

**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 RESPONSE IN OPPOSITION TO DEFENDANT’S
PARTIAL MOTION TO DISMISS PLAINTIFF’S FIRST AMENDED COMPLAINT**

Respectfully,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
I. INTRODUCTION	5
II. BACKGROUND	5
III. STANDARD OF REVIEW	6
IV. ARGUMENTS AND AUTHORITIES.....	7
A. Grodman Sufficiently Pleaded a Procedural Due Process Claim Seeking Prospective Injunctive Relief.	7
1. Eleventh Amendment immunity does not bar Grodman’s procedural due process claims seeking prospective, equitable relief against Texas Tech	8
2. Grodman has sufficiently alleged a constitutionally protected property and liberty interest	8
3. Grodman has sufficiently alleged that Texas Tech denied him constitutionally sufficient procedures	9
B. Grodman Sufficiently Pleaded a Failure-to-Accommodate Claim Under the Rehabilitation Act.	12
1. Grodman sufficiently pleaded that he is an otherwise qualified individual with a disability	12
2. Grodman sufficiently pleaded that Texas Tech knew of his disability.....	13
3. Grodman sufficiently pleaded that Texas Tech failed to make reasonable accommodations for his known limitations.....	13
V. CONCLUSION.....	16
CERTIFICATE OF SERVICE	17

TABLE OF AUTHORITIES

Cases

<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	7
<i>Board of Curators of University of Missouri v. Horowitz</i> , 435 U.S. 78 (1978).....	9
<i>Corn v. Miss. Dep’t of Pub. Safety</i> , 954 F.3d 268 (5th Cir. 2020)	9
<i>Cuvillier v. Taylor</i> , 503 F.3d 397 (5th Cir. 2007)	7
<i>Davis v. Mann</i> , 882 F.2d 967 (5th Cir. 1989)	9
<i>Eiland v. Wolf</i> , 764 S.W.2d 827 (Tex. App.—Houston [1st Dist.] 1989, writ denied)	9
<i>Feist v. La., Dep’t of Justice, Office of the Atty. Gen.</i> , 730 F.3d 450 (5th Cir. 2013)	12, 13
<i>Gaspar v. Bruton</i> , 513 F.2d 843 (10th Cir.1975)	10
<i>Goss v. Lopez</i> , 419 U.S. 565 (1975).....	10
<i>Greene v. Potter</i> , 240 F. App’x 657 (5th Cir. 2007)	12
<i>Harrison v. Young</i> , 48 F.4th 331 (5th Cir. 2022)	8
<i>Ikpeazu v. University of Nebraska</i> , 775 F.2d 250 (8th Cir. 1985)	9
<i>Lane v. Halliburton</i> , 529 F.3d 548 (5th Cir. 2008)	6
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	7

<i>Meza v. Livingston</i> , 607 F.3d 392 (5th Cir. 2010)	7
<i>Nelson v. Univ. of Texas at Dallas</i> , 535 F.3d 318 (5th Cir. 2008)	8
<i>Shaboon v. Duncan</i> , 252 F.3d 722 (5th Cir. 2001)	9
<i>Shah v. Univ. of Tex. Sw. Med. Sch.</i> , 129 F. Supp. 3d 480 (N.D. Tex. 2015), <i>aff'd</i> , 668 F. App'x 88 (5th Cir. 2016).....	9, 10, 11
<i>Shaikh v. Tex. A&M Univ. College of Med.</i> , 739 F. App'x 215 (5th Cir. 2018)	12
<i>Shurb v. Univ. of Texas Health Sci. Ctr. at Houston-Sch. of Med.</i> , 2013 WL 4096826, at *8 (S.D. Tex. Aug. 13, 2013).....	8
<i>Turner v. Pleasant</i> , 663 F.3d 770 (5th Cir. 2011)	7
<i>Wilkenfield v. Powell</i> , 577 F. Supp. 579 (W.D. Tex.1983).....	10
 <u>Statutes</u>	
29 U.S.C. § 705(9)(B).....	12
42 U.S.C. § 1983.....	6
 <u>Rules</u>	
Federal Rule of Civil Procedure 12(b)(6)	5, 6, 7
Federal Rules of Civil Procedure 12(b)(1).....	5, 6
 <u>Constitutional Provisions</u>	
U.S. Const. amend. XIV, § 1	7

