

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

SCHYLER GRODMAN,

Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH  
SCIENCES CENTER, et al.,

Defendants.

No. 5:23-CV-210-H

**ORDER GRANTING IN PART AND DENYING IN PART TEXAS TECH'S  
MOTION TO DISMISS AND GRANTING KAYLANI'S MOTION TO DISMISS**

Before the Court are motions to dismiss by Texas Tech University Health Sciences Center (Dkt. No. 22) and Dr. Samer Zaid-Kaylani (Dkt. No. 23). The amended complaint raises four claims: (1) a violation of procedural due process via Section 1983 against Texas Tech; (2) a violation of procedural due process via Section 1983 against Kaylani; (3) a failure-to-accommodate discrimination claim under the Rehabilitation Act against Texas Tech; and (4) a retaliation claim under the Rehabilitation Act against Texas Tech. Texas Tech has moved to dismiss the Section 1983 claim and the discrimination claim against it, and Kaylani has moved to dismiss the sole claim against him.

The Court grants Texas Tech's motion as to the Section 1983 claim but denies it as to the failure-to-accommodate claim. Texas Tech has sovereign immunity from suit under Section 1983, and therefore that claim must be dismissed. That said, Grodman has sufficiently pled the elements of a claim under the Rehabilitation Act. Because Texas Tech did not move to dismiss the retaliation claim, the case may proceed forward on that claim as well. The Court grants Kaylani's motion in full.

## 1. Factual and Procedural Background<sup>1</sup>

### A. Factual History

#### i. Grodman's Disabilities and Early Residency

Schylar Zane Grodman has been diagnosed with attention deficit hyperactivity disorder (ADHD), Autism Spectrum Disorder (ASD), depression, and social anxiety. Dkt. No. 21 ¶ 14. Those diagnoses are ongoing and “not expected to fully resolve.” *Id.* at 83. These disabilities individually impact his major life activities, but they also collectively impact his life by exacerbating his ADHD. *Id.* ¶¶ 15–16. His ADHD causes “depression, anxiety, social withdrawal, impaired concentration, memory problems, fatigue, and physical and emotional reactions.” *Id.* ¶ 16. He is medicated for his ADHD, but that medication is not without side effects; it causes issues with his sleep and alertness and can require him to adjust the dosage from time to time. *Id.*

In spite of those challenges, Grodman has excelled academically. *See id.* ¶ 18. His academic success culminated in Texas Tech hiring him to work in its Pediatric Residency Program (the “Program”). *Id.* ¶ 19. As a resident, Grodman’s duties included coordinating patient care and participating in “all aspects of pediatric patient treatment and care.” *Id.* ¶ 20.

After joining the Program, Grodman developed a close working relationship with Dr. Samer Zaid-Kaylani, the Program’s former director. *See id.* ¶¶ 6, 21. Although Grodman “was uncomfortable sharing details of his disabilities,” he shared information

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<sup>1</sup> In considering both a 12(b)(1) and 12(b)(6) motion, a court must “take the well-pled factual allegations of the complaint as true and view them in the light most favorable to the plaintiff.” *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008).

regarding his disabilities with Kaylani, Dr. Sharon Herrick,<sup>2</sup> and Dr. Angelo Wong.<sup>3</sup> *Id.* ¶¶ 21–22. Grodman believes that Kaylani also informed Program leadership about Grodman’s disabilities. *Id.* ¶ 23.

Although Grodman did not formally request accommodations until later in his residency, *see, e.g., id.* at 79–80, at least in the beginning, Texas Tech informally accommodated his disabilities. *See id.* ¶¶ 21–26. For instance, Kaylani allotted Grodman additional meetings with his mentor, additional feedback, and major scheduling adjustments, among other things. *Id.* ¶ 25. Even though Grodman had received additional time on medical school and licensing examinations, *see id.* ¶¶ 17, 18, 22, Kaylani informed Grodman that “no such accommodations were necessary” for Program examinations because those examinations were for “educational purposes only.” *Id.* ¶ 24.

Even with those accommodations, Grodman’s early performance in the Program was up and down. He was promoted twice and “was fully supported for competitive fellowship applications.” *Id.* ¶¶ 26–27. “In fact, after Grodman’s successful promotion to the third and final year of his residency, both Kaylani . . . and [] Herrick . . . wrote positive letters of recommendation supporting Grodman’s candidacy for a post-graduation pediatric fellowship.” *Id.* ¶ 27. But not everything went that smoothly. In March 2020, he was “placed on a period of observation” because of deficiencies in “medical knowledge, professionalism competency, system based competency, patient care, practice based learning, and interpersonal skill[s].” *Id.* at 67–68. He was given two months to improve in

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<sup>2</sup> Herrick was and remains the Chair of the Pediatrics Department at Texas Tech-Amarillo. Dkt. No. 21 ¶ 22.

