UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JANE AND JOHN DOE, INDIVIDUALLY AND AS NEXT FRIENDS OF JANIE DOE 1 AND JANIE DOE 2, MINOR CHILDREN,	§	
Plaintiffs	§	**CIVIL ACTION NO. 4:22-cv-00814**
vs.	§	**Judge Mazzant**
PROSPER INDEPENDENT SCHOOL DISTRICT, HOLLY FERGUSON, ANNAMARIE HAMRICK, AND ANNETTE PANIAGUA EX REL. THE ESTATE OF FRANK PANIAGUA	§	
Defendants	§	

DEFENDANT PROSPER INDEPENDENT SCHOOL DISTRICT'S REPLY TO PLAINTIFFS' RESPONSE TO PROSPER INDEPENDENT SCHOOL DISTRICT'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

SUMMARY

Plaintiffs have conceded many of Prosper Independent School District's ("PISD" or the "District") arguments for dismissal because Plaintiffs failed to address these arguments.[1]

The Court lacks jurisdiction over Plaintiffs' claims under the Texas Tort Claims Act ("TTCA") because Plaintiffs did not demonstrate a waiver of governmental immunity.

The Court should reject Plaintiffs' arguments against dismissal of their remaining claims because Plaintiffs: (1) relied on a standard of review that the Supreme Court overturned long ago and; (2) failed to identify well-pled allegations from their Second Amended Complaint sufficient to satisfy the applicable standard of review.

[1] Plaintiffs' Second Amended Complaint is subject to a pending motion to strike (Dkts. 33, 48), as Plaintiffs had already re-pled twice in this Court before filing their Second Amended Complaint. Dkts. 3, 13, 14. PISD files this reply subject to its motion to strike Plaintiffs' Second Amended Complaint.

The Court should reject Plaintiffs' arguments concerning their claims against PISD under 42 U.S.C. §1983 because: (1) respondeat superior liability does not apply; (2) Plaintiffs did not adequately plead a basis for municipal liability; (3) Plaintiffs did not sufficiently plead all elements of their claims; and (4) the Supreme Court foreclosed claims under §1983 for supervisory liability.

The Court should reject Plaintiffs' arguments concerning their Title IX claim because Plaintiffs' arguments contradict binding precedent.

The Court should dismiss with prejudice Plaintiffs' claims against Prosper ISD.

ARGUMENT AND AUTHORITIES

A. Plaintiffs Conceded Many of the District's Arguments.

Plaintiffs offered no response to the following arguments that the District made in its motion to dismiss Plaintiffs' Second Amended Complaint: (1) PISD is immune from suit for intentional torts, such as breach of fiduciary duty and fraud (Dkt. 54, p. 6);[2] (2) the Court lacks jurisdiction over the claims Jane Doe and John Doe purport to assert individually, because Jane Doe and John Doe lack standing to assert these claims (Dtk. 54, pp. 8-9); (3) the Court lacks jurisdiction over Plaintiffs' claim for declaratory relief because Plaintiffs lack standing to pursue such relief (Dkt. 54, p. 10); (4) the Court should dismiss Plaintiffs' claims for exemplary/punitive damages because such claims are not available against the District or under the TTCA (Dkt. 54, pp. 10-12); (5) the Court should dismiss Plaintiffs' claim for emotional distress damages under Title IX, because such damages are not recoverable (Dkt. 54, p. 12); (6) in *Iqbal*,[3] the Supreme Court foreclosed supervisory liability claims under §1983 (Dkt. 54, p. 19); and (7) the Court should dismiss Plaintiffs' purported "heightened risk" claim under Title IX because the Fifth Circuit has

[2] Defendant refers to the page numbers at the bottom of its motion to dismiss Plaintiffs' Second Amended Complaint.
[3] *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

not recognized any such claim, and Plaintiffs did not provide well-pled allegations in support of any such claim (Dkt. 54, pp. 26-28). By failing to respond to these arguments, Plaintiffs conceded their validity. Plaintiffs failed to meet their burden to defeat PISD's motion to dismiss with respect to the above referenced matters, and the Court should dismiss all of these claims.

