



with the specific outcome (an outcome requested on her own accord), of that process does not equate to a violation of federal law. Because Plaintiff fails to plead facts plausible to support a claim of deliberate indifference, her suit must be dismissed in its entirety.

## II. BACKGROUND

Plaintiff filed the underlying suit against TTU for deliberate indifference under Title IX based on its response to Plaintiff's report of sexual assault by a fellow student. *See generally*, Dkt. 1. Plaintiff's allegations stem from an incident that took place on or around November 5, 2023, on Texas Tech University's campus in Lubbock, Texas, between Plaintiff and a fellow student (hereinafter, "Respondent"). Dkt. 1 ¶9. Plaintiff alleges that Respondent forcefully initiated sexual contact with her, resulting in physical injuries and emotional distress. Dkt. 1 ¶13. The day after the assault, Plaintiff reported it to TTU's Title IX Office for Student Civil Rights and Sexual Misconduct ("SCRSM"). Dkt. 1 ¶12. There, she met with Case Manager Meredith Holden. Dkt. 1 ¶12. Plaintiff also reported the assault to the Texas Tech Police Department, which began its own investigation. Dkt. 1 ¶14.

In the months following, Plaintiff participated in several meetings with TTU's SCRSM as part of the formal grievance process. Dkt. 1 ¶¶20-21. The goal of the grievance process was to reach a resolution that was satisfactory to Plaintiff and her well-being. Unfortunately, the nature of the grievance process required Plaintiff to retell the details of the alleged assault multiple times. Dkt. 1 ¶21. The Informal Resolution process was explained to Plaintiff, and she agreed to engage in it.<sup>1</sup> Eventually, in June 2024, Plaintiff agreed to sign an Informal Resolution Agreement ("IR Agreement"). Dkt. 1 ¶24. The terms of the IR Agreement provided Plaintiff with a no-contact

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<sup>1</sup> See Exhibit A.

order regarding Respondent and required that Respondent receive training on sexual misconduct/harassment, contribute \$500.00 to Voice of Hope—a non-profit that supports survivors of sexual violence—, and submit a reflective essay of at least 500 words on the importance of consent. Dkt. 1 ¶¶24, 49. Ultimately, the terms of the Informal Resolution indicate it was signed voluntarily to resolve the matter.<sup>2</sup>

After Plaintiff signed the IR Agreement in June 2024, Plaintiff chose to leave TTU and pursue her education in a remote setting. Dkt. 1 ¶49. Over one year later, she filed this suit, alleging TTU was deliberately indifferent by improperly handling her report of the alleged assault by assigning a biased investigator, unnecessarily dragging out the investigation, forcing her to sign an IR Agreement despite her wishes, and failing to appropriately discipline Respondent. *See generally*, Dkt. 1.

But as TTU will show, Plaintiff's deliberate indifference claim is defeated by her own admissions. Despite not achieving the desired result, Plaintiff cannot deny that TTU actively investigated Plaintiff's grievance by conducting interviews with key witnesses, holding meetings with Plaintiff, and giving Plaintiff various options for finding a solution that best fit her needs. Because these actions are antithetical to deliberate indifference, Plaintiff's suit against TTU must be dismissed in its entirety.

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<sup>2</sup> See Exhibit B.

### III. ARGUMENT AND AUTHORITIES

#### A. Standard of Review

Federal Rule of Civil Procedure 12(b)(6) governs motions to dismiss for failure to state a claim upon which relief can be granted.<sup>3</sup> Fed. R. Civ. P. 12(b)(6). The “court accepts ‘all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.’” *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir.2004) (quoting *Jones v. Greninger*, 188 F.3d 322, 324 (5th Cir. 1999)). To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead sufficient facts to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* Further, “[d]ismissal . . . is appropriate where the plaintiff fails to allege ‘enough facts to state a claim to relief that is plausible on its face’ and thus does not ‘raise a right to relief above the speculative level.’” *Montoya v. FedEx Ground Package Sys., Inc.*, 614 F.3d 145, 148 (5th Cir. 2010) (quoting *Twombly*, 550 U.S. at 555).