Plaintiff Schyler Z. Grodman, M.D. (“Plaintiff” or “Grodman”) hereby files this Response in Opposition to Defendant’s Partial Motion to Dismiss Plaintiff’s First Amended Complaint (the “Response”), and in support thereof shows as follows:

I. INTRODUCTION

Texas Tech University Health Sciences Center (“Defendant” or “Texas Tech”) moves to dismiss Grodman’s claims for violations of procedural due process and failure to accommodate. But this Court has jurisdiction to address Grodman’s claims against Texas Tech, and Grodman’s First Amended Complaint contains more-than-sufficient factual allegations to state plausible claims for relief. Texas Tech thus cannot satisfy the high bars for dismissal required by Federal Rules of Civil Procedure 12(b)(1) or 12(b)(6). As a result, this Court should deny the motion.

II. BACKGROUND

Grodman has been diagnosed with attention deficit hyperactivity disorder (“ADHD”), Autism Spectrum Disorder, depression, and social anxiety. Am. Compl. [ECF No. 14-1] at ¶ 14. These disabilities substantially limit one or more of his major life activities. *Id.* at ¶¶ 15-16. Despite these disabilities, and with reasonable accommodations, Grodman successfully completed an undergraduate program, a masters program, and medical school. *Id.* at ¶¶ 17-18.

Texas Tech hired Grodman to work in its Pediatric Residency Program in 2019. *Id.* at ¶ 19. Texas Tech was aware of Grodman’s disabilities, and—during the first two years of his residency—provided him with informal accommodations. *Id.* at ¶¶ 21-27. In Grodman’s final year of residency, however, Texas Tech fully discontinued the accommodations. *Id.* at ¶¶ 31-34. In December of 2021, after the project director accused Grodman of taking an insufficient dosage of ADHD medication, Texas Tech expeditiously placed Grodman on probation, suspended him, and soon-after terminated him. *Id.* at ¶ 35. Texas Tech did so despite Grodman’s formally requesting

accommodations, including medical leave to adjust his medications, prior to his termination. *Id.* at ¶¶ 35, 43.

As a result, on September 7, 2023, 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 and improper acts. Texas Tech filed a Partial Motion to Dismiss under Rule 12(b)(1) on October 4, 2023 [ECF No. 5], alleging that sovereign immunity barred Grodman’s ADA and TCHRA claims.

On December 4, 2023, Grodman filed a Motion for Leave to File First Amended Complaint, in order to withdraw two claims for discrimination and retaliation under the ADA and TCHRA and to add a procedural (not substantive) due process claim against Texas Tech and against the director of the residency program, Dr. Samer Zaid-Kaylani (“Kaylani”), under 42 U.S.C. § 1983. [ECF No. 14]. Grodman’s Amended Complaint sought reinstatement, expungement of probation, and release of academic records. Am. Compl. [ECF No. 14-1] at 31.

III. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(1)

Texas Tech moves to dismiss Grodman’s procedural due process claims pursuant to Rule 12(b)(1). Dismissal under that rule is appropriate only if this Court lacks subject matter jurisdiction. *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008). In assessing jurisdiction, the Court accepts all well-pleaded facts in the complaint as true and views them in the light most favorable to Grodman. *See id.*

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

Texas Tech also moves to dismiss Grodman’s procedural due process and failure-to-accommodate claims pursuant to Rule 12(b)(6). Dismissal under that rule is inappropriate “unless

the [C]ourt determines that it is beyond doubt that [Grodman] cannot prove a plausible set of facts that support [his] claim[s] and would justify relief.” *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Because of that, “a motion to dismiss under 12(b)(6) is viewed with disfavor and is rarely granted.” *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011) (internal quotations and citations omitted).