B. Plaintiffs Did Not Establish This Court's Jurisdiction Over Their Tort Claims.

Plaintiffs have not met their burden of demonstrating a waiver of governmental immunity for their tort claims. Dkt. 54, pp. 4-6. Plaintiffs do not dispute that the TTCA does not waive governmental immunity for intentional torts. *Cf*. Dkt. 54, p.6; Dkt. 58, pp. 26-28; TEX. CIV. PRAC. & REM. CODE §101.057. Thus, the Court lacks jurisdiction over Plaintiffs' intentional tort claims.

The Court should reject Plaintiffs' argument that their negligence claims fall within the waiver of governmental immunity for tort claims involving the operation or use of a motor vehicle, because Plaintiffs improperly ask the Court to apply a broad construction to this statutory waiver, and Plaintiffs disregard extensive authorities recognizing no waiver of immunity when, as Plaintiffs allege in the instant matter, a government vehicle is merely the location of an assault. Dkt. 58, pp. 26-28; TEX. CIV. PRAC. & REM. CODE §101.021. Plaintiffs rely primarily on cases from Texas intermediate courts of appeals which predate a case in which the Texas Supreme Court explained that: (1) courts are to strictly construe the vehicle-use requirement in the TTCA; (2) to fall within this waiver, the vehicle must have been used as a vehicle, not as a waiting area or holding cell; and (3) the tortious act must relate to the defendant's operation of the vehicle, rather than to some other aspect of the defendant's conduct. *Ryder Integrated Logistics, Inc. v. Fayette County*, 453 S.W.3d 922, 927–28 (Tex. 2015); Dkt. 54, p. 7.

The only case Plaintiffs identify which postdates *Ryder Integrated Logistics* involves a significantly different sitation, in which a bus was being used according to its ordinary purpose—

to pick up a passenger—not as a location for an assault. In *La Joya Indep. Sch. Dist. v. Gonzalez*, 532 S.W.3d 892, 903 (Tex. App.—Corpus Christi–Edinburg 2017, pet. denied), the court merely "concluded that stopping the bus and activating the bus's warning lights in order to pick up a passenger are practical, purposeful actions which are encompassed within the applicable definitions of 'operation' and 'use' of a motor-driven vehicle." This case does not support Plaintiffs' contention that stopping a bus, disabling a GPS tracker, and manipulating seatbelts as a pretext to sexually assault passengers fall within the TTCA's narrow vehicle-use waiver.[4]

To the contrary, courts consistently find no waiver of immunity in circumstances like those which Plaintiffs have alleged. Plaintiffs made no effort to address PISD's extensive authorities that stand for the proposition that a governmental employee does not "use" a motor vehicle within the meaning of the TTCA's immunity waiver when the vehicle is the location of an assault, even if the employee drove the vehicle off-route, stopped the vehicle, and manipulated seatbelts in connection with the assault. *Cf*. Dkt. 54, pp. 7-8 and n.8[5]; Dkt. 58, pp. 26-28.

Plaintiffs' reliance on *Young v. Dimmitt*, 787 S.W.2d 50 (Tex. 1990) (per curiam) for the proposition that the TTCA waives claims for negligent hiring, training, or supervision (Dkt. 58, p.

[4] Plaintiffs' reliance on various cases which pre-date *Ryder Integrated Logistics* is unavailing for the same reason. Additionally, Plaintiffs' reliance on *Contreras v. Lufkin Indep. Sch. Dist*., 810 S.W.2d 23 (Tex. App.—Beaumont 1991, writ denied) is without merit as the Texas Supreme Court explained that *Contreras* "does not hold that immunity was waived." *DART v. Whitley*, 104 S.W.3d 540, 543 (Tex. 2003).

