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Plaintiff Haley Justice ("Plaintiff" or "Haley") files this Response to the Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Motion") by Defendant Texas Tech University ("Texas Tech" or "TTU").

INTRODUCTION

Haley filed this lawsuit after being violently raped by a fellow student of TTU at a TTU dorm in November 2023. Haley asserts, in relevant part, a Title IX claim against TTU for its deliberate indifference to the sexual assault suffered by Plaintiff upon receiving notice thereof from Haley. Such deliberate indifference barred Plaintiff's access to educational opportunities and benefits. Defendant TTU filed a Motion to Dismiss arguing that Haley failed to state a claim that TTU acted with deliberate indifference to her sexual assault. Defendant's Motion should be denied because the Complaint comprises well-plead allegations that plausibly show that TTU was deliberately indifferent, and that Haley is entitled to relief under Title IX. Additionally, Plaintiff sufficiently pleaded facts to state a plausible claim for a heightened risk of sexual harassment and assault. Plaintiff also objects to Exhibits A-C to the Motion, as TTU failed to authenticate those documents and to show that they are central to the Complaint, as required by law for consideration of attachments to a motion to dismiss by a court without conversion of same onto one for summary judgment.

FACTUAL BACKGROUND

On November 5, 2023, Haley Justice, a student at TTU, was violently raped by Tanner Cearley ("Tanner"), a fellow student, at a TTU dorm under TTU's control. ECF No. 1 at ¶¶9-10. The next day, Haley reported the rape to the Texas Tech Title IX Office for Student Civil Rights and Sexual Misconduct (SCRM) with the assistance of a Texas Tech Community Advisor. *Id.* at ¶12. After receiving knowledge of the abuse, TTU acted with deliberate indifference to Haley's sexual assault. *Id.* at ¶16. As soon as Haley had her first meeting with SCRS, TTU began

trying to convince her to waive her right to an investigation and adjudication of formal complaints under Title IX and to agree to an "informal resolution" with Tanner. *Id.* On information and belief, TTU forced this informal resolution to minimize the risks to the school, such as avoiding public scrutiny, lawsuits, negative publicity, and loss of funding. *Id.* at ¶30.

As Haley was extremely fragile after suffering such severe abuse and having to relive the intimate details of the events over and over throughout multiple meetings with the SCRMS personnel, the SCRMS took advantage of Haley's situation to push the informal resolution. *Id.* at ¶20. Notably, TTU SCRMS employees repeatedly told Haley that a formal resolution would be much harder because Haley would have to retell the details of her assault multiple additional times, and that the process could take a long time to finish, with no certainty of a satisfying outcome for Haley. *Id.* at ¶21. While TTU employees attempted to coerce Haley to sign an informal resolution agreement, TTU assigned the same person, Andrea Regalado ("Andrea"), to investigate Haley's claims and facilitate the informal resolution process. *Id.* at ¶26. As the investigator in charge, Andrea made preliminary determinations about credibility and developed opinions about Haley and Tanner, which made her a clearly biased party in the resolution of Haley's case. *Id.* at ¶27.

TTU intentionally and unreasonably delayed the conclusion of the grievance procedure initiated by Haley. *Id.* at ¶31. From November 6, 2023, when Haley filed her Title IX report, until her last formal interview with Andrea, on February 2, 2024, almost three months had already passed. *Id.* at ¶35. Andrea had conducted an unnecessary number of interviews with multiple people by the end of November 2023, and had sufficient evidence for a finding of responsibility against Tanner by a preponderance of the evidence, as required under Title IX federal regulations. *Id.* at ¶36. Nevertheless, TTU continued dragging the process until Haley finally succumbed to TTU's pressure and agreed to, in June 2024, enter into an informal resolution that was bluntly

disproportionate and allowed Tanner to get away with raping Haley, and to continue his college life with the minor inconvenience of having to take a course, make a donation, and write an essay. *Id.* at ¶¶39-41. Throughout the entire time, TTU prioritized getting rid of Haley's case instead of ensuring fairness, transparency, and accountability in the process. *Id.* at ¶46.

