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Appendix A

[Filed: Feb. 12, 2026]

United States Court of Appeals
for the Fifth Circuit

No. 25-40433

DANA F. YOUNG,

Plaintiff—Appellant,

versus

COLLIN COLLEGE,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:24-CV-0979

Before GRAVES, HO, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Dana F. Young moves for leave to proceed in forma pauperis (IFP) in her appeal from an interlocutory order dismissing her motion for summary judgment without prejudice as premature. A motion for leave to proceed IFP challenges the district court's determination that an appeal is not taken in good faith. *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

"This Court must examine the basis of its jurisdiction, on its own motion, if necessary." *Mosley v.*

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

Cozby, 813 F.2d 659, 660 (5th Cir. 1987). A timely notice of appeal in a civil case is a prerequisite for appellate jurisdiction. See *Bowles v. Russell*, 551 U.S. 205, 213-14 (2007).

We do not have jurisdiction over Young's interlocutory appeal of the dismissal of her motion for summary judgment. See *Tamez v. City of San Marcos*, 62 F.3d 123, 124 (5th Cir. 1995). Further, "a notice of appeal from a clearly interlocutory decision" does not "serve as a notice of appeal from the final judgment." *FirsTier Mortg. Co. v. Invs. Mortg. Ins. Co.*, 498 U.S. 269, 276 (1991). Because Young has not appealed from the district court's final judgment, which was entered on October 24, 2025, we lack jurisdiction over the instant appeal. See *Bowles*, 551 U.S. at 213-14; Fed. R. App. P. 4(a)(1)(A).

Accordingly, the appeal is DISMISSED for lack of jurisdiction. The IFP motion is DENIED as moot.

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Appendix B

[Filed: Apr. 16, 2025]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DANA F. YOUNG	§	
	§	
v.	§	NO. 4:24-CV-00979-
	§	SDJ-BD
	§	
COLLIN COLLEGE	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Proceeding pro se, Dana Young sued Collin College for employment discrimination. Dkt. 9 (operative complaint). Before the parties' deadline to exchange initial disclosures, Young moved for summary judgment. Dkt. 21. Defendant Collin College filed a motion asking the court to dismiss or deny the summary-judgment motion as premature or defer ruling on it. Dkt. 28; Dkt. 30 (response). The court will recommend that Collin College's motion be granted.

Collin College argues that Young's motion for summary judgment is premature because it was filed before the parties engaged in any discovery. Collin College insists that it must be afforded the opportunity to conduct discovery before it can adequately respond to the motion.

In her response, Young reiterates and elaborates on arguments made in her summary-judgment motion. She also identifies four witnesses whose depositions,

in her view, will lead to evidence to support her claims. Dkt. 30 at 13-14.

"Summary judgment assumes some discovery," *Brown v. Miss. Valley State Univ.*, 311 F.3d 328, 333 (5th Cir. 2002), so a motion for summary judgment should not "ordinarily be granted before discovery has been completed," *Ala. Farm Bureau Mut. Cas. Co. v. Am. Fid. Life Ins. Co.*, 606 F.2d 602, 609 (5th Cir. 1979). The court has discretion to deny a motion for summary judgment as premature. See, e.g., *Gabarick v. Laurin Mar. (Am.), Inc.*, 406 F.App'x 883, 890 (5th Cir. 2010); *Sunbelt Sav., FSB Dall., Tex. v. Montross*, 923 F.2d 353, 358 (5th Cir. 1991). The court also may dismiss a motion for summary judgment without prejudice if it is filed before any party answers. *Watkins v. Monroe*, No. 6:18-CV-00347, 2019 WL 1869864, at *1 (E.D. Tex. Mar. 27, 2019), *report and recommendation adopted*, No. 6:18-CV-00347, 2019 WL 1858100 (E.D. Tex. Apr. 25, 2019).

Young's pre-discovery motion for summary judgment is premature. As her response to Collin College's motion notes, additional discovery will lead to relevant evidence. And as Collin College argues, it needs additional discovery to support its defenses to Young's claims.

RECOMMENDATION

It is **RECOMMENDED** that the motion to dismiss or defer ruling on the motion for summary judgment, Dkt. 28, be **GRANTED** and the summary-judgment motion, Dkt. 21, be **DISMISSED WITHOUT PREJUDICE** as premature. Young may refile it or an amended motion for summary judgment after the

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close of discovery but before the deadline set by the scheduling order, Dkt. 26.

* * *

Within 14 days after service of this report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U. S. C. §636(b)(1)(C).

A party is entitled to a *de novo* review by the district court of the findings and conclusions contained in this report only if specific objections are made. *Id.* §636(b)(1). Failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report will bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (*en banc*), superseded by statute on other grounds; 28 U.S.C. §636(b)(1) (extending the time to file objections from 10 to 14 days).

So **ORDERED** and **SIGNED** this 16th day of April, 2025.

/s/ Bill Davis

Bill Davis

United States Magistrate Judge

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Appendix C

[Filed: Jul. 11, 2025]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DANA F. YOUNG

2

25

V.

§

CIVIL NO. 4:24—

2

CV-00979-SDJ-BD

2

COLLIN COLLEGE

2

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**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U. S. C. §636. On April 16, 2025, the Magistrate Judge entered proposed findings of fact and a recommendation (the “Report”), (Dkt. #31), that Defendant Collin College’s Motion to Dismiss, (Dkt. #28), be granted. Plaintiff Dana Young filed Objections, (Dkt. #32), to the Report.

The Court conducted a *de novo* review of the Objections and the portions of the Report to which Plaintiff specifically objects, and the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and that the Objections are without merit as to the ultimate findings of the Magistrate Judge. The Court hereby adopts the findings and

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conclusions of the Magistrate Judge as the findings and conclusions of the Court.

IT IS **ORDERED** that the Motion to Dismiss, (Dkt. #28), is **GRANTED** and that Plaintiff's Motion for Summary Judgment is **DISMISSED WITHOUT PREJUDICE** as premature.

So **ORDERED** and **SIGNED** this 11th day of July, 2025.

/s/ Sean D. Jordan

SEAN D. JORDAN

UNITED STATES DISTRICT JUDGE

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Appendix D

[Filed: Aug. 11, 2025]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DANA F. YOUNG	§	
	§	
v.	§	NO. 4:24-CV-00979-
	§	SDJ-BD
	§	
COLLIN COLLEGE	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pro se plaintiff Dana Young sued Collin College under 42 U. S. C. §§ 1981, 1983, and Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e et seq. Dkt. 9 (operative complaint). The college moved to dismiss. Dkt. 11; *see* Dkts. 14 (response), 17 (reply). The court will recommend that the motion be granted.

BACKGROUND

I. Factual Background

According to Young's operative complaint, she was terminated from her teaching job at the college after an incident with a student who was also employed by the college. During Young's mediation class, she invited the students to give examples of "difficult labels they think would challenge being impartial." Dkt. 9-1 at 2. The student, who is Black, suggested the "N word," and Young, who is white, wrote it in full on the

board and discussed use of the word as part of the lesson.

The student complained to a dean, who instructed Young to take the student aside and apologize. Young alleges that when she followed the dean's instructions, the student became angry and threatened to get her fired.

Young emailed the dean and asked that someone else be present during the next class because Young was concerned about the student's threats. The assistant director for continuing education attended part of the next class, at which Young screened excerpts of "Remember the Titans," a movie that includes themes of racial bigotry. Before Young's next class, the assistant director called Young to tell her that class was canceled.

Young was later terminated despite her insistence that the college had not thoroughly investigated the student's complaint or given her an opportunity to respond to it. She also alleges that the college violated its own procedures in her termination process.

II. Procedural History

The college moved for dismissal of Young's initial complaint or, in the alternative, for a more definite statement. Dkt. 6. The court ordered Young to file either a response to the motion or an amended complaint. Dkt. 8. She filed an amended complaint, Dkt. 9, which mooted the college's motion, *see* Dkt. 42. The college then moved to dismiss the amended complaint. Dkt. 11.

