

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 20, 2026

Christopher M. Wolpert
Clerk of Court

JENNIFER SCOTT CALLAWAY, as
parent and next friend of D.C., a minor
child,

Plaintiff - Appellant,

v.

INDEPENDENT SCHOOL DISTRICT
NO. 1 OF OKMULGEE COUNTY, a
Political Subdivision of the State of
Oklahoma, a/k/a Okmulgee Public Schools;
STEPHANIE LEE; DALAWNA BRENT,

Defendants - Appellees.

No. 25-7062
(D.C. No. 6:21-CV-00051-SLP)
(E.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ, PHILLIPS**, and **MORITZ**, Circuit Judges.

Jennifer Callaway, proceeding on behalf of her autistic son D.C., sued D.C.'s principal, his school district, and a district administrator after a student captured images of D.C.'s genitalia while he was using the bathroom. Callaway alleged that defendants violated D.C.'s substantive-due-process rights and rights under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

of 1973 (Rehabilitation Act). The district court dismissed Callaway's complaint for failure to state a claim, and we affirm. Callaway does not plausibly allege that defendants violated D.C.'s federal constitutional or statutory rights.

Background¹

D.C. experiences several limitations because of his autism, including trouble communicating verbally. Thus, when D.C. first enrolled in Independent School District No. 1 of Okmulgee County (OPS) in 2016, the school district placed him on an individualized education plan (IEP). Since 2016, D.C.'s IEP has required that he be accompanied by an adult aide in all school activities, including toileting, and OPS has employed Rochelle Pierson as his aide.

On September 21, 2020, D.C. was a fifth grader at Dunbar Intermediate School, an OPS school. D.C.'s usual teacher was absent, so two special-education aides supervised D.C.'s class, including Pierson. The aides allowed D.C. to use the bathroom on his own, and another student captured images of D.C.'s genitals and shared them with other students.

Callaway then initiated this action on D.C.'s behalf. She brought a Fourteenth Amendment claim under 42 U.S.C. § 1983 against Stephanie Lee, Dunbar's principal; Dalawana Brent, OPS's special-education director; and OPS itself. She also alleged that OPS was negligent and violated Title II of the ADA and Section 504

¹ Given the procedural posture of this appeal, we take these facts from the underlying complaint. *See Young v. Colo. Dep't of Corr.*, 94 F.4th 1242, 1245 & n.1, 1249 (10th Cir. 2024).

of the Rehabilitation Act.

Defendants moved to dismiss for failure to state a claim, and the district court granted their motions. It found that Lee and Brent were entitled to qualified immunity on the § 1983 claim, which also defeated the municipal-liability claim against OPS. It further found that Callaway failed to plausibly allege disability discrimination under the ADA and Rehabilitation Act. And with no remaining federal claims, the district court declined to exercise supplemental jurisdiction over Callaway's state-law claims.

Callaway appeals.

Analysis

Callaway challenges the district court's dismissal of her federal claims. Our review is de novo. *See Cl.G ex rel. C.G. v. Siegfried*, 38 F.4th 1270, 1276 (10th Cir. 2022) (failure to state a claim); *Luethje v. Kyle*, 131 F.4th 1179, 1187 (10th Cir. 2025) (qualified immunity). To survive a motion to dismiss for failure to state a claim, a plaintiff must plead sufficient facts to state a plausible claim for relief. *Young*, 94 F.4th at 1249. In determining whether a plaintiff has met their burden, we liberally construe the pleadings, accept all well-pleaded factual allegations as true, and view all reasonable inferences in favor of the nonmoving party. *Id.*

I. Substantive Due Process

Callaway first objects to the district court's ruling that Lee and Brent are entitled to qualified immunity on her § 1983 substantive-due-process claim. According to Callaway, the district court erred when it concluded that she failed to

plausibly allege that Lee or Brent violated D.C.’s substantive-due-process rights.

When a defendant asserts the defense of qualified immunity, there is a presumption that they are immune from suit. *Luethje*, 131 F.4th at 1187. To overcome the presumption, a plaintiff must show that “(1) the defendant’s actions violated a constitutional right, and (2) the right was clearly established at the time of the violation.” *Id.* The right at issue in this case is the right to be free from state deprivations “of life, liberty, or property[] without due process of law.” U.S. Const. amend. XIV, § 1. This right includes a “substantive component . . . that protects individual liberty against ‘certain government actions regardless of the fairness of the procedures used to implement them.’” *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992) (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)).