To that end, “to survive [Texas Tech’s] Rule 12(b)(6) motion,” Grodman’s complaint “‘does not need detailed factual allegations,’ but must provide [Grodman’s] 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. at 555). And in assessing the motion, the Court must “construe [the] facts in the light most favorable to [Grodman as the] nonmoving party.” *Turner*, 663 F.3d at 775.

IV. ARGUMENTS AND AUTHORITIES

A. Grodman Sufficiently Pleaded a Procedural Due Process Claim Seeking Prospective Injunctive Relief.

The Court should reject Texas Tech’s attempts to dismiss Grodman’s claims for procedural due process violations. 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).

Consequently, federal courts employ a two-step process in assessing violations of procedural due process rights: “The first question asks whether there exists a liberty or property interest which has been interfered with by the State; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” *Meza v. Livingston*, 607 F.3d 392, 399 (5th Cir. 2010) (internal quotations and citations omitted). The answer to the first question

here is “yes,” and the answer to the second is “no.” Grodman has thus stated a plausible claim for relief.

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

At the outset, this Court should reject Texas Tech’s contention that the Eleventh Amendment bars Grodman’s procedural due process claims. Texas Tech ignores a vital point in arguing for sovereign immunity: Grodman is seeking *reinstatement*—not monetary damages. And it is well-established that, pursuant to *Ex parte Young*, sovereign immunity does not bar claims seeking reinstatement. *See, e.g., Nelson v. Univ. of Texas at Dallas*, 535 F.3d 318, 324 (5th Cir. 2008) (“[A] request for reinstatement is sufficient to bring a case within the *Ex parte Young* exception to Eleventh Amendment immunity, as it is a claim for prospective relief designed to end a continuing violation of federal law.”).

That applies to Grodman’s claims against both Texas Tech and Dr. Zaid-Kaylani. *See, e.g., Harrison v. Young*, 48 F.4th 331, 338 (5th Cir. 2022) (confirming that an employee “fired because of her disability” could “sue the state seeking reinstatement”); *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) (permitting plaintiff to seek reinstatement through claims “against the University and individual defendants in their official capacities”). Because “the *Ex parte Young* doctrine [is] an appropriate vehicle for pursuing reinstatement to a previous job position—as [is] the case here”—sovereign immunity does not bar Grodman’s due-process claims. *Corn v. Miss. Dep’t of Pub. Safety*, 954 F.3d 268, 276 (5th Cir. 2020).

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

Texas Tech errs in insinuating that Grodman lacks a constitutionally protected property and liberty interest. Indeed, a finding (or, at a minimum, an assumption) that Grodman has such

an interest in his employment and post-graduate education with Texas Tech would align with other opinions in this circuit and across the United States.

For instance, in *Board of Curators of University of Missouri v. Horowitz*, 435 U.S. 78 (1978), the Supreme Court 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 similar assumptions in cases decided after *Horowitz*. For example, in *Shaboon v. Duncan*, 252 F.3d 722, 730 (5th Cir. 2001), the court assumed without deciding that a medical resident had a protected due process interest in his position. In *Davis v. Mann*, 882 F.2d 967, 973 (5th Cir. 1989), the court similarly assumed the existence of a liberty or property interest in a party's dental residency.

The Court should thus find—or at least assume at this preliminary procedural stage—that Grodman has a constitutionally protected interest at stake.

3. *Grodman has sufficiently alleged that Texas Tech denied him constitutionally sufficient procedures.*

The Court should also find that Grodman sufficiently pleaded that Texas Tech did not provide “constitutionally sufficient” procedures to protect his constitutional interests. “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), *aff'd*, 668 F. App'x 88 (5th Cir. 2016).

On the one hand, 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.” *E.g.*, *Ikpeazu v. University of Nebraska*, 775 F.2d 250, 253 (8th Cir. 1985); *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). Conversely, 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 (1975); *Shah*, 129 F. Supp. 3d at 498.