TTU never informed Haley of Tanner's compliance (or failure to comply) with the terms of the informal resolution agreement. *Id.* at ¶43. On information and belief, TTU failed to monitor Tanner's compliance with that agreement and did not reopen the grievance process against Tanner thereafter. *Id.* TTU failed to inform Haley of any proportional remedial actions taken against Tanner. *Id.* at ¶45. TTU further failed to prevent encounters between Haley and Tanner on campus, and, instead, forced Haley to negotiate back and forth with Tanner for an informal resolution. *Id.* at ¶46. TTU failed to provide Haley with reasonable accommodations to help her continue pursuing her education safely, such as counseling and dorm relocation. *Id.* at ¶47.

TTU's deliberate indifference to the abuse suffered by Haley effectively barred her access to educational opportunities. *Id.* at ¶48. Following the sexual assault, Haley avoided leaving her dorm room, missed several classes, including math, anatomy, and English. *Id.* In fact, Haley failed an English course she took during the summer of 2024. *Id.* Haley missed various extracurricular activities, such as church and other campus events, and seriously considered changing majors and exploring a completely different career path as a result of the trauma. *Id.* As Tanner was never prohibited from taking the same classes as Haley or restricted from circulating on campus, Haley had to move out of Lubbock and currently attends TTU as a fully remote student. *Id.* at ¶49.

TTU maintained a policy of deliberate indifference that created a heightened risk of sexual misconduct that was known or obvious, and Haley directly suffered from these policies. *Id.* at ¶16. In 2023, according to data provided by the U.S. Department of Education, Campus Safety and

Security, TTU was listed as one of the schools with the most dangerous college campuses in Texas. *Id.* at ¶17. TTU statistics reveal consistent high levels of sexual misconduct, minimal interest in investigating such complaints, and irrelevant sanctions against students resulting from investigations. *Id.* at ¶18. For example, TTU's Chief Executive Officer from September 1, 2023, through August 31, 2024—which encompasses the period when the facts alleged in the Complaint happened—, shows that they received 251 reports of sexual misconduct but only conducted twelve formal investigations. *Id.* Out of the twelve reports investigated, only three were concluded with student disciplinary sanctions. *Id.* Further, the volume of sexual misconduct incidents reported by TTU shows no significant decrease year over year. *Id.* at ¶19. TTU's policy of deliberate indifference in refusing to investigate the vast majority of reported sexual misconduct incidents and punishing virtually no one, creates a heightened risk of sexual misconduct such as the rape by Tanner against Haley. *Id.*

LEGAL STANDARD

When considering a motion to dismiss, the court accepts as true all well-pleaded facts and views those facts in a light most favorable to the plaintiff. *Campbell v. City of San Antonio*, 43 F.3d 973, 975 (5th Cir.1995). Accordingly, this Court must disregard TTU's denial of Haley's allegations on its Motion to Dismiss, accept as true all facts well-pleaded by Haley, and view such facts in a light most favorable to her. ECF No. 6 at 1; *Id.* A viable complaint includes "enough facts to state a claim to relief that is plausible on its face," *i.e.*, "enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of [the claim or element]." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007); *see also Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50 (2009). Federal Rule of Civil Procedure 8(a)(2) sets forth that a pleading 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). A complaint does not need detailed factual allegations. *Twombly*, 550 U.S. at 544. As such, a claim

may not be dismissed unless it appears certain that plaintiff cannot prove any set of facts in support of its claim that would entitle plaintiff to relief. *Norman v. Apache Corp.*, 19 F.3d 1017, 1021 (5th Cir.1994); *Carney v. RTC*, 19 F.3d 950, 954 (5th Cir.1994). See also *Kaiser Aluminum & Chemical Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir.1982) (citing 5B WRIGHT & MILLER § 1357 at 598 (1969), for the proposition that "the motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted"), cert. denied, 459 U.S. 1105, 103 S.Ct. 729, 74 L.Ed.2d 953 (1983).