LAW

Federal Rule of Civil Procedure 12(b)(6) authorizes a pre-answer motion to dismiss for “failure to state a claim upon which relief can be granted.” Motions under that rule “are viewed with disfavor and are rarely granted.” *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009). In considering such a motion, the court must first identify and exclude legal conclusions in the complaint that “are not entitled to the assumption of truth,” then consider the remaining “wellpleaded factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The court must accept as true all well-pleaded facts and view them in the light most favorable to the plaintiff. *Heinze v. Tesco Corp.*, 971 F.3d 475, 479 (5th Cir. 2020). The complaint will survive the motion to dismiss if it alleges “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In considering the motion, the court may not look beyond “the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint.” *Allen v. Vertafore, Inc.*, 28 F.4th 613, 616 (5th Cir. 2022). “[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss” from being granted. *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002) (quotation marks omitted).

DISCUSSION

I. Title VII

Young's complaint alleges that she was terminated because of her race and in retaliation for protected activity. The college argues that Young does not allege facts sufficient to show that her termination was motivated by race or that she engaged in any activity protected by Title VII. It also argues, with respect to her retaliation claim, that she failed to exhaust her administrative remedies with the Equal Employment Opportunity Commission ("EEOC").

In response, Young argues that her termination was racially motivated because the college treated a Black student more favorably than it treated her. She also argues that her acts of complaining about the college's failure to follow its own procedures before terminating her constituted protected activity.

Young fails to allege facts sufficient to show that the college terminated her because of her race or that she engaged in any protected activity that could support her retaliation claim. And even if she could state a claim for retaliation, she failed to exhaust her EEOC remedy for that claim.

A. Disparate treatment

Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his [or her] compensation, terms, conditions, or privileges of employment, because of such individual's . . . race." 42 U.S.C. §2000e-2(a)(1). At the pleading stage, the plaintiff need not present evidence; she must only "plead sufficient facts on all of

the ultimate elements of a disparate treatment claim to make [her] case plausible.” *Chhim v. Univ. of Tex. at Austin*, 836 F. 3d 467, 470 (5th Cir. 2016). An employee claiming disparate treatment must plead “(1) an adverse employment action, (2) taken against [her] because of her protected status.” *Hamilton v. Dallas County*, 79 F. 4th 494, 502 (5th Cir. 2023) (quotation marks omitted).

To show that an adverse employment action was taken “because of” the plaintiff’s protected status, the plaintiff can rely on either direct or circumstantial evidence of discrimination. *Cicalese v. Univ. of Tex. Med. Branch*, 924 F. 3d 762, 766 (5th Cir. 2019). “Direct evidence is evidence which, if believed, proves the fact without inference or presumption.” *Jones v. Robinson Prop. Grp., L.P.*, 427 F. 3d 987, 992 (5th Cir. 2005). “When a plaintiff builds a case on circumstantial evidence, a court analyzes the plaintiff’s claim under the McDonnell Douglas framework.” *Cicalese*, 924 F. 3d at 766 (referencing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). That means the plaintiff must allege “facts, direct or circumstantial, that would suggest [that the defendant’s] actions were based on” the employee’s protected status or must allege that the employer “treated similarly situated employees of other [protected classes] more favorably.” *Raj v. La. State Univ.*, 714 F.3d 322, 331 (5th Cir. 2013).

The college does not deny that it took an adverse employment action by terminating Young’s employment, so the only issue to resolve is whether Young has alleged sufficient facts to show that the college did so because of her race. She has not.

Young does not allege any facts that, if true, would amount to direct evidence of discriminatory animus. She does not, for example, allege that any person involved in her termination ever mentioned her race. *See Cicalese*, 924 F. 3d at 767-68 (explaining that allegations of supervisors' derogatory remarks about the plaintiffs' national origin showed sufficient discriminatory animus to overcome a motion to dismiss).

Nor does Young allege facts that, if true, would give rise to an inference that the college treated her differently because of her race (i.e., circumstantial evidence). To do so, she would need to allege that the college treated similarly situated employees outside of her protected class more favorably. *Shahrashoob v. Tex. A&M Univ.*, 125 F. 4th 641, 651 (5th Cir. 2025). Employees are similarly situated when they "h[o]ld the same job or responsibilities, share[] the same supervisor or ha[ve] their employment status determined by the same person, and have essentially comparable violation histories." *Id.* (quotation marks omitted). Young suggests that the student mentioned in her complaint was similarly situated because that student was also an employee of the college. But Young does not allege that the student had the same job title or duties or reported to the same supervisor. Nor does she suggest that the student had a comparable violation history. That means the college's treatment of her cannot give rise to an inference of discrimination.

B. Retaliation

Title VII also prohibits an employer from discriminating against an employee "because he has opposed any practice made an unlawful employment practice

by [Title VII], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII].” 42 U. S. C. §2000e-3(a); see *Brown v. Wal-Mart Stores E., L.P.*, 969 F.3d 571, 576-77 (5th Cir. 2020), as revised (Aug. 14, 2020) (cleaned up) (describing §2000e-3(a) as Title VII’s antiretaliation provision). Retaliation claims brought under Title VII are analyzed under the *McDonnell Douglas* burden-shifting framework, *Johnson v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.*, 90 F.4th 449, 460 (5th Cir. 2024), and the elements of a prima facie case are: (1) the plaintiff engaged in protected activity; (2) she suffered an adverse employment action; and (3) a causal connection exists between the protected activity and the adverse employment action, *Lewis v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.*, 134 F.4th 286, 295 (5th Cir. 2025). An adverse employment action in the retaliation context is one that would dissuade a reasonable employee from making or supporting a charge of discrimination. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U. S. 53, 68 (2006).

The college argues that Young cannot state a claim for retaliation because her complaint does not allege that she engaged in any activity protected by Title VII before her termination. In response, Young argues that her complaints about the college’s failure to properly investigate the student complaint were protected activity. The college is correct.

Young alleges that, after the student threatened to get her fired, she “reported the incident” and “request[ed] personnel to be present at the next class for safety concerns.” Dkt. 9 at 4. She was then removed from teaching “despite notifying both [the

director] and [the assistant director] for HR/Employee Relations about her concerns that a proper investigation was not being conducted.” *Id.* She also alleges that she appealed her termination and that, as a result, “an internal faculty panel review found that [the college] violated its own policies and due process.” *Id.* Only after the appeals process had concluded did Young file an EEOC charge. *Id.*; Dkt. 9-1 at 5–6.

For purposes of a retaliation claim, protected activity is opposition to any practice made unlawful by Title VII. *Lewis*, 134 F. 4th at 295. It includes “making a charge, testifying, assisting, or participating in any investigation, proceeding, or hearing under Title VII.” *Id.* “Importantly, a plaintiff need not demonstrate that the practice was actually unlawful for his opposition to be a protected activity; rather, it is enough that the plaintiff reasonably believed the practice was unlawful.” *Scott v. U.S. Bank Nat’l Ass’n*, 16 F.4th 1204, 1210 (5th Cir. 2021), *as revised* (Nov. 26, 2021) (per curiam). That said, complaints about unfair treatment “without any reference to an unlawful employment practice under Title VII” are not protected activity. *Allen v. Envirogreen Landscape Pros., Inc.*, 721 F. App’x 322, 326 (5th Cir. 2017), *as revised* (Dec. 7, 2017) (per curiam); *see, e.g., Davis v. Dall. ISD*, 448 F. App’x 485, 493 (5th Cir. 2011) (per curiam) (finding that a statement complaining about a “hostile work environment” did not constitute protected activity under Title VII because it “lacked a racial or gender basis”); *Tratree v. BP N. Am. Pipelines, Inc.*, 277 F. App’x 390, 396 (5th Cir. 2008) (per curiam) (explaining that “[c]omplaining about unfair treatment without specifying why the treatment is unfair . . . is not a protected activity”); *Turner v. Baylor Richardson*

Med. Ctr., 476 F.3d 337, 349 (5th Cir. 2007) (concluding that a complaint that “contain[ed] no reference to conduct that could even plausibly be considered discriminatory in nature” was not protected activity); *Harris-Childs v. Medco Health Sols., Inc.*, 169 F. App’x 913, 916 (5th Cir. 2006) (per curiam) (finding that an employee did not engage in protected activity when she complained of harassment but did not mention race or sex).