<sup>3</sup> Wong was “a developmental [p]ediatrician during [Grodman’s] rotation through her service in his first year of residency.” Dkt. No. 21 ¶ 22.

those problem areas, and it appears that he was successful in doing so. *See id.* at 71; *see also id.* ¶¶ 26–27. Grodman was removed from observation in June 2020. *See id.* at 71.

Grodman’s third year of residency also got off to a rough start. Beginning in Fall 2021, things other than his residency began to sap Grodman’s time and energy. *See id.* ¶¶ 28–29. First, Grodman tore his Achilles tendon playing soccer. *Id.* ¶ 28. He requested and received time off to recover, which involved several months of physical therapy. *Id.* Grodman also began to prep for and completed “post-residency fellowship interviews” during this time period. *Id.* ¶ 29. These interviews “required extensive preparation and [the interviews themselves] often lasted all day.” *Id.* All that was in addition to his residency responsibilities. *Id.* The toll these additional activities took was apparent—both Kaylani and Herrick “noticed a change during this time.” *Id.* ¶ 30.

At around the same time, Texas Tech discontinued the informal accommodations that it had extended to Grodman. *Id.* ¶ 31. Grodman alleges that Texas Tech discontinued the accommodations “knowing (and hoping) that it would negatively affect Grodman’s ability to perform his obligations in the program” and to otherwise “manufacture a basis on which to terminate Grodman.” *Id.* ¶¶ 32, 34; *see also id.* ¶¶ 31–32, 34–35, 38–40, 42, 49–52, 58–60. Allegedly, Texas Tech chose to sandbag him because Grodman’s disabilities and their manifestation “would somehow negatively affect [Texas Tech’s] standing.” *Id.* ¶ 31; *see also id.* ¶ 34.

## **ii. Texas Tech’s Disciplinary Actions Against Grodman**

Up until December 2021, Grodman was repeatedly told that “everything was fine” and that his status in the Program was not jeopardy. *Id.* ¶ 35; *see also id.* ¶ 33. But in the

span of roughly a month from December 17, 2021, to January 4, 2022, Grodman went from good standing to termination. *See id.* ¶ 35.

On December 5, Kaylani emailed the Clinical Competency Committee, urging it to hold an “‘urgent vote’ to place Grodman on ‘immediate probation with [a] possible path to termination.’” *Id.*; *see also id.* at 40. Grodman believes that the email was prompted by a “difficult on-call duty” during which Grodman was ill. *See id.* ¶ 35. But in his email to the Committee, Kaylani detailed a number of alarming incidents about Grodman’s performance over the course of several weeks. *See id.* at 40–41. One allegation was that Grodman failed to give antibiotics to a sick child who entered “warm shock status.” *Id.* Other allegations included descriptions of incidents where Grodman either ignored or mistreated patients, was rude to patients and staff, or isolated himself during a shift. *See id.* Because Grodman’s errors had endangered the wellness of several patients, Kaylani labeled Grodman a “dangerous resident” who needed to be put on probation. *Id.*; *see also id.* ¶ 35. The Committee members’ responses—all of which agreed with Kaylani’s recommendation of probation—indicate a concern for the safety of the patients in Texas Tech’s care. *See, e.g., id.* at 43, 48–49. Grodman alleges that no “bad outcomes” occurred. *See id.* ¶ 46.

Several days later, on December 10, Grodman met with Kaylani and other representatives of the Program, to discuss his ADHD medication dosage. *Id.* ¶ 35. Grodman alleges that, at the time of his termination, he was “near [the maximum] 24 hour recommended dosage of his medication.” *See id.* ¶ 14. According to Grodman, Kaylani used this meeting as an excuse to berate him as “a physician who does not take medicine.” *Id.* ¶ 35. Understandably concerned about his standing within the Program, Grodman asked “if there was any possibility that he would not finish his residency on time.” *Id.*

According to Grodman, he was told that his residency ends on “June 30,” which he took as a sign that his residency was not in jeopardy. *Id.* Regardless, Grodman states that he was not informed of Kaylani’s December 5 email. *Id.*

A week later, on December 17, Grodman was notified via letter of the pending disciplinary action against him. *Id.*; *see also id.* at 73–75. That letter noted that he was on probation because of, among other things:

[his] failure to adequately remediate areas of academic deficiencies noted in prior corrective action plans; failure to meet the objectives expected for a third-year resident; [his] performance presents a serious comprise [sic] to acceptable standards of patient care; . . . fail[ure] to progress satisfactorily in fund [sic] knowledge, skill acquisition and professional development; and . . . unprofessional conduct.