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<sup>3</sup> Generally, when “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment.” Fed. R. Civ. P. 12(b). But because TTU has attached the Informal Resolution Notice (Exhibit A), Plaintiff’s signed IR Agreement (Exhibit B), and TTU System Regulation 07.06.A (Title IX Sexual Misconduct) (Exhibit C) to their motions to dismiss, said documents were also referred to in the Complaint (*see generally*, Dkt. 1) and these documents are central to Plaintiff’s claims, the court may consider the documents without converting this motion into one for summary judgment. *See In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007).

**B. Plaintiff fails to state a claim against the Board of Regents.**

Plaintiff styles her suit as one against “Board of Regents of Texas Tech University System, for and on behalf of Texas Tech University in Lubbock.” *See* case style, Dkt. 1. She states: “The Board of Regents of Texas Tech University System is the legal governing body responsible for overseeing the Texas Tech University System.” Dkt. 1 ¶2. To the extent Plaintiff attempts to hold the Board of Regents of Texas Tech University System liable as a separate defendant in this suit based on this oversight role, she cannot do so. The Texas Supreme Court recently held that the Board’s “general right to ‘direct[], manage[], and control[]’” the university under the Texas Education Code is insufficient to demonstrate the Board’s liability for specific actions taken at the component institution level. *See Texas Tech Univ. Sys. v. Martinez*, 691 S.W.3d 415, 422 (Tex. 2024).

To maintain a claim against the Board, a plaintiff must allege sufficient facts showing the Board exercised “operational control” and took “direct action” against the plaintiff consistent with that control. *Id.* at 421. A plaintiff cannot rely on the Board’s general governance powers to impute liability; the petition must contain facts affirmatively demonstrating that the Board itself—rather than the component university—controlled the specific decision or action causing the alleged injury. *Id.* at 423; *see also Glass v. Sul Ross State University*, No. PE:22-CV-00014-DC-DF, 2023 WL 2028928, at \*17 (W.D. Tex. Feb. 14, 2023) (dismissing student’s Title IX retaliation claim against a board of regents for failing to show how student’s harm resulted from the board of regents’ conduct). Because Plaintiff has not alleged facts showing the Board itself participated in or controlled the specific conduct at issue, her claims against the Board must be dismissed.

**C. Plaintiff fails to state a claim for deliberate indifference against TTU.**

Title IX states that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). “A school district that receives federal funds may be liable for student-on-student harassment if the district (1) had actual knowledge of the harassment, (2) the harasser was under the district’s control, (3) the harassment was based on the victim’s sex, (4) the harassment was so severe, pervasive, and objectively offensive that it effectively bar[red] the victim’s access to an educational opportunity or benefit, and (5) the district was deliberately indifferent to the harassment.” *Sanches v. Carrollton-Farmers Branch Indep. Sch. Dist.*, 647 F.3d 156, 165 (5th Cir. 2011) (citation and internal quotation marks omitted). “A damages remedy will not lie under Title IX unless an [appropriate] official . . . has actual knowledge of discrimination in the recipient’s programs and fails adequately to respond.” *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998). For an educational institution to be liable under Title IX, the institution’s “response must amount to deliberate indifference to discrimination.” *Id.* Deliberate indifference is “a high bar, and neither negligence nor mere unreasonableness is enough.” *Sanches v. Carrollton-Farmers Branch Indep. Sch. Dist.*, 647 F.3d 156, 167 (5th Cir. 2011). Rather, a school acts with deliberate indifference when its “response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.” *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 648 (1999). “A school can be deliberately indifferent ‘before the fact’—i.e., the school has actual knowledge of a substantial risk that sexual abuse or harassment will occur and does not respond reasonably to that risk—or ‘after the fact’—i.e., after the school has knowledge of abuse or harassment, it does not respond reasonably, and the

student suffers further harassment as a result.” *J.T. v. Uplift Educ.*, 679 F. Supp. 3d 540, 549 (N.D. Tex. 2023), *aff’d*, No. 23-10773, 2024 WL 5118486 (5th Cir. Dec. 16, 2024) (internal citations omitted).