Nothing in Young’s complaint suggests that the practices she opposed—the college’s alleged failure to properly investigate a student complaint and to follow its own HR procedures—violated Title VII or that she opposed them on that basis. Young’s filing of an EEOC charge, on the other hand, was a protected activity. See *DeHart v. Baker Hughes Oilfield Ops., Inc.*, 214 F. App’x 437, 442 (5th Cir. 2007) (per curiam). But she filed it after her termination, so it could not have been the reason for the college’s decision.

C. Exhaustion of remedies

Title VII directs that a “charge . . . shall be filed” with the EEOC “by or on behalf of a person claiming to be aggrieved” within 180 days “after the alleged unlawful employment practice occur[s].” 42 U.S.C. §2000e-5(b), (e)(1). That exhaustion requirement is mandatory. *Fort Bend County v. Davis*, 587 U.S. 541, 551 (2019).

Because most Title VII complaints are pro se, “the scope of an EEOC complaint should be construed liberally.” *Pacheco v. Mineta*, 448 F.3d 783, 788 (5th Cir. 2006). “Title VII clearly contemplates that no issue will be the subject of a civil action until the EEOC has first had the opportunity to attempt to obtain

voluntary compliance.” *Id.* at 789. For those reasons, the court “interprets what is properly embraced in review of a Title-VII claim somewhat broadly, not solely by the scope of the administrative charge itself, but by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination” and “engage[s] in fact-intensive analysis of the statement given by the plaintiff in the administrative charge, and look[s] slightly beyond its four corners, to its substance rather than its label.” *Id.* (cleaned up).

The college argues that Young did not raise her retaliation claim in her EEOC charge, so she has not met the exhaustion requirement for that claim. Young’s response does not engage that argument.

Young’s charge alleges that she “was terminated for misconduct after a student complaint.” Dkt. 9–11 at 6. It explains the incident in which a student suggested a racially derogatory term and Young wrote it on the board. It goes on to explain that, after the student complaint, a dean and an assistant director “took by phone [Young’s] verbal description of the incident and details of the lesson.” *Id.* The charge then explains that, after Young’s next interaction with the student, Young “emailed the dean and [assistant] director informing them [she] no longer felt safety for [her] students’ classroom learning environment or for [her]self as the teacher with the student.” *Id.* The charge describes the next class session, at which Young showed movie clips, and alleges that the student made a second complaint. Young was then informed that class was canceled and that she had been removed from teaching the class. Young “contacted Tonya Jacobson by phone and by email, [stating] that

[she] believed a proper investigation was not being conducted after a student complaint.” *Id.* at 7. Young was then informed of her termination. After being terminated, Young appealed the decision, and the appeals panel determined that the college had violated its Title VII policies.

Young’s charge does not include facts that would “reasonably be expected to grow” into a retaliation charge. *Pacheco*, 448 F.3d at 789. The charge describes only the sort of nonspecific complaints that are not protected activity because they do not refer to any employment practice prohibited by Title VII. *See supra* Part I.B. The charge does not indicate that either the phone call or email to the dean and assistant director included opposition to any practice made unlawful by Title VII; instead, it shows that Young complained of her safety concerns about having the student in her classroom. Nor does the charge reflect that the call to Jacobson constituted protected activity. Young complained that a proper investigation was not conducted into the student’s complaint, but the charge makes no indication that Young’s concerns conveyed in the call were about a perceived Title VII violation. Finally, Young’s allegation that the review panel concluded that the college did not follow its own Title VII policies still does not indicate that Young’s pre-termination complaints were protected activity. The content of Young’s EEOC charge shows that she did not exhaust her administrative remedies for her retaliation claim. Dismissal without prejudice is the proper disposition. *Stroy v. Gibson ex rel. Dep’t of Veterans Affairs*, 896 F.3d 693, 698 n.2 (5th Cir. 2018).

II. 42 U.S.C. §1981

Young's complaint cites 42 U. S. C. §1981 but does not discuss it further. See Dkt. 9 at 1. That statute provides that

[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. §1981(a). Despite its guarantee that all persons enjoy the same rights as "enjoyed by white citizens," *id.*, that statute applies equally to claims of racial discrimination raised by white plaintiffs. *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 286-87 (1976). Employment claims "brought pursuant to Title VII and §1981 are governed by the same evidentiary framework, such that the analyses under both statutes are substantively the same." *Ayorinde v. Team Indus. Servs. Inc.*, 121 F.4th 500, 506 (5th Cir. 2024). The failure of Young's Title VII claim, *see supra* Part I, therefore means that any §1981 claim she may have brought also fails.

III. 42 U. S. C. §1983

In relevant part, 42 U. S. C. §1983 provides that

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia,

subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The provision "is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quotation marks omitted). To state a §1983 claim, "a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). And to survive a motion to dismiss, the plaintiff "must enunciate a set of facts that illustrate[s] the defendants' participation in the wrong alleged." *Jacquez v. Procunier*, 801 F.2d 789, 793 (5th Cir. 1986).

Young alleges that the college's failure to follow its own HR policy violated her Fourteenth Amendment due-process rights. The college argues that the allegations do not show that Young had a protected property interest that could support a due-process claim or that it can be held liable for the alleged violations. The college is correct on both counts.

A. Protected property interest

To state a procedural due-process claim under §1983, the plaintiff must "identify a protected life, liberty, or property interest" and allege that the challenged "governmental action resulted in a deprivation

of that interest.” *Wilkerson v. Univ. of N. Tex.*, 878 F.3d 147, 155 (5th Cir. 2017) (quotation marks omitted). “If there is no protected property interest, there is no process due.” *Spuler v. Pickar*, 958 F.2d 103, 106 (5th Cir. 1992).

A property interest is more than “an abstract need,” a “desire,” or a “unilateral expectation.” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). The plaintiff must show “a legitimate claim of entitlement” created and defined by “existing rules or understandings that stem from an independent source such as state law.” *Id.* Although state law is typically the source of the property interest supporting a due-process claim, whether that interest rises to the level of a constitutionally protected interest is a question of federal constitutional law. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756–57 (2005); *Stem v. Gomez*, 813 F.3d 205, 211 (5th Cir. 2016).

Young alleges that she was an adjunct faculty instructor at the college. She does not allege that she had tenure or an ongoing employment contract when she was terminated. Instead, she alleges that she had a reasonable expectation that her employment would continue “based on a nine-year record of excellent performance” and the college’s “pattern of behavior.” Dkt. 9 at 2. She does not allege specific facts about the college’s pattern of behavior toward her during those nine years.

Young cites *Perry v. Sindermann*, 408 U.S. 593 (1972), in support of her claimed property interest. In that case, the Supreme Court explained that an adjunct faculty member “who has held his position for a number of years[] might be able to show from the circumstances of this service— and from other relevant

facts—that he has a legitimate claim of entitlement” to support a constitutionally protected property interest. *Id.* at 602. But the “other relevant facts” in *Perry* included an alleged “de facto tenure program,” as evidenced by a faculty guide stating that “[t]he Administration of the College wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory and as long as he displays a cooperative attitude toward his co-workers and his superiors, and as long as he is happy in his work.” *Id.* at 600. That was enough to create a fact question about whether the adjunct faculty member in *Perry* had a protected property interest.

“Texas law,” however, “imposes a strong presumption in favor of at-will employment.” *Hegemeier v. Caldwell County*, 826 F.3d 861, 870 (5th Cir. 2016) (*per curiam*). That is apparent from Texas Education Code §51.943(g), which provides that “[n]othing in this section shall be deemed to provide a faculty member who does not hold tenure additional rights, privileges, or remedies or to provide an expectation of continued employment beyond the period of a faculty member’s current contract.” See *Hiers v. Bd. of Regents of the Univ. of N. Tex. Sys.*, No. 4:20-CV-321-SDJ, 2022 WL 748502, *5–19, 22–23 (E.D. Tex. Mar. 11, 2022) (rejecting a fired college professor’s due-process claim because he failed to allege a protected property interest but allowing his free-speech claim, which does not require a protected property interest, to proceed). That is essentially the opposite of the faculty guide in *Perry*.

Given that backdrop, Young’s allegations do not create a protected property interest. Her history of excellent performance and the college’s unspecified

pattern of behavior do not overcome Texas's strong presumption of at-will employment. And although Young also alleges that the college failed to follow its own established policies before terminating her employment, a property interest "cannot be defined by the procedures provided for its deprivation." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985).