[5] Citing *Limon v. City of Balcones Heights*, 485 F. Supp.2d 751, 753 (W.D. Tex. 2007); *Woodberry v. DART*, No. 3:14-CV-03980-L, 2017 U.S. Dist. LEXIS 30813, *5-6, 21-22 (N.D. Tex. 2017) (no waiver of immunity when plaintiff alleged that, on multiple occasions, a bus driver stopped the bus, walked back to her seat, and raped her); *Hernandez v. City of Lubbock*, 253 S.W.3d 750, 753, 760 (Tex. App.—Amarillo 2007, no pet.) (no waiver of immunity when a police officer sexually assaulted the plaintiff in the back of his patrol car); *Ryder Integrated Logistics*, 453 S.W.3d at 928 (a police officer's assault in his cruiser is not tortious use of a vehicle; where the vehicle is only the setting for the wrongful conduct, "any resulting harm will not give rise to a claim for which immunity is waived under [the TTCA]); *Watson v. Bexar County*, No. SA-CV-646-RF, 2004 U.S. Dist. LEXIS 10842, *9-11 (W.D. Tex. 2004) (no waiver of immunity when police officer assaulted plaintiff in the back of his patrol car). *See also, e.g., Whitley*, 104 S.W.3d at 543 ("the operation or use of a motor vehicle does not cause injury if it does no more than furnish the condition that makes the injury possible."); *Herring v. Dallas County Sch.*, No. 3-99CV1538-P, 2000 U.S. Dist. LEXIS 4588, *7 (N.D. Tex. Apr. 11, 2000) (no waiver of immunity when student claimed injury due to the bus driver smoking while driving the school bus).

28) is unavailing because: (1) in *Young*, the Texas Supreme Court found no waiver of immunity for claims of negligent hiring or negligent entrustment of a vehicle;[6] (2) the Texas Supreme Court subsequently clarified its holding in *Young*, explaining that even distinct claims for negligent supervision or training were subject to the requirement that they fall within the TTCA's waiver of governmental immunity;[7] and (3) courts have consistently held that claims for negligent hiring, training, or supervision do not fall within the TTCA's waiver of governmental immunity.[8]

Indeed, in *Nitsch v. City of El Paso*, 482 F. Supp.2d 820, 840 (W.D. Tex. 2007), the court explained that the Texas Supreme Court affirmed dismissal on the basis of immunity in *Young* because "as the Court points out in *Petta*, the intentional tort and negligent training represent 'distinct cause[s] of action.' *Petta*, 44 S.W.3d at 581. If the use of the vehicle is the source of the claim, the claim is barred under the intentional tort exception although satisfying the waiver's requirement that the claim involve the use of government property." The court explained further that "[a]s was the case in *Young*, if plaintiffs attempt to parse the intentional tort claims against the [individuals] and negligence claims against the [municipality], the complaint fails on the same grounds, landing outside the waiver for use of government property or inside the exception to the

[6] *Id*. at 51.
[7] *State Dep't of Pub. Safety v. Petta*, 44 S.W.3d 575, 581 (Tex. 2001).
[8] *E.g.*, *Starrett v. City of Richardson*, No. 3:18-CV-0191-L, 2018 WL 4627133, *12 (N.D. Tex. July 27, 2018), *report and recommendation adopted sub nom*. *Starrett v. City of Richardson, Tex*., No. 3:18-CV-191-L, 2018 WL 3802038 (N.D. Tex. Aug. 10, 2018), *aff'd*, 766 Fed. App'x 108 (5th Cir. 2019) ("Negligent hiring, training, supervision, and retention claims 'are areas of liability that have not been waived by the TTCA.' *Rivera v. City of San Antonio*, No. SA-06-CA-235-XR, 2006 WL 3340908, at *15 (W.D. Tex. Nov. 15, 2006); *Univ. of Tex. Health Sci. Ctr. v. Schroeder*, 190 S.W.3d 102, 106 (Tex. App.—Houston [1st Dist.] 2005, no pet.) ('allegations of negligent supervision do not satisfy the limited waiver of immunity contained within the act.'); *Campos v. Nueces Cty*., 162 S.W.3d 778, 787–88 (Tex. App.—Corpus Christi 2005, no pet.) (stating that claims for negligent hiring, training, and supervision cannot be brought under the TTCA); *see also Tex. Dep't of Pub. Safety v. Petta*, 44 S.W.3d 575, 580–81 (Tex. 2001)"). *See also e.g.*, *Gable v. Meeks*, No. 3:18-CV-1545-M-BH, 2019 WL 2931947, *6 (N.D. Tex. June 14, 2019), *report and recommendation adopted*, No. 3:18-CV-1545-M, 2019 WL 2929716 (N.D. Tex. July 8, 2019) (same); *Harlingen Consol. Indep. Sch. Dist. v. Miranda*, No. 13-18-00391-CV, 2019 WL 1187151, *3 (Tex. App.—Corpus Christi–Edinburg Mar. 14, 2019, no pet.) (citing *DART v. Edwards*, 171 S.W.3d 584, 587–88 (Tex. App.—Dallas 2005, pet. denied) and *Petta*, 44 S.W.3d at 580 for the proposition that "a claim of negligent training does not constitute the operation or use of a motor vehicle and is, therefore, not cognizable under the TTCA.").