### **1. Post-reporting claim**

Here, Plaintiff brings an “after the fact” or “post-reporting” claim of deliberate indifference, alleging that TTU improperly handled her grievance complaint by assigning a biased investigator, coercing Plaintiff into signing an IR Agreement against her wishes, and failing to adequately discipline or sanction the alleged perpetrator of the assault. *See generally*, Dkt. 1. But none of these actions rise to the level of deliberate indifference. Rather, the allegations show that TTU: (1) immediately initiated an investigation; (2) assigned an investigator; (3) maintained communication with Plaintiff throughout the process; (4) offered Plaintiff counseling services; (5) offered for Plaintiff to move to a new dorm; and (6) initiated discipline against Respondent. Dkt. 1 ¶¶26-27, 29, 35-37. Even taken as true that the investigation required Plaintiff to re-visit a traumatic experience, that the assigned investigator did not meet Plaintiff’s expectations, that Plaintiff was unable to immediately obtain counseling services, and that Respondent’s ultimate discipline did not reflect the exact consequences Plaintiff had desired for him, they do not evince a school that is deliberately indifferent. Dkt. 1 ¶¶57-60. To the contrary, Plaintiff’s Complaint is rife with admissions that TTU thoroughly investigated her grievance. Dkt. 1 ¶¶26-27, 29, 35-37. Plaintiff interprets the seven months’ worth of investigation as a way of showing TTU intentionally “dragged” the process out, when in reality, Plaintiff neither mentions nor accounts for her own reluctance to engage in the Title IX process during that time. It also shows that the SCRSM employees were committed to diligently gathering facts and reviewing evidence. Even so, to the extent Plaintiff believes this process took longer than

necessary, such actions would, at worst, amount to mere negligence, not deliberate indifference. *See Rost ex rel. K.C. v. Steamboat Springs RE-2 School District*, 511 F.3d 1122 (10th Cir. 2008) (school's failure to follow policy by not interviewing alleged suspect and victim personally and instead relying on law enforcement's version of events amounted to negligence, not deliberate indifference); *J.T.*, 679 F. Supp. 3d at 557 (the fact that the school "might have done more or responded differently does not, without more, establish deliberate indifference"); *B.W. v. Career Tech. Ctr. of Lackawanna Cnty.*, 422 F. Supp. 3d 859, 885 (M.D. Pa. 2019) (holding that even if the school's remedial actions after the students' report of sexual abuse "were not as complete as plaintiffs allege they should have been due to their failure to provide plaintiffs with counseling and other services, defendants' remedial actions . . . were not clearly unreasonable in light of the known circumstances."); *Davis*, 526 U.S. at 648 (victims of peer harassment do not have a Title IX right to make a particular remedial demand); *Sanchez*, 647 F.3d at 170 ("Title IX does not require flawless investigations or perfect solutions."); *but see Roe v. Cypress-Fairbanks Indep. Sch. Dist.*, 53 F.4th 334, 345 (5th Cir. 2022) (finding reasonable jury could conclude that school district was deliberately indifferent where district claimed to have investigated sexual assault yet possessed no documentation of investigation).

Additionally, many of Plaintiff's allegations contain no more than mere speculation as to TTU's motives. For example, Plaintiff states: "TTU intentionally delayed the grievance procedure against [Respondent] until SCRSM employees succeeded in coercing Plaintiff into signing the IR Agreement, when TTU could have held a grievance hearing by the end of November 2023, as TTU had collected sufficient evidence for a finding of responsibility by a preponderance of evidence by that date." Dkt. 1 ¶57. And that, "[w]hile TTU dragged out the grievance procedure, SCRSM employees invested significant efforts into getting a proposed resolution from Plaintiff that was

acceptable to [Respondent] in order to have the IR Agreement executed and avoid sanctioning [Respondent].” Dkt. 1 ¶57. But Plaintiff would have no way of knowing whether TTU purposely extended the length of the grievance process in order “delay” the process, nor does she explain or infer how TTU delaying it would result in a favorable outcome for Respondent, or why TTU would be interested in protecting Respondent in the first place. TTU’s actions in investigating Plaintiff’s grievance should not be viewed through the lens of biased speculation. *See Sanches*, 647 F.3d at 167-68 (noting that “courts should refrain from second-guessing the disciplinary decisions made by school administrators”). Accordingly, these allegations should be disregarded, and Plaintiff’s post-reporting claim should be dismissed for failure to state a claim. *See Fed. R. Civ. P. 12(b)(6)*.