ARGUMENTS

I. OBJECTIONS TO DEFENDANT'S EVIDENCE IN SUPPORT OF MOTION TO DISMISS.

Plaintiff objects to Exhibits A-C offered by Defendant as evidence as inadmissible, and such exhibits should not be considered by the Court. Defendant failed to authenticate such exhibits. See ECF No. 6-1, 6-2, 6-3. *Kelso v. Paulson*, No. 3:08-CV-961-B, 2010 WL 2163124, at *4 (N.D. Tex. May 4, 2010) (sustaining objections to exhibits due to insufficient circumstantial evidence of authenticity thereof). Further, Plaintiff makes no reference to Exhibits A and C in the Complaint, and none of Exhibits A-C is central to Plaintiff's claims.

Generally, if matters outside the pleadings are presented to and not excluded by the court in deciding a motion to dismiss for failure to state a claim, the motion shall be treated as one for summary judgment. Fed. R. Civ. P. 12(d). One limited exception to this rule has been recognized by the Fifth Circuit, *i.e.*, "a district court may consider extrinsic documentary evidence only if: "1) the document is attached to the motion to dismiss; 2) the document is referred to in the plaintiff's complaint; and 3) the document is 'central' to the plaintiff's claim." *Antero Res. Corp. v. C & R Downhole Drilling, Inc.*, No. 4:16-CV-00668-Y, 2019 WL 13193898, at *2 (N.D. Tex. July 22, 2019). Here, TTU attached Exhibits A-C to its Motion and requested the Court to consider the

documents without converting the Motion into one for summary judgment. ECF No. 6 at 4. Exhibits A-C comprise copies of, respectively, (A) its Office for Student Civil Rights and Sexual Misconduct Informal Resolution Notice, (B) the Informal Resolution signed by Plaintiff, and (C) Regulation 07.06.A of the Texas Tech University System. ECF Nos. 6-1, 6-2, 6-3.

The Court should disregard such documents in deciding on Defendant's Motion. Plaintiff makes no reference whatsoever to any Informal Resolution Notice or to Regulation 07.06.A of the Texas Tech University System. *See* ECF No. 01. Further, neither such Notice and Regulation, nor the Informal Resolution signed by Plaintiff, is central to her Title IX claim.

Courts within the Fifth Circuit have considered that a document satisfies the centrality component when it is necessary to establish an element of one of the plaintiff's claims. *Antero*, 2019 WL 13193898, at *2. Conversely, when a plaintiff references a document in the complaint but it only constitutes evidence of an element of plaintiff's claim, a court will not consider it. *Id.* (citing *Scanlan v. Tex. A&M Univ.*, 343 F.3d 533, 536-37 (5th Cir. 2003)). The elements of Plaintiff's Title IX are (1) actual knowledge of the assault by the school, (2) that the abuser was under the control of the school, (3) that the assault was based on the victim's sex, (4) that 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) that the school was deliberately indifferent to the harassment. *See Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999). Whether Haley received an Informal Resolution Notice explaining the informal resolution process is unnecessary to establish any elements of her Title IX claim. ECF No. 6 at 2; *see* ECF No. 1. Similarly, a copy of the Informal Resolution signed by Haley merely constitutes evidence that TTU succeeded in coercing Haley to sign the document, one of the several instances of deliberate indifference by TTU alleged in the

Complaint. *See* ECF No. 1. Finally, TTU's Regulation 07.06 explaining how TTU's unresolved Title IX cases are categorized is also irrelevant insofar as the records described in the Complaint reveal consistent high levels of sexual misconduct reported throughout the years, minimal interest in investigating such complaints, and irrelevant sanctions against students resulting from investigations. ECF No. 1 at ¶¶17-19. Moreover, Defendant failed to show the Court how any of the Exhibits A-C is central to Plaintiff's claims. Accordingly, this Court should not consider Exhibits A-C in deciding Defendant's Motion to Dismiss.