waiver for intentional torts." *Nitsch*, 482 F. Supp.2d at 840-41 (citing *Johnson v. Waters*, 317 F. Supp.2d 726, 739–40 (E.D. Tex. 2004)). In the same manner, Plaintiffs' tort claims either fall outside the waiver of immunity for vehicle-use or inside the exception to the waiver for intentional torts.

Plaintiffs have not demonstrated a waiver of governmental immunity with respect to their negligence claims against PISD. The Court should dismiss Plaintiffs' tort claims against PISD.

C. Plaintiffs Rely on an Improper Standard and a Meritless Argument.

Plaintiffs mistakenly claim that the question before this Court "is whether 'it appears certain that the plaintiffs cannot prove any set of facts in support of their claim that would entitle them to relief.'" Dkt. 58, pp. 2;[9] *see also* Dkt. 58, pp. 17,[10] 20. The Supreme Court long ago overturned this standard, holding instead that a plaintiff must meet the plausibility standard, under which the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.[11] A complaint that pleads facts which are "'merely consistent with' a defendant's liability" is insufficient to defeat a motion to dismiss for failure to state a claim. *Id*. (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Complaints which offer only legal conclusions, a formulaic recitation of the elements of a claim, or "'naked assertions' devoid of 'further factual enhancement'" do not suffice. *Id*. (quoting *Twombly*, 550 U.S. at 555, 557) (cleaned up).

[9] Quoting *Doe ex rel. Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211, 215 (5th Cir. 1998) and citing *Doe v. Beaumont Indep. Sch. Dist.*, No. 1:21-CV-00132, 2022 WL 2783047, *7 (E.D. Tex. July 14, 2022).

[10] Plaintiffs' reliance on *Sewell v. Monroe City Sch. Bd.*, 974 F.3d 577 (5th Cir. 2020) is perplexing as the court in *Sewell* applied the plausibility standard and affirmed dismissal of a Title IX claim at the motion to dismiss stage because the plaintiffs had not sufficiently pled allegations to support a finding of deliberate indifference by the school board. *Id*. at 587. This is exactly what the Court should do in the case at bar. Dkt. 54, pp. 22-28.

[11] Plaintiffs' reliance on authorities listed in Dkt. 58, n.1 is unavailing. Although the Fifth Circuit has occasionally parroted pre-*Iqbal* language with respect to the applicable standard of review, the court did not apply the 'no set of facts' standard to any motion to dismiss for failure to state a claim in these cases.

Additionally, Plaintiffs' argument concerning the District's reliance on cases which arose in the summary judgment context is inapposite (Dkt. 58, pp. 8-10, 23-24) because PISD used those cases to explain the elements for which Plaintiffs needed to provide well-pled allegations in order to defeat a motion to dismiss for failure to state a claim. Dkt. 54. That those cases arose in the summary judgment context is irrelevant to the question of whether Plaintiffs sufficiently pled the elements of their claims against PISD in the instant lawsuit.

D. The Court Should Dismiss Plaintiffs' Claims Against PISD Under §1983.

Plaintiffs' argument that they sufficiently pled §1983 claims against Paniagua, Ferguson, and Hamrick is meritless because respondeat superior liability does not apply to §1983 claims against a school district. *Cf*. Dkt. 58, pp. 12-13; Dkt. 54, pp. 18-23.[12] To the extent that Plaintiffs' §1983 claims against PISD are based on vicarious liability, they must be dismissed.

The Court should also reject Plaintiffs' invitation to apply an improper 'any set of facts' standard of review to their municipal liability claims under §1983 alleging failure-to-supervise or failure-to-train. Dkt. 58, pp. 20-23.[13] These claims also fail because Plaintiffs have not provided the Court with allegations sufficient to state a plausible claim that PISD's policymaker (its Board of Trustees[14]) made a deliberate choice to follow a course of action from among various alternatives[15] that caused violations of the minor Plaintiffs' constitutional rights. Dkt. 58.[16]

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[12] Additionally, PISD's counsel does not represent Paniagua. Dkt. 58, pp. 18-19.

