. 215, 220 (5th Cir. 2018). A person is "disabled" where they: have a "physical or mental impairment that substantially limits one or more major life activities"; have a record of such impairment; or are regarded as having such an impairment. *Greene v. Potter*, 240 Fed. Appx. 657, 659 (5th Cir. 2007). Grodman alleged sufficient facts to plausibly plead that he was an "otherwise qualified" individual with a "disability." Grodman alleges that he has a "disability" in fact; by record of his impairment; and that he was regarded as having a disability by Texas Tech. Grodman alleges that he suffered from a mental impairment that substantially limited several major life activities. *Greene*, 240 Fed. Appx. 657 at 659; *see* Am. Complaint at ¶¶ 14-18.

Grodman's Amended Complaint also outlines Texas Tech's awareness of Grodman's disabilities and his limitations. ¶¶ 21-27. *See, e.g.*, Am. Complaint, Ex. C (Bhaskaran's response to Kaylani's request to initiate disciplinary proceedings stating "I vote Yes to proceed with probation/termination. We have made enough and more accommodations for him than any program would have." (emphasis added)). Indeed, Texas Tech initially provided a series of

informal accommodations, but ultimately declined to provide Grodman the reasonable accommodations he requested. Am. Complaint at ¶¶ 31-34.

2. *Grodman has sufficiently pleaded that Texas Tech failed to make reasonable accommodations for his known limitations.*

Grodman has sufficiently pleaded that Texas Tech failed to make reasonable accommodations for his known limitations. For example, Grodman alleges that Texas Tech withdrew the informal accommodations to manufacture a basis on which to terminate him. Am. Compl. at ¶¶ 25 (listing informal accommodations); 31-34 (alleging *inter alia* Texas Tech “withdrew the informal accommodations to manufacture a basis on which to terminate Grodman.”). Texas Tech knew that these informal accommodations were necessary, and that Grodman has successfully completed two years of his residency while utilizing the accommodations.

Texas Tech admits that Grodman made formal and informal requests for accommodations, and only argues that it had no duty to consider Grodman’s request for accommodations. Response at 4-8 [ECF No. 16]. Therefore, Grodman has sufficiently pleaded facts as to each of the elements necessary to establish a *prima facie* case for failure to accommodate under the Rehabilitation Act. Thus, the Court should find that Grodman sufficiently pleads allegations underlying his claim for failure to accommodate pursuant to the Rehabilitation Act at this procedural phase. Fed. R. Civ. P. 8(a)(2); 15(a)(2).

C. Grodman Sufficiently Pleads a *Procedural Due Process* Claim Seeking Prospective Injunctive Relief.

The Fourteenth Amendment provides that no person shall be deprived “of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV, § 1. Procedural due process ensures that state actors utilize the required and fair procedures before they can deprive someone of a life, liberty, or property interest. *Mathews v. Eldridge*, 424 U.S. 319, 332(1976). Thus, a

prerequisite to stating a procedural due process claim is that a life, liberty, or property interest be at stake. *See Bd. of Regents v. Roth*, 408 U.S. 564, 569–71(1972).

1. *Eleventh Amendment immunity does not bar Grodman’s procedural due process claims seeking prospective, equitable relief against Texas Tech.*

Importantly, Grodman’s Amended Complaint seeks reinstatement—prospective injunctive relief, and not monetary damages— against Texas Tech. *See Nelson v. Univ. of Texas at Dallas*, 535 F.3d 318, 322 (5th Cir.2008) (“this circuit has always treated *Ex parte Young* as an appropriate vehicle for pursuing reinstatement to a previous” position); *see also Shurb v. Univ. of Texas Health Sci. Ctr. at Houston-Sch. of Med.*, 2013 WL 4096826, at *8 (S.D. Tex. Aug. 13, 2013) (“The Court finds that to the extent the plaintiff seeks reinstatement to the University, that would qualify as prospective injunctive relief, and such a claim may proceed ***against the University and individual defendants in their official capacities.***”) (emphasis added).

Furthermore, “a request for reinstatement[.]” as sought by Grodman here, “is sufficient to bring a case within the *Ex parte Young* exception to Eleventh Amendment immunity, as it is a claim for prospective relief intended to end a continuing violation of federal law.” *Nelson v. Univ. of Tex.*, 535 F.3d 318, 324 (5th Cir. 2008). *See also Caldwell v. Medina*, No. 1:19-CV-524-RP, 2020 U.S. Dist. LEXIS 126138, at *12 (W.D. Tex. 2020); *Corn v. Miss. Dep’t of Pub. Safety*, 954 F.3d 268, 276 (5th Cir. 2020) (citing *Warnock v. Pecos Cty.*, 88 F.3d 341, 343 (5th Cir. 1996)) (“In *Warnock v. Pecos Cty.*, we stated that the *Ex parte Young* doctrine was an appropriate vehicle for pursuing reinstatement to a previous job position – as the case here.”). Because Grodman’s due process claims satisfy *Ex parte Young*, Plaintiff respectfully requests the Court grant its Motion for Leave as to Grodman’s procedural due process claims.