II. PLAINTIFF'S CLAIMS AGAINST THE BOARD OF REGENTS FOR AND ON BEHALF OF TTU ARE PROPER AND SHOULD NOT BE DISMISSED.

Plaintiff brings claims against the Board of Regents of Texas Tech University System ("Board") as the legal governing body responsible for overseeing TTU. In fact, the Complaint names the Board as a defendant "for and on behalf of" TTU. Accordingly, Plaintiff's claims should not be dismissed.

The case law cited by Defendant in its Motion is inapposite. First, Defendant cites to *Tex. Tech Univ. Sys. v. Martinez*, an employment discrimination lawsuit under Chapter 21 of the Labor Code. 691 S.W.3d 415 (Tex. 2024). In that case, the Supreme Court held that the plaintiff, a seventy-two-year-old employee who was discharged from TTU's health sciences center, failed to allege sufficient facts regarding the Board's control over her employment opportunities to support her age discrimination claims against the Board. *Id.* The Supreme Court reached this conclusion by analyzing the facts in light of *Rennel*, under which "a defendant that is not the plaintiff's direct employer can be liable only if it had operational control over employment decisions and took direct action against the plaintiff consistent with that control." *Id.* at 421 (quoting *NME Hosps., Inc. v. Rennels*, 994 S.W.2d 142,147 (Tex. 1999)). The case herein is a Title IX lawsuit and *Rennels* does

not apply. Notably, Defendant failed to present any specific arguments favoring the application of *Martinez* to this case.

Second, Defendant cites to *Glass v. Sul Ross State Univ.*, where plaintiff asserts, among other claims, a Title IX retaliation claim against the Board of Regents of Sul Ross State University. No. PE:22-CV-00014-DC-DF, 2023 WL 2028928 (W.D. Tex. Feb. 14, 2023). In *Glass*, the U.S. Magistrate recommended, and the court adopted, the dismissal of plaintiff's Title IX retaliation claim against Board of Regents finding that "[p]laintiff's allegations insufficiently illustrate causation," which is a requirement that is specific for retaliation claims. *Id.* at *18, report and recommendation adopted, No. P:22-CV-00014-DC, 2023 WL 11832316 (W.D. Tex. Mar. 8, 2023); *see id.* (citing *Collins v. Jackson Pub. Sch. Dist.*, 609 F. App'x 792, 795 (5th Cir. 2015) (unpublished)). The instant case is a sexual abuse case under Title IX, with elements different from those of retaliation claims, and Defendant failed to present any specific arguments favoring the application of *Glass* to this case.

Therefore, because Plaintiff brings claims against the Board as the legal governing body responsible for overseeing TTU, for and on behalf of TTU, and because the case law cited by Defendants is inapplicable to this case, the Motion should be denied.

III. PLAINTIFF SUFFICIENTLY PLEADED TITLE IX CLAIMS AGAINST TTU.

Under Title IX, a school may be liable for failing to address student-on-student sexual harassment if the school (1) had actual knowledge of the harassment, (2) the harasser was under the control of the school, (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 school was deliberately indifferent to the harassment. *See Davis*, 526 U.S. at 650. In its Motion, Defendant does not dispute requirements (1)-(4). ECF No. 6. Notably, Plaintiff has sufficiently pleaded that, on November 5, 2023, Haley

was raped by Tanner, a TTU student, under the control of TTU at an on-campus residence hall. ECF No. 1, ¶¶9-10. Plaintiff further pleaded that this severe, pervasive, and objectively offensive sexual assault effectively barred Plaintiff's access to educational opportunities and benefits. *Id.* at ¶¶48-50.

At issue here is whether, accepting as true the facts pleaded by Plaintiff, and viewing such facts in a light most favorable to her, Plaintiff alleged enough facts to raise a reasonable expectation that discovery will reveal evidence of TTU's deliberate indifference as to the sexual assault suffered by Plaintiff. ECF No. 6 at 6; *Twombly*, 550 U.S. at 570. The Complaint, as required under the Federal Rules of Civil Procedure, is a short and plain statement of claims containing well-plead allegations that plausibly shows that TTU was deliberately indifferent to Haley's assault, and that Haley is entitled to relief under Title IX. Additionally, Plaintiff has sufficiently pleaded facts to state a plausible claim for a heightened risk of sexual harassment and assault. Further, the case law relied upon by Defendant is inapposite and provides no grounds for dismissal.