In this context, we have observed that state actors are generally “only liable for their own acts, not for acts of private violence.” *Schwartz v. Booker*, 702 F.3d 573, 579 (10th Cir. 2012). However, we recognize two exceptions to this principle: the special-relationship doctrine and, relevant here, the state-created-danger theory. *Id.* “[T]he state-created[-]danger theory applies when the [s]tate creates or increases a” risk of harm to an individual, *id.* at 579–80, and the harm “precipitate[s] a deprivation of life, liberty, or property in the constitutional sense,” *Gray v. Univ. of Colo. Hosp. Auth.*, 672 F.3d 909, 922 (10th Cir. 2012).

The state-created-danger theory requires a plaintiff to allege that “the state actor took an affirmative action[] and . . . that action led to private violence injuring the plaintiff.” *Est. of Reat v. Rodriguez*, 824 F.3d 960, 965 (10th Cir. 2016); *see also*

Matthews v. Bergdorf, 889 F.3d 1136, 1150 (10th Cir. 2018) (noting complaint must allege affirmative action and private violence). Affirmative conduct “typically involves conduct [that] impos[es] ‘an immediate threat of harm, which by its nature has a limited range and duration,’ and [that] is ‘directed at a discrete plaintiff rather than [at] the public at large.’” *Hernandez v. Ridley*, 734 F.3d 1254, 1259 (10th Cir. 2013) (quoting *Ruiz v. McDonnell*, 299 F.3d 1173, 1183 (10th Cir. 2002)). “[M]ere negligence or inaction is not enough” to satisfy the requirement. *Est. of B.I.C. v. Gillen*, 710 F.3d 1168, 1173 (10th Cir. 2013).

We agree with the district court’s determination that Callaway has not plausibly alleged Lee or Brent engaged in affirmative conduct. Instead, Callaway alleges that Lee and Brent *failed* to act. In particular, the complaint states that Lee and Brent “each violated D.C.’s right to equal access by *failing* to ensure that the special[-]education classroom at Dunbar was adequately staffed and by *failing* to ensure that the explicit requirements of D.C.’s IEP were being followed.” App. 18 (emphases added). The complaint further alleges that if Lee and Brent had “*made any effort* to properly train and supervise other OPS employees, D.C. would not have suffered.” *Id.* at 20 (emphasis added). These are not allegations of affirmative acts by Lee or Brent. At best, Callaway’s complaint includes one allegation hinting at affirmative action, albeit action not explicitly linked to Lee or Brent, when it states that “OPS elected” to have the aides supervise the special-education class. *Id.* at 12. But read in context, this too is an allegation of inaction when faced with a teacher on leave: “[r]ather than provide another special[-]education teacher, OPS elected to

have the special[-]education aides” cover the gap. *Id.* at 12–13 (emphasis added).

But even if we could infer from the phrase “OPS elected” that Lee or Brent themselves affirmatively decided to have Pierson supervise D.C.’s class, Callaway’s complaint is still inadequate. Recall that affirmative conduct usually imposes an immediate threat of harm, which has a limited range and duration, and is directed at a discrete plaintiff, not the public. *Hernandez*, 734 F.3d at 1259. There are no allegations in the complaint from which we could infer that the staffing decision exposed anyone to an immediate threat of harm. Nor are there allegations that the decision was directed at D.C., “rather than at the public at large.”² *Ruiz*, 299 F.3d at 1183. Thus, reading the complaint in full, Callaway has not alleged that Lee or Brent took an affirmative act.

Callaway resists this conclusion, relying on our statement in *Currier v. Doran*, “that the state can be liable when it affirmatively places private citizens in harm’s way by removing what would otherwise be safety valves.” 242 F.3d 905, 922 (10th Cir. 2001). But *Currier*, and the cases it relied on for that proposition, are distinguishable. There, a social worker investigated an allegation that two children were abused while in their father’s custody. *Id.* at 908, 910. The social worker found

² On this point, Callaway cites *Novosad v. ACB*, No. 05-cv-01651, 2006 WL 1409441 (D. Colo. May 17, 2006) (unpublished), for the proposition that it is sufficient to allege that a state actor directed their conduct at a particular group, rather than a discrete plaintiff. But *Novosad* relies on *Ruiz*, *see id.* at *3, which does not state that a plaintiff can satisfy the affirmative-conduct requirement by alleging that a state actor’s conduct was directed at a particular group, *see Ruiz*, 299 F.3d at 1183.