[13] Plaintiffs' reliance on *Groden v. City of Dallas, Tex.*, 826 F.3d 280, 285 (5th Cir. 2016) (quoted by *Beaumont Indep. Sch. Dist.*, 2022 WL 2783047, at *15) is misplaced. Dkt. 58, p. 20. In *Groden*, the court noted that, although a plaintiff need not identify the policymaker, the plaintiff needed to plead facts which establish that the challenged policy was promulgated or ratified by the municipal policymaker in order to survive a motion to dismiss. Plaintiffs have not done so. Dkts. 27, 58.

[14] *Doe v. Edgewood Indep. Sch. Dist*., 964 F.3d 351, 365 (5th Cir. 2020); TEX. EDUC. CODE §11.151.

[15] Dkt. 54, p. 20 (citing *City of Canton v. Harris*, 489 U.S. 378, 389 (1989) and *Goodman v. Harris County*, 571 F.3d 388, 396 (5th Cir. 2009).

[16] Instead, relying on *Rosa H. v. San Elizario Indep. Sch. Dist*., 106 F.3d 648 (5th Cir. 1997), Plaintiffs argued that "the Fifth Circuit has expressly rejected a rule that would require a school district's Board of Trustees to itself know of sexual abuse or harassment for a plaintiff to state and actionable claim." Dkt. 58, n.2. Plaintiffs' reliance on *Rosa*

Plaintiffs also argued that they stated a claim for municipal liability for failure-to-train and failure-to-supervise merely because they alleged that: (1) various District administrators were in possession of videos and GPS information from Paniagua's bus; (2) unnamed administrators at a campus were aware that the minor Plaintiffs were the last to leave Paniagua's bus; and (3) a different parent allegedly complained once in a prior year about a different bus driver engaging in "inappropriate conduct." Dkt. 58, pp. 21-23; Dkt. 27, ¶¶17-21, 33. These arguments are also unavailing, as they do not support any finding that the District's Board of Trustees had any knowledge relating to Paniagua or that the Board of Trustees made any deliberate choice to follow a course of action that caused violations of the minor Plaintiffs' constitutional rights.

Plaintiffs do not address the elements of a failure-to-train claim or respond to PISD's authorities showing that Plaintiffs failed to offer sufficient well-pled allegations to support such a claim. *Cf*. Dkt. 54, pp. 16-18; Dkt. 58, pp. 20-23. As Plaintiffs identified no well-pled allegations to support at least one element of a failure-to-train claim (the manner in which the training was allegedly deficient, any notice that the Board of Trustees had that a training program was allegedly deficient, the allegedly deficient training program caused a constitutional deprivation to the Plaintiffs), the District is entitled to dismissal of this claim. Dkt. 54, p. 18.

Finally, Plaintiffs' reliance on *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 450-58 (5th Cir. 1994) (en banc) is unavailing because: (1) in *Iqbal*, the Supreme Court foreclosed such claims; and (2) even if such claims were viable, Plaintiffs identified no plausible, fact specific allegations that the Board learned of a pattern of abuse and looked the other way. Dkt. 54, pp. 19-22.

H. is misplaced because that case involved a Title IX claim, not any claim under §1983, so it does not establish standards for municipal liability under §1983. *Rosa H.*, 106 F.3d at 651.

E. Plaintiffs Have Not Sufficiently Pled a Claim Under Title IX.

The Court should dismiss Plaintiffs' Title IX claim because Plaintiffs failed to adequately allege that: (1) before May 7, 2022, when Jane Doe made her report, PISD administrators had actual knowledge that Paniagua was sexually abusing the minor Plaintiffs; and (2) after May 7, 2022, PISD administrators responded with deliberate indifference to Jane Doe's report.