B. Entity liability

The college is a local governmental entity. See *Santoro v. Cnty. of Collin, Tex.*, No. 4:18-CV-00660-ALM-CAN, 2019 WL 5692187, at *9 (E.D. Tex. Aug. 16, 2019), report and recommendation adopted, No. 4:18-CV-660, 2019 WL 4686361 (E.D. Tex. Sept. 26, 2019). As such, it is liable for the actions of its employees only if an official policy or custom causes the plaintiff's injury. *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 691-94 (1978); see *City of St. Louis v. Praprotnik*, 485 U.S. 112, 122 (1988). "[T]he unconstitutional conduct must be directly attributable to the municipality through some sort of official action or imprimatur." *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001). Accordingly, to succeed on a §1983 claim against a governmental entity, the plaintiff must show that "(1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right." *Doe v. Burleson County*, 86 F.4th 172, 176 (5th Cir. 2023) (citing *Davidson v. City of Stafford*, 848 F.3d 384, 395 (5th Cir. 2017)).

Determination of who may be found liable as a "policymaker" is a matter of state law. *Jett v. Dall. ISD*, 491 U.S. 701, 737 (1989). The final policymaking

authority for the college is its board. See Tex. Educ. Code §§130.082, .084; *Saenz v. Dall. Cnty. Cmty. Coll. Dist.*, No. 3:10-CV-742-O, 2011 WL 1935742, at *4 (N.D. Tex. May 16, 2011).

The college argues that Young fails to state a §1983 claim against it because she does not allege that any official policy or custom was a moving force behind a violation of her due-process rights. In response, Young argues that the college's failure to follow its own policy demonstrates that it violated her due-process rights. Dkt. 14. at 7.

Young does not allege that the college's board promulgated any policy that was the moving force behind her termination. Instead, she alleges that the college deviated from official policy when it fired her without thoroughly investigating the student's complaint. But "[t]he failure to follow procedural guidelines, standing alone," cannot give rise to entity liability. *Evans v. City of Marlin*, 986 F.2d 104, 108 n.6 (5th Cir. 1993); see *Praprotnik*, 485 U.S. at 127 (explaining that "[w]hen an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them, are the act of the [entity]"). "Nor, without more, would [an entity] automatically be liable under §1983 if one of its employees happened to apply the policy in an unconstitutional manner, for liability would then rest on respondeat superior." *City of Canton, Ohio v. Harris*, 489 U.S. 378, 387 (1989). Young's allegations therefore fail to show that an official policy was the moving force behind the alleged constitutional violation.

IV. Opportunity to Amend

Dismissal for failure to state a claim is typically with prejudice. *Memon v. Allied Domecq QSR*, 385 F.3d 871, 874 n.6 (5th Cir. 2004) (per curiam). But a *pro se* litigant should generally be offered an opportunity to amend her complaint before it is dismissed. *Brewster v. Dretke*, 587 F.3d 764, 767–68 (5th Cir. 2009) (per curiam). “Granting leave to amend is not required, however, if the plaintiff has already pleaded his [or her] ‘best case.’” *Id.* at 768 (quoting *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998)).

Young’s first complaint alleged a Title VII disparate-treatment violation, which the college addressed in its first motion to dismiss. Dkt. 6. Her amended complaint still fails to address the deficiencies identified by that motion. She has pled her best case, so that claim should be dismissed with prejudice. But to the extent Young may plead additional facts in support of her due-process claim or intended to rely on legal theories that have not previously been addressed by the defendant or the court, further amendment could conceivably allow her to state a claim. See *Morgan v. Chapman*, 969 F.3d 238, 247–48 (5th Cir. 2020) (noting that “a complaint need not specify legal theories” and that amendment is not futile if the “factual allegations state a claim for something,” even if not the theory identified in the complaint). For that reason, Young should be given leave to amend her complaint a second time.

RECOMMENDATION

It is **RECOMMENDED** that the motion to dismiss, Dkt. 11, be **GRANTED**. Young’s disparate-treatment

claim should be **DISMISSED WITH PREJUDICE**. Her other claims should be **DISMISSED WITHOUT PREJUDICE**, and Young should be given 21 days from entry of a memorandum adopting this recommendation, if any, to file an amended complaint.

* * *

Within 14 days after service of this report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. §636(b)(1)(C).

A party is entitled to a *de novo* review by the district court of the findings and conclusions contained in this report only if specific objections are made. *Id.* §636(b)(1). Failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report will bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U. S. 140, 155 (1985); *Douglass v. United Servs. Auto Ass'n*, 79 F. 3d 1415, 1417 (5th Cir. 1996) (en banc), superseded by statute on other grounds; 28 U. S. C. §636(b)(1) (extending the time to file objections from 10 to 14 days).

So **ORDERED** and **SIGNED** this 11th day of August, 2025.

/s/ Bill Davis

Bill Davis

United States Magistrate Judge

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Appendix E

[Filed: Oct. 20, 2025]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DANA F. YOUNG

§

§

v.

§

§

CIVIL NO. 4:24-CV-

00979-SDJ-BD

§

COLLIN COLLEGE

§

§

§

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. §636. On August 11, 2025, the Magistrate Judge entered proposed findings of fact and a recommendation (the "Report"), (Dkt. #44), that Defendant Collin College's ("Defendant") Motion to Dismiss, (Dkt. #11), be granted. Defendant filed Objections, (Dkt. #46), to the Report.

The Court conducted a *de novo* review of the Objections and the portions of the Report to which Defendant specifically objects, and the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and that the Objections are without merit as to the ultimate findings of the Magistrate Judge. The Court hereby adopts the findings and

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conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is therefore **ORDERED** that the Motion to Dismiss, (Dkt. #11), is **GRANTED**. Plaintiff Dana F. Young's ("Plaintiff") disparate-treatment claim is **DISMISSED WITH PREJUDICE** and her other claims are **DISMISSED WITHOUT PREJUDICE**. It is further **ORDERED** that, within 21 days, Plaintiff file an amended complaint that resolves the deficiencies identified in the Report. Failure to do so will result in dismissal of her claims with prejudice.

So ORDERED and SIGNED this 20th day of October, 2025.

/s/ Sean D. Jordan

SEAN D. JORDAN

UNITED STATES DISTRICT JUDGE

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Appendix F

[Filed: Oct. 24, 2025]

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DANA F. YOUNG

§

§

§

CIVIL NO. 4:24CV-

v.

§

00979-SDJ-BD

§

COLLIN COLLEGE

§

§

§

FINAL JUDGMENT

Pursuant to the Memorandum Adopting Report and Recommendation of the United States Magistrate Judge filed in this matter on October 20, 2025, (Dkt. 50), and Plaintiff Dana F. Young's notice that she does not intend to file an amended complaint, (Dkt. 51), it is

ORDERED, ADJUDGED, AND DECREED that Plaintiff Dana F. Young's claims against Defendant Collin College are **DISMISSED WITH PREJUDICE**.

All relief not previously granted is hereby **DE-NIED**.

So ORDERED and SIGNED this 24th day of October, 2025.

/s/ Sean D. Jordan

SEAN D. JORDAN

UNITED STATES DISTRICT JUDGE

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Appendix G

[Filed: Mar. 18, 2026]

United States Court of Appeals
for the Fifth Circuit

No. 25-40433

DANA F. YOUNG,

Plaintiff—Appellant,

versus

COLLIN COLLEGE,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:24-CV-0979

ON PETITION FOR REHEARING

Before GRAVES, HO, and DOUGLAS, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellant's motion for leave to file petition for rehearing out of time is GRANTED.

IT IS FURTHER ORDERED that the petition for rehearing is DENIED.

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Appendix H

[Filed: Apr. 23, 2025]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

Dana F. Young	§	
Plaintiff, Pro Se	§	
	§	
	§	Case No. 4:24-CV-
v.	§	00979-SDJ-BD
	§	
Collin College	§	
Defendant	§	

**PLAINTIFF'S OBJECTION TO THE REPORT
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

I. INTRODUCTION

Plaintiff respectfully submits this Objection pursuant to 28 U.S.C. §636(b)(1)(C) and Local Rule CV-72(b), in response to the Report and Recommendation of the United States Magistrate Judge ("R&R") filed April 16, 2025 (Dkt. 31), which recommends denying or staying Plaintiff's Motion for Summary Judgment (Dkt. 21) as premature.