A. Plaintiff Plausibly Alleged that TTU Acted With Deliberate Indifference to Plaintiff's Sexual Assault.

Plaintiff has plausibly alleged that TTU was deliberately indifferent to Plaintiff's report of sexual assault. In *Doe 11 v. Baylor Univ.*, also a Title IX case, plaintiff alleged she was assaulted by another student at Baylor University. No. 6:17-CV-228-RP, 2018 WL 11471249, at *2 (W.D. Tex. Dec. 28, 2018). The court found that plaintiff plausibly alleged that Baylor acted with deliberate indifference after receiving notice of her claims where plaintiff alleged that (i) Baylor failed to appropriately or adequately investigate the assault, (ii) misled plaintiff throughout the investigation process, (iii) failed to ensure she would not be subjected to continuing assault and harassment, and (iv) denied her access to medical and mental health treatment. *Id.* at *7.

Here, Plaintiff has alleged that TTU coerced Plaintiff into agreeing to an informal resolution. ECF No. 1 at ¶¶20-24. Employees of TTU Title IX Office for Student Civil Rights and Sexual Misconduct (SCRSM) abused Haley's fragile emotional state and persistently discouraged her from pursuing a formal grievance by repeatedly stating that Haley would have to relive her trauma through a lengthy process with no certainty of a satisfying outcome. *Id.* Ultimately, TTU convinced Haley to sign an informal resolution waiving her right to a formal investigation and resolution of claims against Tanner by TTU. *Id.*

Plaintiff further alleged that TTU assigned Andrea Regalado to negotiate the informal resolution, the same SCRSM employee in charge of investigating Haley's case. ECF No. 1 at ¶¶25-30. As such, Mrs. Regalado was never a neutral party in the resolution of Haley's claims against Tanner. *Id.* Notably, Mrs. Regalado was one of the SCRSM employees forcing Haley to enter into an informal resolution that ultimately benefitted TTU, and its intent to minimize the risks to the school, such as avoiding public scrutiny, lawsuits, negative publicity, and loss of funding. *Id.*

Plaintiff also alleged that TTU intentionally and unreasonably delayed the conclusion of the grievance procedure initiated by Haley, as TTU needed time to push an informal resolution. ECF No. 1 at ¶¶31-39. Plaintiff alleged that, at least by the end of November 2023, TTU had sufficient evidence for a finding of responsibility against Tanner by a preponderance. *Id.* at ¶37. Still, TTU took several additional months to conclude its investigation of the case, and never made a finding of responsibility or sanctioned Tanner. *Id.* at ¶39. Plaintiff further alleged that the terms of the informal resolution were clearly disproportionate to the severity of the sexual abuse Haley suffered. *Id.* at ¶40-43. In fact, TTU failed to inform Haley of proportional remedial actions—if any—taken against Tanner. *Id.* at ¶45. TTU failed to prevent encounters between Haley and Tanner on campus, and, instead, pressured Haley to negotiate back and forth with Tanner for an informal

resolution. *Id.* at ¶46. Moreover, TTU failed to provide Haley with mental health assistance, and the only relocation options provided by TTU were actually punitive to Haley. *Id.* at ¶48. In the meantime, Tanner continued his college life with the minor inconvenience of having to take a course, make a donation, and write an essay. *Id.* at ¶45, 58.

Accordingly, as in *Doe 11 v. Baylor Univ.*, Haley plausibly alleged that TTU was deliberately indifferent to her report of sexual assault, and Defendant's Motion should be denied.