*Id.* at 73. The letter further breaks down each flagged area into detail. *See id.* at 73–75. It provided a list of “Probation Objectives,” which listed areas and ways that he could improve over the three-month probationary period. *See id.* at 74–75. The letter also notes that an “occurrence on [Grodman’s] part of any unsafe patient practice or unprofessional incidents may result in the recommendation that [he] be dismissed immediately from this program.” *Id.* Grodman was expected to make these improvements while continuing his duties as a resident.<sup>4</sup> *See id.* ¶ 35; *id.* at 74–75.

According to Grodman, the flagged issues are all symptoms of his ADHD. *See id.* ¶ 37. Grodman complains further that he was not given an “opportunity for any kind of remediation or the opportunity to seek professional help.” *Id.* ¶ 35. Further, Grodman believes that the probation letter represents the “weaponization of Grodman’s disabilities

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<sup>4</sup> Grodman alleges that he was very busy during this time period, in part because Texas Tech sought to prevent him from filing a formal request for accommodation or to otherwise seek additional outside help. *See* Dkt. No. 21 ¶ 45–46, 58.

against him,” *id.* ¶ 37, but nowhere does Grodman state that he actually informed the Committee that his disabilities were the root of these issues before being placed on probation, *see generally id.* ¶¶ 35–42. Nor is it apparent that Grodman had made any request for time to adjust his medication, seek professional counseling, or anything similar at this point. *See id.* ¶¶ 21–25, 35.

While Grodman was told he would have up to three months to show improvement on the areas flagged in his probation letter, on December 23, 2021—six days after he received the probation letter—Grodman was suspended. *Id.* ¶ 35; *see also id.* at 77. According to the suspension letter, Grodman was found to have “violated the terms of [his] ‘Probation Objectives’ outlined in the letter provided to [him] on December 17.” *Id.* at 77. The letter further stated that “concerns exist that the performance of [his] duties are seriously compromised or may constitute a danger to patients.” *Id.* But it does not elaborate as to how those concerns arose. *See id.* Finally, it notes that the program would investigate the matter within 30 days and then determine the next course of action, although Grodman alleges that no investigation took place. *Id.*; *see also id.* ¶ 46.

On December 27, several months after the informal accommodations were discontinued, Grodman formally requested accommodations for his disabilities. *See id.* ¶ 35; *see also id.* ¶ 48; *id.* at 80–85. Among other things, Grodman requested a 30-day leave of absence to adjust his medication, extra time on exams, time to consult with his therapists regarding treatment options, and the opportunity to develop a remediation plan. *Id.* ¶ 43. Grodman also “sought to have his disability considered in connection with his threatened termination.” *Id.* This prompt response from Grodman, he argues, “demonstrat[es] that he

was willing and able to remediate any concerns that the program has without the need for the ultimate sanction of termination.” *Id.* ¶ 45.

That did not stop the Committee from terminating him on January 7, 2022, nor was his request for accommodations ever addressed.<sup>5</sup> *See id.* ¶¶ 35, 38, 56; *id.* at 90. According to the dismissal letter, Grodman was recommended for dismissal because his performance “presents a serious compromise to acceptable standards of patient care”; he exhibited unprofessional conduct towards patients and colleagues; “[he f]ail[ed] to progress to the expected level of competency as a third-year pediatric resident”; and “[he f]ail[ed] to follow the Probation Objectives outlines in [his] probation letter.” *Id.* at 87. In particular it noted that, “[d]uring the first week of [Grodman’s] probation, [Grodman] demonstrated multiple instances of unsafe patient practice and unprofessional behavior.”<sup>6</sup> *Id.* In deciding to dismiss Grodman, the Committee considered the totality of his time in the Program. *See id.* ¶¶ 55–56. But Grodman alleges that they did not review a copy of his formal accommodations request prior to terminating him. *See id.* ¶ 54.

After his termination, Grodman sought to resign but was told that he could not resign unless he forfeited his right to appeal the decision of the Committee. *Id.* ¶ 61. Grodman appealed regardless, and his termination was upheld. *Id.* Several months later, Grodman was informed that the American Board of Pediatrics had been notified of his

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<sup>5</sup> Grodman alleges he informed the Committee about the full extent of his disabilities before he was terminated. Dkt. No. 21 ¶ 48.

<sup>6</sup> In particular, the letter states that Grodman “failed to follow direct orders from the faculty about patient management, failed to monitor patients and address major health concerns, and failed to communicate major related events to [his] faculty that all created concerns that the performance of [his] duties was seriously compromised and constituted a danger to patients.” Dkt. No. 21 at 87–88.

termination. *Id.* ¶ 62. To Grodman, these actions, taken as a whole, “demonstrate[] a discriminatory motivation to fire Grodman.” *See generally id.* ¶¶ 35–63.