Plaintiff filed her Motion for Summary Judgment ("MSJ") after the Rule 26(f) conference because Defendant had not presented undisputed facts, or evidentiary support and no substantive legal rebuttal in its pleadings, despite having had procedural opportunity to do so. Instead, Defendant has persisted in attacking Plaintiff's character and credibility,

misrepresenting the law and statutory authority, and showing the intent to continue doing so in disregard of judicial efficiency and procedural fairness, rather than addressing Plaintiff's claims.

Plaintiff then concluded that summary judgment was appropriate. The MSJ demonstrated there was no genuine dispute of material fact and therefore is entitled to judgment as a matter of law.

The magistrate judge's R&R misinterprets Plaintiff's position, misapplies Rule 56 of the Federal Rules of Civil Procedure, and overlooks Defendant's ongoing noncompliance with court rules and orders. The Plaintiff has presented the material facts necessary for summary judgment. The Defendant has not submitted any affidavits or evidence producing a genuine dispute.

Access Mediquip L.L.C., v. United Healthcare Ins. Co., 662 F. 3d 376, 381 (5th Cir. 2011)

Held "Discovery not required when nonmovant fails to identify how it would create a genuine issue."

Washington v. Allstate Ins. Co., 901 F. 2d 1281, 1285 (5th Cir. 1990)

Held "General assertions of discovery need insufficient absent Rule 56(d) affidavit."

The magistrate judge's R&R cites summary judgment precedent suggesting discovery must be allowed before ruling. However, those cases do not apply where one party has already submitted undisputed evidence, and the opposing party has failed to produce any record-based rebuttal. Defendant has not met this standard.

Beattie v. Madison Cnty. Sch. Dist., 254 F. 3d 595, 606 (5th Cir. 2001)

Established "Summary judgment may be granted prior to discovery when no specific discovery needs are identified."

Little v. Liquid Air Corp., 37 F. 3d 1069, 1075 (5th Cir. 1994)

Held "A party opposing summary judgment must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial."

II. OBJECTIONS

Rule 72(b)(2): "Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations.

This objection is predicated on Defendant's failure to comply under Rule 56(d) of the Federal Civil Rules of Procedure. The magistrate judge's misreading and misinterpretation of Plaintiff's MSJ results in misapplied law and therefore mischaracterizes Plaintiff. Deference to non-compliance is subject to judicial error in discretion and cause for reversal upon appeal.

Plaintiff's statements are listed as OBJECTION under each line below in response to the magistrate judge's full quote from his report and recommendation, (Dkt. 31, p. 1):

1. **Proceeding *pro se*, Dana Young sued Collin College for employment discrimination Dkt. 9 (operative complaint).**

CLARIFICATION: EEOC Right to Sue (See Exhibit K, Dkt. 9) for wrongful termination and race discrimination. The record establishes violations under Title VII, 42 U.S.C. §1981, the 14th Amendment (U.S.

Const. Amend. XIV), and under 42 U.S.C. §1983. (Civil action brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and 42 U.S.C. §1981 of the Civil Rights Act of 1866 (Amended 1991), and applicable state law.)

Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 383 (2004)

Held “Section 1981 applies to claims of hostile work environment, wrongful termination, and failure to transfer based on race.”

Baker v. McCollan, 443 U.S. 137, 144 n. 3 (1979)

Held “Section 1983 is not itself a source of substantive rights but a method for vindicating federal rights.”

2. “Before the parties deadline to exchange initial disclosures, Young moved for summary judgment. Dkt. 21.

OBJECTION: Reframing context without legal application—Rule 56(b)

The magistrate judge uses the timeline (MSJ filed after Rule 26(f) but before disclosures) as context to support the view that the motion was premature. Plaintiff complied with Rule 56(b) where no local rule bars early filing and nothing in the Court’s scheduling order prohibits motions for summary judgment before disclosures.

Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)

Held “The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case.”

Washington v. Allstate Ins. Co., 901 F.2d 1281, 1285 (5th Cir. 1990)

Held "Summary judgment may be appropriate, even when discovery is incomplete, if the nonmoving party has not diligently pursued discovery of the evidence."

Brown v. Miss. Valley State Univ., 311 F.3d 328, 333 (5th Cir. 2002)

Held "Summary judgment "assumes some discovery," but does not require it when a sufficient record exists."

Gabarick v. Laurin Mar. (Am.), Inc., 406 F. App'x 883, 890 (5th Cir. 2010)

Held "Denial of a summary judgment motion filed pre-discovery is within the trial court's discretion only when justified by insufficiency of the record or a valid Rule 56(d) declaration."

3. "Defendant Collin College filed a motion asking the court to dismiss or deny the summary-judgment motion as premature or defer ruling on it. Dkt. 28; Dkt. 30 (response)."

OBJECTION: Non-compliance with federal and local rules. A party seeking denial or deferral of summary judgment based on lack of discovery must comply with Rule 56(d), requiring an affidavit or declaration explaining why it cannot present facts essential to oppose the motion. The record shows Defendant did not provide a declaration showing a failure to comply under Rule 56(d) their motion procedurally unsupported.

Raby v. Livingston, 600 F.3d 552, 561 (5th Cir. 2010)

Held "To justify a continuance under Rule 56(d), the nonmovant must present specific facts explaining the inability to make a substantive response as required by the rule."

Access Mediquip, L.L.C., v. UnitedHealthcare Ins. Co., 662 F.3d 376, 392 (5th Cir. 2011)

Held "Summary judgment is appropriate when the nonmovant fails to file the required affidavit or declaration under Rule 56(d)."

Washington v. Allstate Ins. Co., 901 F.2d 1281, 1285 (5th Cir. 1990)

Held "A nonmovant who does not diligently pursue discovery or comply with Rule 56(d) cannot later claim that summary judgment is premature."

Humphreys v. Roche Biomedical Labs., Inc., 990 F.2d 1078, 1081 (5th Cir. 1993)

Held "A party may not simply rely on vague assertions that additional discovery will produce needed, but unspecified facts."

4. The court will recommend that Collin College's motion be granted.

OBJECTION: Misapplied law. A court may defer summary judgment under Rule 56(d), but only when the nonmovant complies with that rule. Here, Collin College did not file the required affidavit or declaration, and did not identify specific facts it could obtain through discovery to rebut the Plaintiff's evidence. Granting the motion without requiring compliance with Rule 56(d) represents a misapplication of judicial discretion and law.

Raby v. Livingston, 600 F.3d 552, 561 (5th Cir. 2010)

Held "Rule 56(d) requires a nonmovant to identify specific evidence that it seeks to obtain and show how that evidence will create a genuine issue of material fact."

Access Mediquip, L.L.C., v. UnitedHealthcare Ins. Co., 662 F.3d 376, 392 (5th Cir. 2011)

Held "Failure to comply with the procedural requirements of Rule 56(d) is grounds for denying the request to delay consideration of a summary judgment motion."

United States v. \$92,203.00 in U.S. Currency, 537 F.3d 504, 508 (5th Cir. 2008)

Held "District courts have discretion, but that discretion "must be exercised in accordance with the rule's requirements."

Washington v. Allstate Ins. Co., 901 F.2d 1281, 1285 (5th Cir. 1990)

Held "A party who has not complied with Rule 56(d) cannot later object that summary judgment was premature."

5. **Collin College argues that Young's motion for summary judgment is premature because it was filed before the parties engaged in any discovery.**

OBJECTION: Failure to meet the burden under Rule 56(d). To claim the motion for summary judgment as premature cannot be supported by the Federal Rules of Civil Procedure. The rules do not prohibit early summary judgment. They permit it explicitly under Rule 56(b), which allows a motion at any time. The party in opposition to it must comply with Rule 56(d) if it asserts discovery is needed. Collin College did not comply.