1. Plaintiff's Short and Plain Statement of Claims Comprises Well-Plead Allegations Showing Entitlement to Relief.

Defendant asserts in its Motion that Plaintiff (i) would have no way of knowing whether TTU extended the grievance process for purposes of delay, (ii) failed to infer that the delay would result in a favorable outcome for Tanner, and (iii) failed to provide a reason why TTU would be interested in protecting Tanner. ECF No. 6 at 9. However, Plaintiff has sufficiently alleged that, by the end of November 2023, TTU had already collected sufficient evidence for a finding of responsibility against Tanner by a preponderance of the evidence, but Mrs. Regalado only shared a draft of the investigation report—which was not even finished—six months later, and TTU never held a grievance hearing or sanctioned Tanner. ECF No. 1 at ¶¶31-39. Plaintiff also alleged that TTU unreasonably extended the grievance process to force Haley into signing an informal resolution, which benefitted Tanner because the informal resolution resolved the rape without a hearing, with no formal finding of responsibility, no right to appeal, and no disciplinary consequences by TTU against Tanner. *Id.* at ¶16. As set forth above, Plaintiff further alleged that TTU forced the informal resolution to minimize the risks to the school, such as avoiding public scrutiny, lawsuits, negative publicity, and loss of funding. *Id.* ¶¶16, 30.

Finally, at a 12(b)(6) Motion to Dismiss stage, Plaintiff is only required to provide a short and plain statement of the claim showing that she is entitled to relief. Fed. R. Civ. P. 8(a)(2);

Twombly, 550 U.S. at 544. Plaintiff is not required to prove intent, produce evidence, or anticipate Defendant's arguments in her Complaint. Because Plaintiff has stated a claim to relief that is plausible on its face, Defendants' Motion should be denied.

2. The Authorities Cited by TTU Do Not Support Dismissal.

Funding recipients are deliberately indifferent to acts of student-on-student abuse/harassment where the recipient's response or lack thereof is clearly unreasonable "in light of the known circumstances." *Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 648, 119 S. Ct. 1661, 1674, 143 L. Ed. 2d 839 (1999) (reversing dismissal for failure to state a claim in Title IX case where plaintiff may be able to show that response by school board to peer sexual misconduct was clearly unreasonable in light of the known circumstances). In the Motion, Defendant cites to several cases in an attempt to establish that TTU's actions "would, at worst, amount to mere negligence." ECF No. 6 at 8. However, none of the case law cited by Defendant applies here. First, the circumstances in those cases are completely different from the circumstances in this lawsuit. Second, the procedural posture in most cases cited by Defendant is of summary judgment motions, whereas here, Defendant has moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See ACORN v. Fowler*, 178 F.3d 350, 357 (5th Cir.1999) (emphasizing the "difference in procedural posture" between motions to dismiss and motions for summary judgment). Further, Defendant cites to cases that are not binding upon this Court.

Defendant cites *Rost ex rel. K.C. v. Steamboat Springs RE-2 Sch. Dist.*, 511 F.3d 1114 (10th Cir. 2008), where the Tenth Circuit affirmed entry of summary judgment by the district court. As such, the *Rost* case is not a binding precedent. In *Rost*, in relevant part, the court found the school district not clearly unreasonable so as to be deliberately indifferent to the harassment under Title IX where, in a "complicated situation involving the rights of many parties including the alleged perpetrators, the school district deferred [investigation] to law enforcement," as the school

principal reasonably believed that the incidents occurred outside of school grounds and before the students involved were enrolled at the school. *Id.* at 1121. The circumstances in *Rost* and in this case differ in all respects, and reliance thereon by Defendant is misplaced.