### **B. Relevant Procedural History**

Sometime after these events, Grodman filed a complaint with the Equal Employment Opportunity Commission (EEOC). *See id.* ¶ 3. The EEOC issued a right-to-sue letter to Grodman in June 2023. *See id.* at 34.

Within 90 days of receiving the EEOC’s letter, Grodman brought this lawsuit asserting that Texas Tech violated the ADA, the Texas Commission on Human Rights Act (THCRA), and the Rehabilitation Act. *See* Dkt. No. 1. Texas Tech sought to have the ADA and THCRA claims dismissed for want of subject-matter jurisdiction. Dkt. No. 5. Rather than respond to the motion to dismiss itself, Grodman filed an amended complaint. *See* Dkt. No. 10. But because Grodman did not comply with Federal Rule of Civil Procedure 15(a), the Court struck the amended complaint. Dkt. No. 13.

Grodman subsequently moved for leave to file an amended complaint. Dkt. No. 14. Over objection from Texas Tech, the Court granted his motion and denied-as-moot Texas Tech’s original motion to dismiss. Dkt. No. 20. Grodman’s amended complaint added Kaylani as a defendant, dropped the ADA and THCRA claims, and added a procedural due process claim. *Compare* Dkt. No. 21, *with* Dkt. No. 1.

Each defendant separately moved to dismiss the amended complaint. *See* Dkt. Nos. 22; 23. Because each defendant invoked an immunity defense, the Court stayed discovery pending resolution of the motions to dismiss. *See* Dkt. No. 30. Each motion to dismiss has now been fully briefed and is ripe for consideration. *See* Dkt. Nos. 24; 25; 27; 28.

## 2. Standards of Review

The defendants have moved the Court to dismiss Grodman's claims pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). *See* Dkt. Nos. 22; 23. Federal Rule of Civil Procedure 12(b)(1) provides that "a party may assert the [defense of lack of subject-matter jurisdiction] by motion." Fed. R. Civ. P. 12(b)(1). Defendants may also challenge the sufficiency of a complaint via Rule 12(b)(6). Fed. R. Civ. P. 12(b)(6). In considering both a 12(b)(1) and 12(b)(6) motion, a court must "take the well-pled factual allegations of the complaint as true and view them in the light most favorable to the plaintiff." *Lane*, 529 F.3d at 557. "A Rule 12(b)(1) motion should be granted only if 'it appears certain that the plaintiff cannot prove a plausible set of facts that establish subject-matter jurisdiction.'" *Davis v. United States*, 597 F.3d 646, 649 (5th Cir. 2009) (quotation omitted). Similarly, a Rule 12(b)(6) motion should not be granted "unless the court determines that it is beyond doubt that the plaintiff cannot prove a plausible set of facts that support the claim and would justify relief." *Lane*, 529 F.3d at 557 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)).

"Generally, a court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, documents incorporated into the complaint by reference, and matters of which the court may take judicial notice." *Innova Hosp. San Antonio, Ltd. P'ship v. Blue Cross & Blue Shield of Ga., Inc.*, 892 F.3d 719, 726 (5th Cir. 2018) (internal quotation omitted) (quoting *Wolcott v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011)). "However, under Rule 12(b)(1), the court may find a plausible set of facts by considering any of the following: (1) the complaint alone; (2) the complaint supplemented by the undisputed facts evidenced in the record; or

(3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Lane*, 529 F.3d at 557 (quotation omitted).

### **3. Analysis**

The Court grants in part and denies in part Texas Tech’s motion to dismiss (Dkt. No. 22) and grants in full Kaylani’s motion to dismiss (Dkt. No. 23). First, the Court dismisses the Section 1983 claim against Texas Tech because Texas Tech has sovereign immunity from suit. Second, the Court dismisses the Section 1983 claim against Kaylani because Grodman does not have standing to pursue that claim. And third, the Court denies the motion to dismiss Grodman’s failure-to-accommodate claim because at this stage of the proceeding he has sufficiently pled that Texas Tech was aware of his disability and the extent of accommodations required.