Plaintiffs argue that two administrators' mere possession of certain materials relating to Paniagua's bus gave them actual notice that Paniagua was sexually abusing the minor Plaintiffs before Jane Doe made her May 7, 2022 report to District personnel. Dkt. 58, pp. 24-25. These allegations do not demonstrate actual knowledge under Title IX; instead, they amount to an argument that Defendants *should have known* about Paniagua's alleged conduct. This is insufficient to demonstrate actual knowledge under Title IX. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 285 (1998) ("it would frustrate the purposes of Title IX to permit a damages recovery against a school district for a teacher's sexual harassment of a student based on principles of *respondeat superior* or constructive notice, i.e., without actual notice to a school district official") (citation omitted); *Rosa H.*, 106 F.3d at 652-53; *M.E. v. Alvin Indep. Sch. Dist.*, 840 Fed. App'x 773, 775 (5th Cir. 2020).[17]

The Court should also reject Plaintiffs' argument that the District's response to Jane Doe's May 7, 2022 report states a claim for deliberate indifference under Title IX (Dkt. 58, pp. 25-26) because this argument violates binding precedent concerning deliberate indifference in the Title

[17] Unreported district court opinions do not vitiate Supreme Court and Fifth Circuit precedent on this issue. Dkt. 58, pp. 24-25. *Doe v. Dallas Indep. Sch. Dist.*, 534 F. Supp.3d 682 (N.D. Tex. 2021) is unavailing, as the court did not deny the motion to dismiss merely due to the existence of video showing the harasser on school grounds. Instead, the plaintiffs pled that teachers actually knew that the harasser was a 25 year old student and that they observed the 25 year old student engaging in explicit sexual contact with a 14 year old student. *Id.* at 688. *Alice L. v. Eanes Indep. Sch. Dist.*, No. A-06-CA-944-SS, 2007 WL 9710282, *8-9 (W.D. Tex. Mar. 15, 2007) is also distinguishable because the plaintiff alleged that the principal was actually notified by CPS officials about student-on-student sexual abuse.

IX context. Plaintiffs admit that, upon receiving Jane Doe's complaint, District personnel: (1) reviewed video from Paniagua's bus; (2) provided information and/or copies of this video to outside law enforcement personnel who were investigating Paniagua; and (3) investigated Paniagua and terminated his employment. Plaintiffs also acknowledge that, within days of Jane Doe's report, Paniagua was arrested. Dkt. 27, ¶¶5, 21 [PageID 288-89], 28-29. The threshold for demonstrating deliberate indifference is a high one,[18] and Plaintiffs' allegations and representations demonstrate that the District's response to Jane Doe's report was not clearly unreasonable in light of the known circumstances. Dkt. 54, pp. 24-26. Plaintiffs' argument amounts merely to the contention that the District could have taken additional steps in response to Jane Doe's report, which, as a matter of law, would not constitute deliberate indifference.[19]

Plaintiffs have not identified sufficient well-pled allegations to support all the elements of a Title IX claim against the District. The Court should, therefore, dismiss this claim.

F. <u>The Court Should Dismiss Plaintiffs' Claims With Prejudice.</u>

Plaintiffs failed to offer any authority in opposition to the District's briefing asking the Court to dismiss Plaintiffs' claims with prejudice. Dkt. 54, pp. 4-5, 28-29. Indeed, Plaintiffs did not ask the Court to provide them with a fifth opportunity to plead their claims, nor did they give any indication that they would be able to cure their pleading deficiencies. Dkt. 58.

For all of these reasons, the Court should grant the District's motion to dismiss Plaintiffs' Second Amended Complaint and dismiss all of Plaintiffs' claims against PISD with prejudice.

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[18] *E.g.*, *I.F. v. Lewisville Indep. Sch. Dist.*, 915 F.3d 360, 369 (5th Cir. 2019); *Sanches v. Carrollton-Farmers Branch Indep. Sch. Dist.*, 647 F.3d 156, 167 (5th Cir. 2011); *Doe ex rel. Doe v. Dall. Indep. Sch. Dist.*, 220 F.3d 380, 387-89 (5th Cir. 2000); *Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211, 219 (5th Cir. 1998); *I.L. v. Houston Indep. Sch. Dist.*, 776 Fed. App'x 839, 842 (5th Cir. 2019).

[19] *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 648 (1999); *I.F.*, 915 F.3d at 369; *Sanches*, 647 F.3d at 167; *Dallas Indep. Sch. Dist.*, 153 F.3d at 219.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2023, I electronically filed the foregoing document with the Clerk of the Court through the ECF system and an email notice of the electronic filing was sent to all attorneys of record.

/s/ *Thomas P. Brandt*
THOMAS P. BRANDT