bruises on one child's buttocks but concluded they were the result of a fall. *Id.* at 910. The social worker also learned that the other child was spanked with a belt. *Id.* Less than a week after her investigation, the social worker instructed the children's mother "to stop making allegations of abuse because it was traumatizing the children." *Id.* After one of the children died from abuse, representatives for the children sued the social worker and claimed that she violated the children's substantive-due-process rights. *Id.* The social worker moved for summary judgment based on qualified immunity, and the district court denied the motion. *Id.* at 911. On appeal, we ultimately concluded that the social worker was entitled to qualified immunity because the law was not clearly established. *Id.* at 924–25.

However, we also held that the social worker violated the children's substantive-due-process rights because she increased their vulnerability to abuse by discouraging their mother from reporting additional indicia of abuse and from seeking the help of police or other social workers. *Id.* at 921–22. In reaching that holding, we partially relied on *Dwares v. City of New York*, where the Second Circuit held a substantive-due-process claim was plausibly pleaded where police officers allegedly told "skinheads" that officers would not interfere if the skinheads assaulted protestors. 985 F.2d 94, 96–97 (2d Cir. 1993). We also relied on *Freeman v. Ferguson*, in which the Eighth Circuit held a substantive-due-process claim was plausibly pleaded where a police chief ordered officers to not respond to a woman's complaints about violations of restraining order. 911 F.2d 52, 53–55 (8th Cir. 1990). These cases informed our observation that although "the government is under no

constitutional obligation to rescue private citizens from harm, . . . the state can be liable when it affirmatively places private citizens in harm's way by removing what would otherwise be safety valves." *Currier*, 242 F.3d at 922.

None of these cases support Callaway's argument that Lee or Brent acted affirmatively. In each, the complaints detailed affirmative state conduct from which it was reasonable to infer that the state actors understood their actions could expose individuals to private violence: a social worker told a parent to stop reporting abuse, officers told aggressors they wouldn't interfere in an attack, and a police chief ordered officers not to respond to restraining-order violations. *See id.* (social worker); *Dwares*, 985 F.2d at 96–97 (officers); *Freeman*, 911 F.2d at 53–55 (police chief). And given the probability of danger resulting from abuse, attacks, and violations of a restraining order, each actor's affirmative conduct removed one of the plaintiffs' safety valves. *See Currier*, 242 F.3d at 922. But here, there are no allegations evincing a similar understanding by Lee or Brent that removing D.C.'s aide would expose him to private violence. To be sure, D.C.'s IEP required that he have an adult aide present in all toileting activities. Yet Callaway does not allege, and we can't reasonably infer, that the purpose of the requirement was to ensure D.C.'s safety from harassment in the restroom. Thus, *Currier*, *Dwares*, and *Freeman* do not support the conclusion that, based on the allegations in this complaint, Lee or Brent acted affirmatively. Accordingly, Callaway fails to plausibly allege that Lee or Brent violated a constitutional right, which means they are entitled to qualified immunity. *See Luethje*, 131 F.4th at 1187.

Nor did the district court err when it dismissed the § 1983 claim against Lee and Brent with prejudice. “[D]ismissal with prejudice is appropriate where a complaint fails to state a claim . . . and granting leave to amend would be futile.” *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006). “A proposed amendment is futile if the complaint, as amended, would be subject to dismissal for any reason.” *Watson ex rel. Watson v. Beckel*, 242 F.3d 1237, 1239–40 (10th Cir. 2001). Callaway proposes amending her complaint to articulate Lee and Brent’s supervisory responsibilities within OPS. But such allegations would not cure the defect in the complaint because supervisory responsibilities are not a substitute for affirmative conduct. Thus, amendment would be futile, and the district court did not err when it dismissed the § 1983 claims against Lee and Brent with prejudice.³

II. Disability Discrimination

Callaway next objects to the district court’s ruling that she failed to plausibly allege OPS discriminated against D.C. in violation of the ADA and Rehabilitation Act. Under Title II of the ADA, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. The Rehabilitation Act similarly provides that “[n]o otherwise qualified individual with a disability . . . shall,

³ The absence of a constitutional violation means that Callaway’s § 1983 claim against OPS also fails. *See Crowson v. Washington County*, 983 F.3d 1166, 1186 (10th Cir. 2020) (noting § 1983 claim against municipality “cannot survive a determination that there has been no constitutional violation”).

solely by reason of [their] disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving [f]ederal financial assistance.” 29 U.S.C. § 794(a).