#### **A. The Court dismisses Grodman’s procedural due process claim against Texas Tech because it has sovereign immunity from suit under Section 1983.**

The Court dismisses Grodman’s Section 1983 claim against Texas Tech because the university has sovereign immunity from suit under Section 1983. A federal court generally lacks subject-matter jurisdiction to hear a suit brought by a person against a non-consenting state. *See Allen v. Cooper*, 589 U.S. 248, 254 (2020). Unless the State has waived sovereign immunity or Congress abrogates it, federal courts cannot entertain such suits. *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 253–54 (2011). “Texas has not consented by statute [to suit], and [Section] 1983 does not abrogate state sovereign immunity.” *NiGen Biotech*,

*L.L.C. v. Paxton*, 804 F.3d 389, 394 (5th Cir. 2015). So Texas itself may not be sued under Section 1983.<sup>7</sup> *See id.*

But the Eleventh Amendment’s reference to actions “against one of the United States” also includes certain actions against state agents and instrumentalities. *Regents of Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997). The Fifth Circuit has concluded that Texas Tech is an arm of the state that enjoys sovereign immunity. *Wallace v. Tex. Tech Univ.*, 80 F.3d 1042, 1047 n.3 (5th Cir. 1996) (“Texas Tech, as a state institution, clearly enjoys Eleventh Amendment immunity.”). Having concluded that Texas Tech has sovereign immunity from suit under Section 1983, the Court dismisses this claim for want of subject-matter jurisdiction. *See Stollings*, 2021 WL 3748964, at \*5 (noting that “any action barred by the doctrine of sovereign immunity must be dismissed for lack of subject-matter jurisdiction”).

Grodman argues that because he “is seeking *reinstatement*—not monetary damages,” the *Ex Parte Young* doctrine allows his claim to survive. *See* Dkt. No. 24 at 8. The Court rejects his argument. But that assertion does not change the critical point that *Ex Parte Young* applies only to state officials, not the states or their instrumentalities.<sup>8</sup> *See Fontenot v.*

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<sup>7</sup> In fact, Section 1983 does not authorize suits against the state or its instrumentalities, *see Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989), but the Court considers jurisdictional issues before turning to the validity of a claim itself. *See Stollings v. Tex. Tech Univ.*, No. 5:20-CV-250, 2021 WL 3748964, at \*5 (N.D. Tex. Aug. 25, 2021) (quoting *Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir. 1994)).

<sup>8</sup> The cases Grodman cites in support of his argument are for suits against state officials, not states or their instrumentalities. *See Harrison v. Young*, 48 F.4th 331, 337 (5th Cir. 2022) (noting that “[a] state official violating federal law can be sued for prospective relief”); *Nelson v. Univ. of Tex. at Dall.*, 535 F.3d 318, 320, 324 (5th Cir. 2008) (finding that “a request for reinstatement is sufficient to bring a case within the *Ex Parte Young* exception to Eleventh Amendment immunity” when filed against a university official in his official capacity); *but see Shurb v. Univ. of Tex. Health Sci. Ctr. at Hous.–Sch. of Med.*, No. 4:13-CV-271, 2013 WL 4096826, at \*8 (S.D. Tex. Aug. 13, 2013) (citing *Nelson* for the

*McGraw*, 777 F.3d 741, 752 (5th Cir. 2015). For *Ex Parte Young* to apply, a plaintiff must name individual state officials as defendants in their official capacities. *Green Valley Special Util. Dist. v. City of Shertz*, 969 F.3d 460, 471 (5th Cir. 2020) (en banc). And here, Grodman has sued Texas Tech itself under Section 1983. Therefore *Ex Parte Young* cannot save his claim. See *Green Valley Special Util. Dist.*, 969 F.3d at 471. Thus, the Court finds Grodman's arguments unavailing and dismisses the Section 1983 claim against Texas Tech for want of subject-matter jurisdiction. Because there is no reason to believe that Texas Tech will lose its sovereign immunity, the Court finds that amendment of this claim would be futile and therefore dismisses it without leave to amend.

**B. Grodman does not have standing to pursue his Section 1983 claim against Kaylani, so the Court dismisses it.**

Because Kaylani in his individual capacity cannot provide the relief that Grodman seeks, Grodman does not have standing to pursue his Section 1983 claim against him. While Section 1983 does not permit suits against the state, it does allow for certain suits against state officials for injunctive relief, see *Will*, 491 U.S. at 71 n.10, and against a person in their individual capacity, *Mason v. Lafayette City-Par. Consol. Gov't*, 806 F.3d 268, 275 (5th Cir. 2015); see also 42 U.S.C. § 1983. Grodman has sued Kaylani in his individual capacity and seeks "reinstatement, expungement of probation, further alterations of his records, and the release of his academic records"; that is, he seeks injunctive relief. See Dkt. No. 27 at 1, 4; accord. Dkt. No. 21 ¶¶ 79–95, 98; *id.* at 31. Normally such suits may be considered on the merits, but Grodman lacks standing to bring this claim against Kaylani.

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proposition that "a claim [for reinstatement] may proceed against the University and individual defendants in their official capacities").