Defendant also cites *B.W. v. Career Tech. Ctr. of Lackawanna Cnty.*, 422 F. Supp. 3d 859 (M.D. Pa. 2019), a case from the U.S. District Court for the Middle District of Pennsylvania and, therefore, not binding upon this Court. Unlike this case, *B.W.* is not based on "student-on-student" abuse, but on abuse by a teacher against students. *Id.* at 873. Further, in *B.W.*, upon receipt of notice of the abuse by the school, the teacher "was immediately suspended and then, shortly thereafter, forced to resign." *Id.* at 883. The court found that, as the teacher "was disciplined and punished," the school's response was sufficient "based on the known circumstances at the time." *Id.* Unlike in *B.W.*, the rape Haley suffered was ultimately resolved without any disciplinary sanctions against Tanner, but with an Informal Resolution signed by Haley as a result of coercion by TTU. ECF No. 1 at ¶¶20-24. Accordingly, *B.W.* is inapposite.

Defendant further cites *Sanchez v. Carrollton-Farmers Branch Indep. Sch. Dist.*, 647 F.3d 156 (5th Cir. 2011), where the court affirmed summary judgment on plaintiff's Title IX claims "[b]ecause the supposed harassment was not based on sex, it was not severe, pervasive, or objectively unreasonable, and the district was not deliberately indifferent to it." *Id.* at 170. Specifically, the supposed harassment involved plaintiff Sanchez and defendant J.H., both students, in the context of cheerleading tryouts. Considering the circumstances in that case, including the non-severity of the allegations, which involved arguments and curse words between the students, the court concluded that the school's response was not clearly unreasonable. *Id.* at 168-9.

The circumstances in Plaintiff's case are far more serious than those in *Sanchez*. Haley was violently raped by another TTU student with whom Haley had no previous intimate relationship. ECF No. 1 at ¶¶7-15. For this conduct, Tanner was indicted on a felony charge of aggravated assault, arrested, and currently awaits trial. *Id.* at ¶15. Instead of properly responding to the abuse suffered by Haley, TTU took advantage of her fragile situation to coerce Haley to agree to an informal resolution, in addition to assigning the case investigator, in a clearly biased position, to facilitate the informal resolution process while intentionally prioritizing TTU's reputation and other interests. *Id.* at ¶¶25-30. TTU intentionally delayed the grievance procedure against Tanner until its employees got a proposed informal resolution that was acceptable to Tanner executed by Haley. *Id.* at ¶¶31-39. Further, TTU failed to inform Plaintiff of proportional remedial actions—if any were ever taken—against Tanner, or of Tanner's compliance with the terms of the informal resolution agreement. *Id.* at ¶43.

Defendant also cites *J. T. v. Uplift Educ.*, No. 23-10773, 2024 WL 5118486 (5th Cir. Dec. 16, 2024), where the procedural posture is also a motion for summary judgment. In *J.T.*, the court considered the available evidence and found that the school's response was not clearly unreasonable when it immediately removed the abusive teacher from the classroom after receiving notice that the teacher had kissed a student. *Id.* at *6. The investigations by the school eventually resulted in termination of the teacher. *Id.* In Plaintiff's case, no remedial action was taken by TTU against Tanner. Therefore, *J.T.* is inapplicable here due to its incompatible procedural posture and fully distinguishable facts. Accordingly, Plaintiff alleged facts sufficient to support a sexual abuse claim under Title IX, and Defendant's Motion should be denied.

B. Plaintiff Plausibly Alleged a Heightened Risk Claim Against TTU.

Plaintiff has sufficiently pled a plausible claim for a heightened risk of sexual harassment and assault. Although the Fifth Circuit has not expressly recognized a "heightened-risk" claim under Title IX, it "has not foreclosed on the possibility that such a claim may be cognizable in the context of student-on-student sexual assault allegations." *Harrower as next friends of J.H.1 v. Eastland Indep. Sch. Dist.*, 786 F. Supp. 3d 998, 1019 (N.D. Tex. 2025) (quoting *Owens v. La. State Univ.*, 666 F. Supp. 3d 561, 588 (M.D. La. 2023)). In fact, district courts in the Fifth Circuit have recognized such a claim. *Id.* The Fifth Circuit has not yet delineated specific elements for a pre-reporting official-policy claim. *Id.* Nevertheless, case law shows that the legal standard for a pre-reporting official-policy claim involving allegations of student-on-student sexual harassment "involve[s] allegations that an entity ... has an official policy that fails to adequately respond to complaints of sexual violence or assault." *Id.* (quoting *Doe No. 1 v. Tex. Christian Univ.*, 2021 WL 12289429, at *9 (N.D. Tex. Jan. 12, 2021)). Further, "[t]he courts in those cases analyze[] the entity's liability by looking at the action or inaction taken by the entity prior to the plaintiff's report of assault." *Id.* (quoting *Doe No. 1*, 2021 WL 12289429, at *9 (citing *Doe 12 v. Baylor Univ.*, 336 F. Supp. 3d 763, 775 (W.D. Tex. 2018))).