## **2. Heightened risk claim**

To the extent Plaintiff’s pleadings allege a “heightened risk” claim, this too should fail. In “heightened risk” cases, the inquiry revolves around whether the defendant-institution’s policy or custom created a heightened risk of the alleged injury. *Doe I on Behalf of Doe II v. Huntington Indep. Sch. Dist.*, No. 9:19-CV-00133-ZJH, 2020 WL 10317505, at \*5 (E.D. Tex. Oct. 5, 2020).

Here, Plaintiff cites to publicly-available statistics from TTU’s Title IX Office to support her argument that TTU has “maintained a policy of deliberate indifference that creates a heightened risk of sexual misconduct that was known or obvious.” Dkt. 1 ¶63. From there, she incorrectly assumes that TTU has a high rate of sexual misconduct incidents and that many of them are unresolved, and then makes the unsupported inference that TTU “refuses to investigate the vast majority of reported incidents” and “punishes virtually no one.” Dkt. 1 ¶¶17-19. In making these incorrect assumptions, Plaintiff asks the Court to infer a policy of deliberate indifference based on the number of uninvestigated reports of sexual misconduct for the last three years. Dkt. 1 ¶¶17-19, fn. 2-4. This

inference is implausible and contradicted by the regulatory framework under which TTU operates. The term “unresolved” in the context of Title IX data does not mean “ignored.” Rather, cases are frequently categorized as unresolved for procedural reasons mandated by law or policy—such as lack of jurisdiction (*e.g.*, conduct occurring outside the University’s education program or activity) or complainant abandonment (where complainant chooses not to proceed with a formal grievance or fails to comply with necessary investigative steps).<sup>4</sup> When a university closes a file because it lacks jurisdiction or because a complainant withdraws, it is *following* the law, not acting with indifference toward it. Plaintiff pleads no facts to show that these “uninvestigated” or “unresolved” cases were actual instances of ignored abuse rather than procedural closures. Similarly, Plaintiff’s cited statistics refer to reports of “sexual misconduct”—an extremely broad term that cannot be analogized to the type of sexual assault allegedly experienced by Plaintiff. Without this type of context, this raw data cannot support a plausible inference that TTU maintains a policy of indifference. *See Doe I v. Huntington Indep. Sch. Dist.*, 2020 WL 10317505, at \*5 (E.D. Tex. Oct. 5, 2020) (dismissing heightened risk claim where plaintiff failed to allege concrete facts of an official policy of ignoring assault). Because Plaintiff’s “heightened risk” theory relies solely on this mischaracterized data, the claim is no more than mere conjecture and speculation and cannot sustain a heightened risk claim. *See Roe v. Cypress-Fairbanks Indep. Sch. Dist.*, 53 F.4th 334, 342 (5th Cir. 2022) (holding that “the District’s response to other incidents of sexual harassment do not show the District’s knowledge of a substantial risk of *Roe*’s sexual assault.”); *see also Doe v. Edgewood Indep. Sch. Dist.*, 964 F.3d 351, 363 (5th Cir. 2020) (declining to consider whether and to what extent the harassment of persons “other than the plaintiff” may constitute actual

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<sup>4</sup> *See* Exhibit C, § 8 (Grievance Process for Title IX Sexual Misconduct).

knowledge of the plaintiff's specific risk of Title IX harm); *Doe I on Behalf of Doe II*, 2020 WL 10317505 at \*5 (finding that student did not allege enough concrete facts to establish that the school had an official policy or custom of ignoring *sexual assault* as opposed to mere hazing and dismissing remaining allegations that the school "perpetuat[ed] . . . a culture in which athletes were protected from allegations of misconduct" as conclusory). Accordingly, Plaintiff's heightened risk claim should be dismissed for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6).

#### IV. PRAYER

For the foregoing reasons, TTU respectfully requests that the Court dismiss Plaintiff's suit in its entirety and all other relief to which TTU may be justly entitled.

Dated: January 23, 2026

Respectfully Submitted.

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document was filed electronically via the Court's CM/ECF system on January 23, 2026, causing electronic service upon all counsel of record.

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