Federal courts have jurisdiction only over cases or controversies, and “standing is an essential and unchanging part of the case-or-controversy requirement of Article III.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). “[S]tanding is not dispensed in gross,” so a court must conclude that standing has been established as to each claim and for each form of relief sought. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). “To have standing, [a party] ‘must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.’” *Inclusive Cmtys. Project, Inc. v. Dep’t of Treasury*, 946 F.3d 649, 655 (5th Cir. 2019) (quoting *Spokeo, Inc. v. Robbins*, 578 U.S. 330, 338 (2016)).

“Redressability tests whether a favorable decision would ‘amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered.’” *Petteway v. Galveston County*, 666 F. Supp. 3d 655, 666 (S.D. Tex. 2023) (quoting *Utah v. Evans*, 536 U.S. 452, 464 (2002)). “A plaintiff must show that ‘it is *likely*, as opposed to merely *speculative*, that the injury will be redressed by a favorable decision.’” *Inclusive Cmtys. Project, Inc.*, 946 F.3d at 655 (emphasis in original) (quoting *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000)). But redressability also tests whether a court’s judgement affects the defendant; ultimately, a plaintiff cannot prove redressability where a defendant has no power to redress the alleged injury. *See Petteway*, 666 F. Supp. 3d at 666–67.

Here, even were the Court to find Grodman’s Section 1983 viable, no relief that could be ordered against Kaylani would redress Grodman’s complaints. Grodman requests that the Court provide injunctive relief that would require his “reinstatement, expungement of probation, further alterations of his records, and the release of his academic records.”

Dkt. No. 27 at 1, 4; *accord.* Dkt. No. 21 at 31. But here, Kaylani has been sued in his individual capacity. *See* Dkt. No. 21 at ¶¶ 79–95. And suits against a person in his individual capacity can only impose “personal liability.” *See Kentucky v. Graham*, 473 U.S. 159, 165 & n.10 (1985); *see also id.* at 167–68 (concluding that a plaintiff who prevails in a Section 1983 action against an individual has no right to recover from the entity of which he is an official). In his personal capacity, Kaylani has no authority to reinstate Grodman, expunge his probation, alter his records, or release his records. *See id.*; Dkt. No. 28 at 2. He is not even employed by Texas Tech anymore. *See* Dkt. No. 21 ¶ 6. And the mere allegation that Kaylani possesses the letter that Grodman seeks to have released or that Kaylani “continued to take actions to effect Grodman’s termination” does not change that reality. *See* Dkt. No. 27 at 4–5. Regardless, Kaylani has alleged that he does not even possess the letter in question, *see* Dkt. No. 28 at 2, and the Court has no reason to doubt his assertion. *See Lane*, 529 F.3d at 557 (concluding that a Court may resolve disputed issues of fact to determine whether subject-matter jurisdiction exists). The sort of relief that Grodman requests flows from Kaylani’s (former) authority with the medical program, rather than from his own individual capacity. Therefore, Kaylani, in his personal capacity alone, cannot provide the relief that Grodman seeks. Because no court order against Kaylani would enable him to redress Grodman’s complaints, Grodman lacks standing to bring this Section 1983 claim. *See Petteway*, 666 F. Supp. 3d at 666–67. Therefore, the Court dismisses his claim against Kaylani.

Nor would the ability to amend his complaint to sue Kaylani in his official capacity change that result. A suit against someone in his official capacity “generally represent[s] . . . another way of pleading an action against an entity of which the officer is an agent.”

*Graham*, 473 U.S. at 165 (quoting *Monell v. City of New York Dep't of Soc. Servs.*, 473 U.S. 658, 690 n.55 (1978)). Here, it is undisputed that Kaylani is no longer employed by Texas Tech and, therefore, has no official capacity with the university. *See* Dkt. Nos. 21 ¶ 6; 23 at 3. So an amended complaint suing Kaylani in his official capacity would be doomed to fail—Grodman cannot reasonably request that the Court restore Kaylani to his position as Program director solely to bring about Grodman's sought after relief. Therefore, at least as to his claim regarding Kaylani, any amendment to his already amended complaint would be futile.<sup>9</sup>

**C. Grodman has stated a viable discrimination claim against Texas Tech under the Rehabilitation Act.**

Grodman's amended complaint asserts two violations of the Rehabilitation Act against Texas Tech: discrimination (failure-to-accommodate) and retaliation. Dkt. No. 21 ¶¶ 64–78. Because Texas Tech has not moved to dismiss the retaliation claim, the Court does not consider it here.<sup>10</sup> The Court denies the motion to dismiss Grodman's failure-to-accommodate claim against Texas Tech because he has sufficiently pled the elements of a claim.

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<sup>9</sup> Grodman could of course seek to sue the current director of the program in his official capacity, but that would not save his claim against Kaylani.