Brown v. Mississippi Valley State Univ., 311 F.3d 328, 333 (5th Cir. 2002)

Held "Summary judgment assumes some discovery, but the rule does not forbid early motions; rather, it

permits courts to deny or defer them if the nonmovant properly demonstrates the need.”

Gabarick v. Laurin Mar. (Am.), Inc., 406 F. App’x 883, 890 (5th Cir. 2010)

Held “Discretion to deny a motion as premature is not automatic; the nonmovant must submit an affidavit showing how discovery would defeat summary judgment.”

Am. Family Life Assurance Co. v. Biles, 714 F. 3d 887, 894–95 (5th Cir. 2013)

Held “Courts have “no obligation to consider a non-movant’s request to defer ruling on summary judgment unless it is properly made under Rule 56(d).”

Raby v. Livingston, 600 F.3d 552, 561 (5th Cir. 2010)

Held “A party opposing summary judgment must explain how the requested discovery relates to the motion and must do so through affidavit or declaration.”

6. **“Collin College insists that it must be afforded the opportunity to conduct discovery before it can adequately respond to the motion.**

OBJECTION: Failure to meet the burden under Rule 56(d).

Rule 56(d) provides that for a party to request discovery before responding to a motion for summary judgment it must show, via affidavit or declaration, specific reasons discovery is necessary to oppose the motion. Collin College submitted no such affidavit, and therefore failed to retain its right to argue it “must be afforded discovery.

Raby v. Livingston, 600 F.3d 552, 561 (5th Cir. 2010)

Held "Rule 56(d) requires a nonmovant to explain, via affidavit, how additional discovery will create a genuine issue of material fact. A non-movant may not simply rely on vague assertions that additional discovery will produce needed, but unspecified, facts."

Am. Family Life Assurance Co. v. Biles, 714 F. 3d 887, 894-95 (5th Cir. 2013)

Held "A request for relief under Rule 56(d) must be made by affidavit or declaration, and the nonmovant must explain why facts precluding summary judgment cannot be presented."

Washington v. Allstate Ins. Co., 901 F. 2d 1281, 1285 (5th Cir. 1990)

Held "Rule 56 does not require that discovery take place before summary judgment can be granted. If the nonmoving party fails to file affidavits setting forth the particular facts expected from further discovery, the court is not required to delay consideration of the motion."

7. In her response, Young reiterates and elaborates on arguments made in her summary-judgment motion.

CLARIFICATION: Plaintiff's Opposition (Dkt. 30) was not repetitive but directly responded to Defendant's arguments regarding prematurity and included new legal citations addressing Rule 56(d) and added a detailed procedural analysis demonstrating Plaintiff's compliance with federal summary judgment standards, also expanding on arguments raised in the MSJ (Dkt. 21), procedural compliance, undisputed material facts, and the sufficiency of the record.

8. "She also identifies four witnesses whose depositions, in her view, will lead to

evidence to support her claims. Dkt. 30 at 13-14.

OBJECTION: Incorrect statement, mischaracterization of Plaintiff, and misapplied law. The magistrate judge's mischaracterization gives the impression that Plaintiff requested depositions to develop evidence needed for summary judgment, which is incorrect. The magistrate judge inaccurately summarizes Plaintiff's Opposition (Dkt. 30, p 13-14). Plaintiff identified three not four individuals as potential deponents. The third reference as "a. under the College President cites the College Executive Vice-President not as a potential deponent but evidenced in Exhibit H for entity liability without the need for further discovery.

Plaintiff stated in her Motion for Summary Judgment, (Dkt. 21, p. 7):

Plaintiff respectfully maintains that sufficient evidence has been presented to warrant summary judgment, and that additional discovery including depositions, electronic transmissions and hard copy records would only further confirm Defendant's violations... This is not Plaintiff's request for discovery and is not a concession that the record is incomplete. The statement shows that Plaintiff asserts the current record, satisfies Rule 56, and that any future discovery would be confirmatory, not foundational. The magistrate judge's framing suggests Plaintiff admits the record is incomplete, which is a mischaracterization leading to misapplied law regarding premature motions for summary judgment. Plaintiff had already submitted material facts, undisputed and supported by evidence.

Brown v. Mississippi Valley State Univ., 311 F.3d 328 (5th Cir. 2002), and *Gabarick v. Laurin Maritime*,

406 F. App'x 883 (5th Cir. 2010), apply where discovery is necessary to establish material facts.

Washington v. Allstate Ins. Co., 901 F.2d 1281, 1285 (5th Cir. 1990)

Held "Summary judgment may be appropriate even before discovery if the nonmoving party has failed to demonstrate how discovery would create a genuine issue of material fact."

Robinson v. Cerenity Senior Care, 2022 WL 16744327, at 6 (D. Minn. Nov. 7, 2022)

Held "A motion is not premature where the movant has submitted supporting evidence, and the opposing party fails to comply with Rule 56(d) requirements."

9. "Summary judgment assumes some discovery," ***Brown v. Miss. Valley State Univ.***, 311 F.3d 328, 333 (5th Cir. 2002), so a motion for summary judgment should not ordinarily be granted before discovery has been completed, ***Ala. Farm Bureau Mut. Cas. Co. v. Am. Fid. Life Ins. Co.***, 606 F.2d 602, 609 (5th Cir. 1979).

OBJECTION: Misapplied law. These precedents do not establish an over-all rule prohibiting summary judgment pre-discovery.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)

Held "Rule 56 permits a summary judgment motion at any time, and that the burden then shifts to the nonmovant to "designate specific facts showing a genuine issue."

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)

Held "The sufficiency of the evidence determines whether a trial is necessary not the timing of discovery.

The Fifth Circuit has established summary judgment is not premature, even where discovery has not occurred, unless the nonmovant has properly complied with Rule 56(d) and shown how discovery will produce specific material facts. **Brown** and *Ala. Farm Bureau* misapplies the law if the magistrate judge concludes discovery is required without first considering whether sufficient evidence was already submitted and whether Rule 56(d) was followed."

Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994)

Held "Conclusory allegations and unsubstantiated assertions are insufficient to defeat summary judgment."

10. "The court has discretion to deny a motion for summary judgment as premature. See, e.g., *Gabarick v. Laurin Mar. (Am.), Inc.*, 406 F.App'x 883, 890 (5th Cir. 2010); *Sunbelt Sav., FSB Dall., Tex. v. Montross*, 923 F.2d 353, 358 (5th Cir. 1991)."

OBJECTION: Misapplied law.

Court discretion must be grounded in the standards and structure of Rule 56.

Defendant did not satisfy the procedural requirement set by Rule 56(d), which the magistrate judge's discretion cannot override. *Gabarick* and *Sunbelt* both involved a proper calling upon procedure for discovery needs, not a failure to follow the rules.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)

Held "Rule 56 does not require discovery before a court may rule on summary judgment only that the nonmovant be afforded the procedural mechanisms to respond."

Brown v. Miss. Valley State Univ., 311 F.3d 328, 333 (5th Cir. 2002)

Established "If the nonmovant needs discovery, they must file a Rule 56(d) affidavit or declaration showing why they cannot present facts essential to justify their opposition."

Access Mediquip, L.L.C., v. UnitedHealthcare Ins. Co., 662 F.3d 376, 392 (5th Cir. 2011)

Held "Rule 56(d) motions must be specific and supported by facts, not general assertions."

11. **The court also may dismiss a motion for summary judgment without prejudice if it is filed before any party answers.** *Watkins v. Monroe*, No. 6:18-CV-00347, 2019 WL 1869864, at 1 (E.D. Tex. Mar. 27, 2019), report and recommendation adopted, No. 6:18-CV00347, 2019 WL 1858100 (E.D. Tex. Apr. 25, 2019).

OBJECTION: Misapplied law.

The Watkins dismissal was based on the defendant's having not yet answered the complaint, and no adversarial process had begun. In Plaintiff's case, Defendant Collin College has answered and actively participated in motion practice, including opposing the summary judgment motion. The magistrate judge's use of Watkins as legal precedent misapplies the procedural standard and introduces error. The Plaintiff's MSJ was filed in compliance with Rule 56(b), which allows for its filing at any time until 30 days after the

close of all discovery, absent an otherwise court-imposed order.