Here, Grodman plausibly alleged facts showing that his dismissal fell within the second, more protected category (*i.e.*, for disciplinary reasons). For example, the probation letter given to Grodman on December 17, 12 days *after the vote* instigated by Kaylani to place Grodman on “probation with a path to termination,” stated the major elements that Grodman needed to improve were test scores. *See* Am. Complaint at ¶ 37. Moreover, Grodman alleged that Texas Tech wrongfully used a prior (resolved) observation period taken against Grodman to terminate Grodman, and that this prior period of observation was based solely on his disabilities and academic performance. *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.

Thus, despite Texas Tech’s attempts to reframe Grodman’s dismissal as an “academic” one, *see* [ECF No. 22] at 6-7, Grodman’s “disciplinary” dismissal entitled him not only to notice of the “charges against him,” but also “an explanation of the evidence” against him and an

“opportunity to present his side of the story.” *E.g., Shah*, 129 F. Supp. 3d at 498. Grodman plausibly alleged he did not receive that here.

Instead, Grodman alleged that Texas Tech, in bad faith, manufactured a basis to terminate him when there was none, and never truly afforded him a chance to be heard. *See, e.g., Am. Compl.* [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 alleged that he was not given a meaningful or legitimate opportunity to be heard due to a bad faith “manufactured” termination.

Texas Tech makes much of the fact that Grodman was “afforded a hearing.” But there is no difference between failing to provide a due process hearing and providing a hearing in name only after already determining the outcome—as Texas Tech did here. *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, failed to follow its own 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 thus was not provided the requisite procedural due process.

The Court should reject Texas Tech’s motion to dismiss this claim.

B. Grodman Sufficiently Pleaded a Failure-to-Accommodate Claim Under the Rehabilitation Act.

The Court should also reject Texas Tech's attempts to dismiss Grodman's failure-to-accommodate claim. To state a cognizable claim for failure to accommodate, Grodman needed to plead facts plausibly showing that: (1) Grodman is an otherwise qualified individual with a disability; (2) the disability and its limitations were known by Texas Tech; and (3) Texas Tech failed to make reasonable accommodations for Grodman's known limitations. *Feist v. La., Dep't of Justice, Office of the Atty. Gen.*, 730 F.3d 450, 452 (5th Cir. 2013). Grodman met those requirements here.

1. *Grodman sufficiently pleaded that he is an otherwise qualified individual with a disability.*

Grodman sufficiently pleaded the first element of his failure-to-accommodate claim: that he is an otherwise qualified individual with a disability. *Feist*, 730 F.3d at 452. A disability is a "physical or mental impairment that substantially limits one or more major life activities of [an] individual; a record of such impairment; or being regarded as having such an impairment." *Greene v. Potter*, 240 F. App'x 657, 659 (5th Cir. 2007) (quoting 29 U.S.C. § 705(9)(B)). An "otherwise qualified" individual with a disability is 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 F. App'x 215, 220 (5th Cir. 2018).

Grodman alleged sufficient facts to plausibly plead that he was an "otherwise qualified" individual with a "disability." **First**, Grodman alleged that his diagnoses of ADHD, Autism Spectrum Disorder, depression, and social anxiety constituted a "disability" in fact, by record, and by Texas Tech regarding them as such. Am. Compl. at ¶¶ 14-18; *see also Greene*, 240 F. App'x at 659. Further, Grodman alleged that these diagnoses caused mental impairments that substantially limited several major life activities. *Id.*

Second, Grodman alleged that, with accommodations, he could perform the essential functions of the job that Texas Tech terminated him from. *See, e.g.*, Am. Complaint at ¶ 55. That fulfills Grodman’s burden—at this preliminary stage of litigation—of showing that he satisfies the first element of this claim.

2. Grodman sufficiently pleaded that Texas Tech knew of his disability.

Grodman also adequately pleaded the second element of his failure-to-accommodate claim: that Texas Tech knew of his disability. *Feist*, 730 F.3d at 452. Grodman alleged that the program director “asked questions about Grodman’s health conditions and disabilities” for the first two years of his residency. Am. Compl. at ¶ 21. Grodman also alleged that he made Texas Tech aware of prior accommodations on exams, he disclosed his disability to his designated mentor, and the program director informed other program leadership of his disability. *Id.* at ¶¶ 22-23; *see also id.* ¶¶ 24-27. The fact that Texas Tech provided informal accommodations to Grodman early in his tenure leaves no question of Texas Tech’s knowledge of Grodman’s disability. *See id.* at ¶¶ 25, 31-34.