<sup>10</sup> Discrimination (failure-to-accommodate) claims and retaliation claims are different claims under the Rehabilitation Act. *Compare Perkins v. Child Care Assocs.*, 751 F. App'x 469, 478 (5th Cir. 2018) (describing a discrimination claim under the Rehabilitation Act), *with Kurth v. Gonzales*, 472 F. Supp. 2d 874, 884 (E.D. Tex. 2007) (describing a retaliation claim under the Rehabilitation Act). Whether Grodman has stated a claim upon which relief may be granted under the retaliation provision of the Rehabilitation Act is an open question, but it is one that the Court need not reach given that it has not been challenged. *See generally* Dkt. No. 22 at 7 (moving to dismiss only the reasonable accommodation claim under the Rehabilitation Act); *see also* Dkt. No. 25 (discussing only the accommodation claim under the Rehabilitation Act).

Section 504 of the Rehabilitation Act prohibits discrimination against someone solely on account of their disability.<sup>11</sup> *See Smith v. Harris County*, 956 F.3d 311, 316–17 (5th Cir. 2020). In addition to preventing outright discrimination, this act “impose[s] upon public entities an affirmative obligation to make reasonable accommodations for disabled individuals.” *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454 (5th Cir. 2005). “To succeed on a failure-to-accommodate claim, a plaintiff must prove: (1) he is a qualified individual with a disability; (2) the disability and its consequential limitations were known by the covered entity; and (3) the entity failed to make reasonable accommodations.” *Ball v. LeBlanc*, 792 F.3d 584, 596 n.9 (5th Cir. 2015).

It is not in dispute that Grodman is a qualified individual with a disability or that Texas Tech never provided at least some accommodations; therefore, the Court need only consider the “knowledge” element. *See id.* A plaintiff may ordinarily satisfy the knowledge requirement by demonstrating that he “identified [his] disabilities as well as the resulting limitations” to a public employee and “requested an accommodation in direct and specific terms.” *Smith*, 956 F.3d at 317. “When a plaintiff fails to request an accommodation in this manner, he can prevail only by showing that ‘the disability, resulting limitation, and necessary reasonable accommodation’ were ‘open, obvious, and apparent’ to the entity’s relevant agents.” *Id.* at 317–18 (quoting *Windham v. Harris County*, 875 F.3d 229, 237 (5th Cir. 2017)).

Here, Grodman has plausibly alleged that Texas Tech had the requisite knowledge as to at least some of the accommodations requested by Grodman. Grodman informed Texas

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<sup>11</sup> Of note, “[t]he Rehabilitation Act and the American with Disabilities Act (ADA) have the same standards and provide the same remedies; [therefore,] case law interpreting either statute applies to both.” *Perkins*, 751 F. App’x at 478; *see also Kemp v. Holder*, 610 F.3d 231, 234–35 (5th Cir. 2010).

Tech, via Kaylani, about his diagnosed disabilities. Dkt. No. 21 ¶ 21 (“Grodman . . . disclosed his diagnosed disabilities, including his ADHD diagnosis, his struggle to adjust his medications, and the nature of the impact that his disabilities had on his personal life and work.”). Further, Grodman plausibly alleges that Kaylani informed Program leadership about his disabilities. *See id.* ¶ 23.

But Grodman also must request “an accommodation in specific and direct terms,” and the amended complaint does not make it clear that he did, at least to each requested accommodation. *See Smith*, 956 F.3d at 317; *see generally* Dkt. No. 21. Prior to his formal request for accommodation, Grodman appears to have only presented Texas Tech with a request for extra time on exams. *See* Dkt. No. 21 ¶¶ 22, 24; *see also* Dkt. No. 24 at 13 (noting that Grodman only informed Texas Tech about his “prior accommodations on exams”). But he has not actually pled that he asked for extra time on exams until his formal request in December 2021. Rather he asserts only that he notified the university that he had received such an accommodation in the past. Dkt. No. 21 ¶¶ 22 (“Grodman also disclosed that he received accommodations including extra time on all standardized testing and all USMLE exams.”), 24 (“Kaylani knew that Grodman had been given extra time on exams.”). That said, Grodman does allege that Kaylani represented to him that “no such accommodations were necessary.” *Id.* ¶ 24. While it is not clear that Grodman ever actually requested extra time on exams, Grodman plausibly alleges that Kaylani’s representation was in response to Grodman’s request for such an accommodation. *See White v. U.S. Corr., L.L.C.*, 996 F.3d 302, 306–07 (5th Cir. 2021) (noting that a Court should “constru[e] all reasonable inferences in the complaint in the light most favorable to the plaintiff”). With that reasonable

inference, the Court concludes that Grodman has sufficiently pled his failure-to-accommodate claim, at least as to his request for extra time on exams.<sup>12</sup>