Celotex Corp. v. Catrett, 477 U. S. 317, 322 (1986)

Held "Summary judgment is an integral part of federal procedure and is proper when the movant shows the absence of a genuine issue, regardless of discovery stage."

Washington v. Allstate Ins. Co., 901 F.2d 1281, 1285 (5th Cir. 1990)

Held "Summary judgment may be granted early where the opposing party fails to demonstrate with specificity, under Rule 56(d), why discovery is necessary."

Brown v. Miss. Valley State Univ., 311 F.3d 328, 333 (5th Cir. 2002)

Held "Exceptions apply where sufficient evidence has already been submitted."

12. "Young's pre-discovery motion for summary judgment is premature.

OBJECTION: Disregard for Federal Rules of Civil Procedure—Rule 56(b).

Plaintiff demonstrated evidentiary sufficiency, and Defendant failed to comply with Rule 56(d). No discovery was pending under court order, and Defendant did not justify its delay.

Labeling Plaintiff's MSJ as premature mischaracterizes a properly filed motion under Rule 56(b), which allows summary judgment motions at any time until 30 days after the close of all discovery.

The magistrate judge's application of the term "pre-discovery suggests that discovery is a procedural prerequisite, which contradicts legal precedent that the

necessity of discovery depends on whether the non-moving party complies with Rule 56(d).

Celotex Corp. v. Catrett, 477 U. S. 317, 322 (1986)

Held "Rule 56 "mandates the entry of summary judgment" where the nonmovant fails to make a sufficient showing, regardless of discovery status."

Parsons v. United States DOJ, 801 F. 3d 701, 709 (6th Cir. 2015)

Held "Summary judgment prior to discovery is not improper where the movant produces sufficient undisputed facts and the nonmovant fails to comply with Rule 56(d)."

Little v. Liquid Air Corp., 37 F. 3d 1069, 1075 (5th Cir. 1994)

Held "Nonmovants may not "simply rely on vague assertions" to postpone summary judgment without meeting Rule 56(d) s standards."

13. As her response to Collin College's motion notes, additional discovery will lead to relevant evidence.

OBJECTION: Mischaracterization and misapplied law. Plaintiff's MSJ states that discovery would confirm the violations not that it is necessary to establish them. The magistrate judge's summary reframes this into a concession that discovery is needed to lead to relevant evidence, which contradicts the premise and purpose of the motion for summary judgment. That is a material misreading of what Plaintiff wrote and presents a lower evidentiary position than the one asserted. Plaintiff stated in the Motion for Summary Judgment, (Dkt. 21, p. 7):

"Plaintiff respectfully maintains that sufficient evidence has been presented to warrant summary

judgment, and that additional discovery including depositions, electronic transmissions and hard copy records would only further confirm Defendant's violations..."

The mischaracterization directly affects how the magistrate judge determines the MSJ as premature, leading to a misapplication of the law. The rewording reverses Plaintiff's position from asserting that summary judgment is proper *now*, to appearing to admit that discovery is required. That false premise is then used to justify the motion to dismiss/stay.. as premature, despite Plaintiff's submitted evidence arguing it is already sufficient under Rule 56. A motion cannot be deemed premature based on a misread concession.

Roberts v. Louisiana Downs, Inc., 742 F.2d 221, 223 (5th Cir. 1984)

Held "Summary judgment should not be denied merely to allow discovery if the discovery would not change the outcome."

Access Telecom, Inc. v. MCI Telecomms. Corp., 197 F.3d 694, 719 (5th Cir. 1999)

Held "Denial based on discovery is improper where the party opposing summary judgment fails to specify how additional discovery would create a genuine issue of material fact."

Brown v. Mississippi Valley State Univ., 311 F.3d 328, 333 (5th Cir. 2002)

Held "Summary judgment is proper where the moving party supports their position with evidence and the nonmovant fails to meet the Rule 56(d) burden, even if discovery has not occurred."

14. "And as Collin College argues, it needs additional discovery to support its defenses to Young's claims."

OBJECTION: Misapplied law. Judicial error in discretion overlooking Defendant's failure to comply under Federal Rules of Civil Procedure—Rule 56(d).

"Additional discovery presumes that some discovery has already taken place or that Defendant has sufficiently provided procedural justification for needing more. Defendant submitted no affidavit or declaration required under Rule 56(d) to justify its continuing delays. The magistrate judge's acceptance of Defendant's claim passes over this requirement and misapplies the law in the absence of a showing of compliance.

The magistrate judge's deference to Defendant's unsupported assertion improperly shifts the burden onto the Plaintiff to overcome speculative or future defenses. It is the nonmovant's responsibility, under Rule 56(d), to identify specific material facts they cannot present and explain why discovery is necessary. Defendant failed to comply. Therefore, concluding that Defendant needs additional discovery is without a legal foundation. The magistrate judge's recommendation neglects to observe procedural rules and fairness.

Washington v. Allstate Ins. Co., 901 F.2d 1281, 1285 (5th Cir. 1990)

Held "Rule 56(d) requires a nonmovant to present a valid affidavit explaining why they cannot present facts essential to oppose summary judgment."

Raby v. Livingston, 600 F.3d 552, 561 (5th Cir. 2010)

Established "Vague assertions about discovery needs are insufficient; the party must demonstrate how discovery would create a genuine issue of material fact."

Campbell v. Eastland, 307 F.2d 478, 491 (5th Cir. 1962)

Held "The discovery process is not to be used to delay proper disposition of cases when no valid procedural basis is presented."

III. RULE 56(d)

Rule 56(d) allows a court to defer or deny summary judgment only when the nonmovant shows by affidavit or declaration that it cannot present facts essential to justify its opposition. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: 1—defer considering the motion or deny it. 2—allow time to obtain affidavits or declarations or to take discovery; or 3—issue any other appropriate order. While discretion exists, it is procedurally conditioned on a proper showing.

Plaintiff, in full compliance with 56(d), filed her MSJ after the Rule 26(f) conference, which permits filing at any time unless otherwise ordered. No such order restriction existed in this case. Defendant failed to comply and did not provide a proper showing under Rule 56(d).

IV. APPLICABLE FEDERAL AND LOCAL RULES OF CIVIL PROCEDURE

The following provisions of the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the Eastern District of Texas, Sherman Division (E.D. Tex. Civ. R.) apply

to this Objection. All rules are cited in their most recent versions.

FEDERAL (Amended Dec. 1, 2024)

Rule 1 “These rules govern the procedure in all civil actions and proceedings in the United States district courts... They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”

Rule 56(a) “A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

Rule 56(c)(1) “A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record... or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute...”

Rule 56(d) “If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order.”

LOCAL (Effective Dec. 1, 2023)

Local Rule CV-1 “(a) The rules of procedure in any proceeding in this court are those prescribed by the

laws of the United States, the Federal Rules of Civil Procedure, these local rules, and any orders entered by the court. These local rules shall be construed as consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court of the United States and the United States Court of Appeals for the Fifth Circuit."

Local Rule CV-7 "(a) Generally. An application to the court for an order shall be by motion, which, unless made during a hearing or trial, shall be in writing and shall set forth with particularity the grounds therefor and the relief or order sought."

Local Rule CV-7 "(d) Responses to motions must include a brief setting forth the party's contentions of fact and/or law, and argument and authorities."

Local Rule CV-7(e) "Responses shall contain a concise statement of the facts and supporting arguments. All evidence must be included in an appendix and properly cited."

Local Rule CV-56 "(a) Motion. Any motion for summary judgment must include a statement of the issues to be decided by the court and, separately, a statement of each material fact as to which the moving party contends there is no genuine issue.

Local Rule CV-56(c) "Any party opposing a summary judgment motion shall file a response that includes: (1) a response to the movant's statement of undisputed facts; and (2) a statement of material facts as to which a genuine issue exists, with citations to proper summary judgment evidence.

V. JUDICIAL DISCRETION

The magistrate judge exercises discretion as if Rule 56(d) applied, but the Defendant never submitted an

affidavit or declaration, making it a procedural failure under Rule 56(d). The magistrate judge may exercise discretion upon a proper showing by affidavit or declaration that discovery is necessary to oppose the motion. Neither were submitted by the Defendant. Judicial discretion overlooking Rule 56(d) noncompliance is misapplied law.