The courts recognize claims for a heightened risk of sexual harassment and assault under the actual notice and deliberate indifference framework, or under the official policy framework. *Hernandez v. Baylor Univ.*, 274 F. Supp. 3d 602, 615 (W.D. Tex. 2017); *Id.* at 615 n. 4. Here, Plaintiff plausibly alleged claims under the official policy framework. For this reason—and also because of incompatibility in procedural postures—, Defendant's reliance on *Roe v. Cypress-Fairbanks Indep. Sch. Dist.* is misplaced. 53 F.4th 334, 342 (5th Cir. 2022). In *Roe*, the court found no genuine issue of material fact whether the school was liable for pre-assault deliberate

indifference because the school showed it had no knowledge of a substantial risk of the sexual assault to the plaintiff specifically. *Id.* at 342. For similar reasons, *Doe v. Edgewood Indep. Sch. Dist.* is also inapplicable here. 964 F.3d 351 (5th Cir. 2020). Additionally, in both *Doe v. Edgewood Indep. Sch. Dist.* and *Doe I on Behalf of Doe II v. Huntington Indep. Sch. Dist.*, also relied upon by Defendant, the court found no evidence of reported sexual misconduct. No. 9:19-CV-00133-ZJH, 2020 WL 10317505, at *5 (E.D. Tex. Oct. 5, 2020); *Doe v. Edgewood*, 964 F.3d 351 at 364.

Here, Plaintiff alleged sufficient facts showing that Plaintiff can prove that TTU has maintained a policy of deliberate indifference that created a heightened risk of sexual misconduct; therefore, the Motion should be denied. Specifically, Plaintiff provided data by the U.S. Department of Education, Campus Safety and Security, showing that TTU was listed as one of the schools with the most dangerous college campuses in Texas the year Haley was raped. ECF No. 1 at ¶16. Plaintiff further provided data by TTU showing that, from September 1, 2023, through August 31, 2024, TTU received 251 reports of sexual misconduct but only conducted twelve formal investigations. Out of the twelve reports investigated, only three were concluded with student disciplinary sanctions. *Id.* at ¶17. Plaintiff further presented data from other years showing that TTU reports reveal consistent high levels of sexual misconduct throughout the years, minimal interest in investigating such complaints, and irrelevant sanctions against students resulting from investigations. *Id.* at ¶18. To the extent Defendant interprets this data differently than Plaintiff, the issue should not be resolved on a motion to dismiss, where the Court must accept as true all well-pleaded facts and view those facts in a light most favorable to Haley. Accordingly, Defendant's Motion should be denied.

CONCLUSION AND PRAYER

For the reasons above, Plaintiff Haley Justice respectfully requests that this Court deny Defendant Texas Tech University's Motion to Dismiss. Alternatively, to the extent the Court finds any deficiencies in the Complaint, Plaintiff requests leave to address any such deficiency in an amended pleading. Plaintiff further requests all other and further relief to which it may be entitled.

Dated: February 13, 2026

Respectfully submitted,

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**COUNSEL FOR PLAINTIFF HALEY
JUSTICE.**

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing document was duly served upon all parties entitled to receive notice, via the Court's CM/ECF Court Filing System, in accordance with the Federal Rules of Civil Procedure, on this day February 13, 2026.

/s/ Thaís Amaral Dourado

Thaís Amaral Dourado