2. *Grodman has sufficiently alleged a constitutionally protected property and liberty interest.*

“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), *Shah v. Univ. of Tex. Sw. Med. Sch.*, 54 F. Supp. 3d 681, 691 (N.D. Tex. 2014). A finding that Grodman has a constitutional protected interest in his employment and post-graduate education with Texas Tech would fall in line with other opinions in this circuit and across the United States. In *Board of Curators of University of Missouri v. Horowitz*, 435 U.S. 78, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978), the Supreme Court of the United States assumed, without deciding, that students have some protected interest in public higher education. *Id.* at 84-86 (assuming that medical student had been deprived of liberty or property interest when she was dismissed from medical school and considering merits of procedural due process claim). The Fifth Circuit has made the same assumption in cases decided after *Horowitz*. In *Shaboon* the court assumed without deciding, that the medical resident had protected due process interest in his position. *Shaboon v. Duncan*, 252 F.3d 722, 730 (5th Cir. 2001). In *Davis* the court assumed the existence of a liberty or property interest in his dental residency. *Davis v. Mann*, 882 F.2d 967, 973 (5th Cir. 1989). In a public university setting, the level of procedural protection that students are due varies according to whether they were dismissed for disciplinary or academic reasons. *Shah v. Univ. of Tex. Sw. Med. Sch.*, 129 F. Supp. 3d 480, 498 (N.D. Tex. 2015). It is clear, and undisputed, that Plaintiff was dismissed for disciplinary reasons.

3. *Grodman has sufficiently alleged that Texas Tech denied him a meaningful opportunity to be heard.*

A university’s decision to dismiss a student based on academic grounds may only be overturned by a court “if there was no rational basis for the university's decision, or if the decision

was motivated by *bad faith or ill will unrelated to academic performance.*” *Ikpeazu v. University of Nebraska*, 775 F.2d 250, 253 (8th Cir.1985) (citing *Hines v. Rinker*, 667 F.2d 699, 703 (8th Cir.1981)); see *Eiland v. Wolf*, 764 S.W.2d 827, 833 (Tex.App.—Houston [1st Dist.] 1989, writ denied); *Gaspar v. Bruton*, 513 F.2d 843, 851 (10th Cir.1975); *Wilkenfield v. Powell*, 577 F.Supp. 579, 583 (W.D.Tex.1983). Even when a student is dismissed for disciplinary reasons, the Fourteenth Amendment requires that “the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.” *Goss v. Lopez*, 419 U.S. 565, 581, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975); *Shah v. Univ. of Tex. Sw. Med. Sch.*, 54 F. Supp. 3d 681, 692 (N.D. Tex. 2014).

Here, Grodman alleges that Texas Tech, in bad faith, manufactured a basis to terminate him when there was none, and never truly afforded him a change to be heard. See, e.g., Am. Complaint [ECF No. 14-1] at ¶¶ 88, 90 (“Grodman did, and still does, challenge the truth and integrity of Texas Tech’s termination process, which was spearheaded by Kaylani, and its dismissal recommendation by the Committee, which was made without the Committee even considering Grodman’s request for accommodations. As such, these actions were taken without cause and were arbitrary and capricious.”).

In other words, Grodman alleges that he was not given a *meaningful* opportunity to be heard due to a bad faith “manufactured” termination that did not give him a *legitimate* opportunity to be heard. There is no difference between failing to provide a due process hearing and providing one but ignoring the outcome. Am. Compl. at ¶ 54 (“Defendant and Committee members have even admitted that they did *not consider Grodman’s timely request* in their decision to fire him and didn’t even have copies of his request during their final meeting regarding Grodman’s

termination. Even weeks before suspending Grodman, the Committee expressed *unwillingness to consider accommodations or to even consider that his undermedication of Grodman’s disability played any role in his issues.*”) (emphasis added). Texas Tech pursued disciplinary proceedings against Grodman, and failed to follow its policies and procedures, and undertook a process that was wholly outside of the bounds of discipline issued to other residents for comparative disciplinary issues. Grodman was not provided with the due process required, and despite.

Regardless, as courts must indulge all reasonable inferences in favor of the plaintiff at this phase of the litigation, Defendants’ disputed conclusions do not warrant this Court’s dismissal of Grodman’s procedural due process claims under Rule 12(b)(6).

V. PLAINTIFF’S REQUEST FOR LEAVE TO AMEND

In the event this Court determines Grodman has failed to properly state a claim upon which relief may be granted and thereby moves to grant the relief requested in Texas Tech’s Response, the dismissal should be without prejudice, and Grodman should be granted leave to amend.

Under Federal Rule of Civil Procedure 15(a), leave to amend should be freely given when justice so requires and should be granted absent some justification for refusal. *Forman v. Davis*, 371 U.S. 178, 83 S. Ct. 227, 230, 9 L.Ed.2d 222 (1962). This decision is within the “sound discretion” of the district court, but the request should not be denied under Rule 15(a) “unless there is a substantial reason to do so.” *Mailing and Shipping Sys, Inc. v. Neopost USA, Inc.*, 292 F.R.D. 369, 376 (W.D. Tex. 2013); *Leffall v. Dallas Indep. Sch. Dist.*, 28 F.3d 521, 524 (5th Cir. 1994)). As a matter of equity, Rule 15(a) favors giving leave to amend. *See Iron Oak Tech., LLC v. Dell, Inc.*, 2018 WL 1631396, at *2 (W.D. Tex. Apr. 4, 2018); *Lyn-Lea Travel Corp. v. Am. Airlines*, 283 F.3d 282, 286 (5th Cir. 2002).

Plaintiff has not previously sought to amend his Complaint. Allowing Plaintiff to file an amended complaint would serve justice and promote judicial efficiency. Further, there would be no substantial or undue hardship, prejudice, bad faith, undue delay, or futility by granting Plaintiff leave to amend.

VI. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's Motion for Leave to File First Amended Complaint [ECF No. 14].

Date: January 11, 2024

Respectfully Submitted,

/s/ Jeffrey M. Tillotson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system on January 11, 2024.

/s/ Jeffrey M. Tillotson

Jeffrey M. Tillotson