Grodman thus plausibly alleged facts supporting this element as well.

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

The result is the same on the final element: that Texas Tech failed to make reasonable accommodations for Grodman’s known limitations. *Feist*, 730 F.3d at 452. Tellingly, Texas Tech does not dispute that it provided informal accommodations to Grodman during the first two years of his residency. Nor does it dispute that those accommodations were successful. Instead, Texas Tech merely argues that Grodman had a duty to “continue requesting” accommodations, even when Texas Tech withdrew them without explanation.

But Grodman alleged that Texas Tech improperly 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, knew that Grodman had successfully completed two years of his residency while utilizing the accommodations, and nonetheless withdrew the accommodations without explanation. That alone meets element three’s requirements.

Regardless, Grodman alleged other facts showing that Texas Tech failed to make reasonable accommodations.

First, Grodman alleged (and attached evidence showing) that Texas Tech was frustrated with past accommodations and was unwilling to continue making any accommodations for him. *See, e.g.*, Am. Compl., 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.”); *see also* Ex. D (“I second Dr. Bhaskaran’s comment”).

Second, to that end, Grodman alleged that Texas Tech deliberately based its decision to terminate Grodman on his disabilities and the burden of providing him informal accommodations. In fact, Grodman alleged that even the *actual* reasons cited by Texas Tech in connection with the termination could be directly traced to symptoms of Grodman’s disabilities—symptoms Texas Tech was aware of, but had previously told Grodman “not to worry” about. *See* Am. Compl. 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].”).

Third, Grodman alleged that Texas Tech refused to make reasonable accommodations while he was adjusting the dosage of the medication used to treat his disabilities. Specifically, Grodman alleged that:

- Texas Tech expedited Grodman’s termination over the period of winter break, despite knowing that is when Grodman was adjusting the dosage. *See, e.g.*, Am. Compl. at ¶ 60. Indeed, rather than grant Grodman the 60-day probationary period required by Texas Tech’s procedures, the organization terminated him after only 18 days. *See* Am. Compl. at ¶¶ 24, 50, 60; Ex. A.
- Texas Tech avoided the opportunity for Grodman to request accommodations and deliberately and improperly refused to consider his requests for accommodations and medical leave before terminating Grodman. *See, e.g.*, Am. Compl. at ¶ 43.
- Texas Tech admitted its termination decision would have been the same even if it considered this requested accommodation.
- Texas Tech repeatedly misrepresented and hid the ongoing termination proceedings—and the basis of his termination—from Grodman. *See* Am. Compl. at ¶ 38.

Texas Tech’s motion focuses almost entirely on its failure to provide this specific accommodation, arguing that its failure was excused because “Plaintiff’s request followed workplace misconduct ... when termination was looming.” [ECF No. 22] at 10. But, taking the allegations above as true—as the Court must at this stage—it is clear that Texas Tech: (1) had already determined that it would not provide any further accommodations to Grodman, and

(2) improperly expedited the termination process to prevent Grodman from receiving this accommodation. The Court should thus reject Texas Tech's arguments on this point.

* * *

In sum, Grodman's Amended Complaint asserted more-than sufficient facts to allow for the reasonable inference that Texas Tech failed to make reasonable accommodations, including by deliberately withdrawing prior successful accommodations in order to manufacture a basis for termination. Accordingly, the Court should find that Grodman pleaded sufficient facts to state a failure-to-accommodate claim under the Rehabilitation Act and deny Texas Tech's motion.

V. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court deny Texas Tech's Partial Motion to Dismiss.

Date: February 21, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Plaintiff's Response In Opposition to Defendant's Partial Motion to Dismiss Plaintiff's First Amended Complaint was electronically filed with the Clerk of the Court using the CM/ECF system on February 21, 2024.

/s/ Jeffrey M. Tillotson

Jeffrey M. Tillotson