Am. Family Life Assurance Co. v. Biles, 714 F.3d 887, 894 (5th Cir. 2013)

Held "Without the required affidavit, the district court abused its discretion in deferring summary judgment."

Celotex Corp. v. Catrett, 477 U.S. 317, 326 (1986)

Held "Judicial discretion must be exercised consistent with procedural fairness to both parties."

Washington v. Allstate Ins. Co., 901 F.2d 1281, 1285 (5th Cir. 1990)

Held "The failure to file an affidavit under Rule 56(d) justifies denial of relief; a court granting relief anyway exceeds its discretion."

Access Telecom, Inc. v. MCI Telecomms. Corp., 197 F.3d 694 719 (5th Cir. 1999)

Established "Relief under Rule 56(d) requires strict compliance. Courts err by granting additional time or deferring judgment without it."

VI. REPUTATIONAL HARM—PUBLIC RECORD

Defendant's repeated attacks on Plaintiff's character, submitted through formal filings and now part of the public record, continue to cause reputational and emotional harm. The impact is not only historical. It carries forward, shaping how others perceive Plaintiff's integrity and affecting future professional and

relational opportunities. It extends a wrongful termination past economic loss into public and professional standing. Terms such as heinous used to describe Plaintiff are unsupported by material facts and were presented to justify alleged unlawful actions and federal violations.

While no separate claim for defamation has been brought, these public record statements support Plaintiff's argument for damages as part of the broader harm suffered and perpetuating into the future. Plaintiff has had to endure traumatic stress. Her termination also damaged her reputation with her students where she was highly regarded, well-respected and known for her uprightness and competence.

Collin College's institutional ills from systemic error that this case exposes through the rule of law reveal that the intent was not only to terminate Plaintiff's job but to terminate her career signaling the impact of permanence beyond employment to identity, livelihood, and opportunity. Personal harm has been compounded by litigation filings uncorrected by the magistrate judge to this point with ongoing and unjust consequences affecting more than just the Plaintiff but also students and colleagues, even the public who might be encounter similar circumstances; those whose trust and pride were injured, and those whose continued respect for and association with Plaintiff are diminished by the public course of this case, where the full harm cannot be undone.

Gertz v. Robert Welch, Inc., 418 U.S. 323, 350 (1974)

Held "The legitimate state interest underlying the law of libel is the compensation of individuals for the harm inflicted on them by defamatory falsehoods."

VII. REQUEST FOR DE NOVO REVIEW

For the reasons presented in this filing, Plaintiff respectfully objects to the Report and Recommendation of the United States Magistrate Judge and requests that the District Court:

- Conduct a *de novo* review under Rule 72(b)(3) and 28 U.S.C. §636(b)(1).
- Reject the Court's Report and Recommendation to grant Defendant's Motion to Dismiss or Stay Plaintiff's MSJ as premature.
- Deny Defendant's Motion to Dismiss or Stay Plaintiff's Motion for Summary Judgment as Premature
- Reaffirm that Plaintiff's MSJ should be considered on the merits, not deferred based on procedural misapplications.
- Proceed to decision on the record already submitted.
- Note that the mischaracterization of Plaintiff's position and disregard for Rule 56(d) failure to comply creates grounds for reversal upon appeal.

VIII. DAMAGES AND RELIEF

Plaintiff respectfully refers the Court to her Motion for Summary Judgment (Dkt. 21) and Plaintiff's Opposition (Dkt. 30), in which all claims and supporting exhibits, including the claim for wrongful termination and Title VII statutory authority, are identified and preserved. Any omissions in summary form were not

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intended to waive those claims, and Plaintiff relies on the full record previously submitted.

IX. CONCLUSION

This Objection is respectfully submitted to correct a misapplication of law and to also reinforce the value of fair and equal rule enforcement in all federal proceedings.

The clarity of the record, the absence of any material dispute from Defendant, and Plaintiff's consistent adherence to governing rules, including Rule 56, offer this Court a meaningful example and opportunity to affirm the principle that justice is not determined by party status, but by procedural and factual integrity.

Respectfully submitted,
/s/ Dana F. Young 4-23-25
Dana F. Young
Plaintiff, Pro Se

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Appendix I

[Filed: Oct 8, 2025]

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS, SHERMAN
DIVISION**

Dana F. Young,	§	
Plaintiff, Pro Se	§	
v.	§	Case No. 4:24-CV-
	§	00979-SDJ-BD
Collin College,	§	
Defendant	§	

**OBJECTION TO MAGISTRATE JUDGE'S OR-
DER (DKT 44)**

Dana F. Young, Plaintiff Pro Se, respectfully objects to the Magistrate Judge's Order (Dkt. 44) under Fed. R. Civ. P. 72(a), because the Order advocates arguments for Defendant that the Defendant never raised and claims Defendant failed to rebut in litigation. The Order misapplies Fed. R. Civ. P. 56(d) standards governing summary judgment procedure.

1. Rule 56(d) requires that a party opposing summary judgment must file an affidavit or declaration specifying why it cannot present facts essential to justify its opposition. *Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1285 (5th Cir. 1990). HELD: Rule 56(d) party opposing summary judgment must file an affidavit setting forth specific reasons why it cannot present facts essential to justify its opposition. Absent this affidavit, there is no basis for a continuance.
2. Defendant filed no Rule 56(d) affidavit and offered no admissible evidence to create a genuine

dispute of material fact. The Magistrate Judge's Order exceeds permissible discretion by advancing Defendant's position and recommending denial of Plaintiff's motion as "premature."

3. Plaintiff previously preserved these issues in her Motion for Summary Judgment (Dkt. 29) and Objection to Report and Recommendation (Dkt. 32), which cite *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986) requiring entry of summary judgment where no genuine dispute exists

Plaintiff respectfully requests that the Court uphold this Objection, vacating the Magistrate Judge's Order (Dkt. 44), and pursuant to Rule 58(a), enter a Final Judgment.

Respectfully submitted,

/s/ Dana F. Young

Dana F. Young, Plaintiff Pro Se

5200 S. Colony Blvd. #560512

The Colony, TX 75056

DFLY812@gmail.com

Date: October 8, 2025

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Appendix J

DFLY <dfly812@gmail.com>

Activity in Case 4:24-cv-00979-SDJ-BD Young v.
Collin College Memorandum & Opinion

1 message

txedCM@txed.uscourts.gov

<txedCM@txed.uscourts.gov>

Fri, Jul 11, 2025 at 5:07 PM

To: txedcmcc@txed.uscourts.gov

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U.S. District Court
Eastern District of TEXAS [LIVE]

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Case Name: Young v. Collin College

Case Number: 4:24-cv-00979-SDJ-BD

Filer:

WARNING: CASE CLOSED on 07/11/2025

Document Number: 35

Docket Text:

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE for [31] Report and Rec-
ommendations. IT IS ORDERED that the Motion**

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to Dismiss, (Dkt. #28), is GRANTED and that Plaintiff's Motion for Summary Judgment is DISMISSED WITHOUT PREJUDICE as premature. Signed by District Judge Sean D. Jordan on 7/11/2025. (knp)

4:24-cv-00979-SDJ-BD Notice has been electronically mailed to:

Kathryn Elizabeth Long klong@thompsonhorton.com, dcampbell@thompsonhorton.com, hsenter@thompsonhorton.com, iyaseen@thompsonhorton.com, lgary@thompsonhorton.com, ssimpson@thompsonhorton.com

Kenneth Adam Rothey arothey@thompsonhorton.com, hsenter@thompsonhorton.com, mirvin@thompsonhorton.com

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Dana F. Young dfly812@gmail.com

4:24-cv-00979-SDJ-BD Notice will not be electronically mailed to:

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Appendix K

[Filed: Jul. 14, 2025]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DANA F. YOUNG,	§	
Plaintiff-Appellant,	§	
v.	§	Case No. 4:24-cv-
	§	00979-SDJ-BD
	§	
COLLIN COLLEGE,	§	
Defendant-Appellee.	§	

NOTICE OF APPEAL

Notice is hereby given that Plaintiff-Appellant, Dana F. Young, appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered on July 11, 2025 (Dkt. 35), and all other appealable orders made part of that judgment.

/s/ Dana F. Young

Dated: 7-14-25

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