Texas Tech makes three arguments in an attempt to establish otherwise. First, Texas Tech argues that Grodman only requested accommodations when it became apparent that he was about to be suspended. *See* Dkt. No. 22 at 15. Texas Tech correctly notes that a request for accommodations when disciplinary action is looming is best “understood as a plea either for forgiveness or for a second chance.” *Id.* (quoting *Trahan v. Wayfair Maine, LLC*, 957 F.3d 54, 65 (1st Cir. 2020)). As established above though, the plausible allegation and inference is that Grodman informed Kaylani about his need for extra time on testing and that Texas Tech chose not to provide an accommodation. *See* Dkt. No. 21 ¶ 24. Further, this was not a harmless denial of an accommodation; the letter placing him on probation cites his low scores on exams as an issue of concern. *See id.* at 73. Additionally, this denial of accommodations took place well before the misconduct in question occurred. *See id.* ¶ 24. Even were the Court to agree that Grodman’s formal request in December 2021 was a plea for forgiveness, that would not justify Texas Tech’s failure to accommodate Grodman’s request for extra time on examinations, especially given that it used his poor performance on those exams against him. *See id.* at 67–68, 73–75. Therefore, the Court rejects Texas Tech’s first argument at this stage of the proceedings.

Second, Texas Tech argues that Grodman’s informal requests for accommodations do not satisfy the plausible pleading standard. *See* Dkt. No. 22 at 15–16. The Court

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<sup>12</sup> It is not clear that Grodman had informed Texas Tech of the other accommodations until his formal request in December 2021. *See* Dkt. No. 21 ¶ 35. But the fact that he has sufficiently pled the elements as to one failure to accommodate, and that his failure to perform up to task is partially attributable to that, is sufficient for this stage of the case. *See Ball*, 792 F.3d at 596 n.9.

disagrees. For similar reasons as described above, at a minimum, Grodman has sufficiently pled that Texas Tech failed to accommodate his request for extra time on examinations. Further, Texas Tech has not been able to identify, nor has the Court been able to find, any case law that requires a formal request for accommodations be made for a court to find a cognizable failure-to-accommodate claim. *Compare Smith*, 956 F.3d at 317 (requiring only the identification of disabilities and direct and specific request for accommodation), *with* Dkt. No. 22 at 16–17. At a minimum, as alleged, Texas Tech failed to engage in the good-faith interactive discussion required of an employer that has an employee who requests an accommodation. *See EEOC v. Agro Distrib. LLC*, 555 F.3d 462, 471 (5th Cir. 2009). Therefore, the Court rejects Texas Tech’s second argument.

Finally, Texas Tech argues that Grodman had an ongoing obligation to notify Texas Tech about how his disabilities were affecting his performance and to request accommodations. Dkt. No. 21 at 16–18. But this argument fails because, as alleged, Grodman fairly believed that his exam scores were not going to be held against him. After all, Grodman’s complaint alleges that Kaylani told him that he did not need extra time on his examinations because those tests were “for educational purposes only and that those scores ‘would never be used against [Grodman].’” Dkt. No. 21 ¶ 24 (alteration in original). It would make little sense for Grodman to request an accommodation that he fairly believed would not affect his job performance. *See id.* And contrary to Texas Tech’s argument, “an employer’s obligation to accommodate is triggered when an employee requests an accommodation.” *Dillard v. City of Austin*, 837 F.3d 557, 562 (5th Cir. 2016). The fact that Grodman did not continually request extra time does not absolve Texas Tech of its responsibility to accommodate that request. *See id.* Therefore, the Court rejects Texas

Tech's third argument. In sum, the Court viewing the allegations in the light most favorable to Grodman, concludes that Grodman has sufficiently alleged his failure-to-accommodate claim.

#### **4. Conclusion**

The Court grants in part and denies in part Texas Tech's motion to dismiss (Dkt. No. 22). Texas Tech is immune from suit under Section 1983, so that claim is dismissed without leave to amend. Grodman has, however, sufficiently pled his failure-to-accommodate claim against Texas Tech. Therefore, this case may proceed against Texas Tech on both the failure-to-accommodate and retaliation claims. The Court additionally grants Kaylani's motion to dismiss (Dkt. No. 23). Grodman does not have standing to pursue his claim against Kaylani, and amendment would be futile; therefore, the Court dismisses it with prejudice. The Clerk of Court is directed to terminate Kaylani as a party to this matter.

So ordered on July 25, 2024.

  
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JAMES WESLEY HENDRIX  
UNITED STATES DISTRICT JUDGE