“We typically evaluate claims identically under the ADA and Rehabilitation Act.” *Crane v. Utah Dep’t of Corr.*, 15 F.4th 1296, 1312 (10th Cir. 2021). To state a claim under either statute, a plaintiff must allege that they were discriminated against because of their disability. *Id.* (ADA); *Cline v. Clinical Perfusion Sys., Inc.*, 92 F.4th 926, 932 (10th Cir. 2024) (Rehabilitation Act). Discrimination can include an entity’s failure to provide a reasonable accommodation. *J.V. v. Albuquerque Pub. Schs.*, 813 F.3d 1289, 1295 (10th Cir. 2016) (ADA); *Hampton v. Utah Dep’t of Corr.*, 87 F.4th 1183, 1191 (10th Cir. 2023) (Rehabilitation Act).

The purpose of a reasonable accommodation is to assure a disabled person’s “meaningful access” to an entity’s services, programs, or benefits. *Alexander v. Choate*, 469 U.S. 287, 301 (1985). For example, in *Chaffin v. Kansas State Fair Board*, we rejected the argument that wheelchair-bound plaintiffs’ physical presence at a state fair constituted meaningful access where plaintiffs were “effectively trapped in a handicapped section, unable to leave for food or to use the restroom, unable to view the stage, and subjected to being climbed over, stepped on, and bumped into by other attendees.” 348 F.3d 850, 857 (10th Cir. 2003), *overruled on other grounds as recognized by Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1167 n.4 (10th Cir. 2012). And in *Robertson v. Las Animas County Sheriff’s Department*, we found a genuine dispute of material fact over whether defendants

denied a deaf inmate meaningful access to a detention facility's services based on evidence that defendants knew plaintiff was deaf and needed an accommodation to call his attorney and participate in a hearing. 500 F.3d 1185, 1196–99 (10th Cir. 2007).

Building on these cases, Callaway contends that OPS deprived D.C. of meaningful access to the bathroom by not adequately staffing his class or providing him with his required aide. We disagree. Unlike the evidence in *Chaffin* and *Robertson*, the complaint does not show that D.C. was physically unable to use the restroom without adult supervision or the assistance of his aide. Put another way, there are no allegations that D.C. could not travel to the bathroom or use the toilet on his own. Although the complaint alleges that D.C. was sexually harassed in the bathroom because his aide was not present, Callaway's theory would require us to find a deprivation of "meaningful access" to an entity's facilities anytime an entity's action or inaction precedes private violence in an entity's facilities. Callaway does not provide authority for such a proposition. Accordingly, she fails to state a claim for disability discrimination against OPS.⁴

⁴ The parties dispute whether Callaway has plausibly alleged that any discrimination by OPS was intentional. Intentionality influences whether Callaway could recover compensatory damages under the Rehabilitation Act and, possibly, under the ADA. *See Havens v. Colo. Dep't of Corr.*, 897 F.3d 1250, 1263 (10th Cir. 2018) (noting plaintiff must establish intentional discrimination to recover compensatory damages under Rehabilitation Act); *A.J.T. ex rel. A.T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 605 U.S. 335, 344 (2025) (noting, but not deciding, that most circuits require plaintiff to show intentional discrimination to obtain compensatory damages under ADA and Rehabilitation Act); *Hans v. Bd. of Shawnee Cnty. Comm'rs*, 775 F. App'x 953, 956 (10th Cir. 2019) (unpublished) (agreeing with

Conclusion

The district court did not err in finding that Callaway fails to state a claim under § 1983, the ADA, or the Rehabilitation Act. Thus, we affirm the dismissal of her complaint.

Entered for the Court

Nancy L. Moritz
Circuit Judge

other circuits that plaintiffs “cannot recover compensatory damages under Title II of the ADA without establishing intentional discrimination”); *id.* at 962 (Phillips, J., concurring in part) (“Whether Title II plaintiffs must plead or prove intentional discrimination to obtain compensatory damages are still open questions in our circuit.”). We need not weigh in on this issue because we find that Callaway fails to state a discrimination claim under the ADA and Rehabilitation Act.