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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0646**

Jun Xiao,
Appellant,

vs.

Dr. Raquel Rodriguez, individually and in her official capacity, et al.,
Respondents.

**Filed May 6, 2019
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CV-16-12740

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Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant Dr. Jun Xiao appeals the dismissal of his contractual and constitutional claims against respondents Dr. Raquel Rodriguez, Dr. Todd Johnson, and Vice President Brooks Jackson. He argues that, because the district court had subject-matter jurisdiction

over the matter, his complaint included claims upon which relief could be granted, and respondents were not entitled to qualified immunity, the district court erred by dismissing his claims. We affirm.

FACTS

Appellant Dr. Jun Xiao is a graduate of the University of Minnesota (“UMN”) College of Pharmacy (“the program”). He enrolled in the program in 2009, was dismissed in 2013, and eventually completed the program at a later date. Appellant is a Chinese immigrant. He speaks with an accent, but passed the UMN’s English-proficiency exam. He has a disability that impacts his mood, energy, and ability to interact with others.

Appellant’s initial complaint stems from academic difficulties he experienced beginning in September of 2012, which led to his dismissal from the program. The following are the facts as alleged by appellant in his complaint, and recited, as alleged facts, by the district court.

Facts as alleged

Appellant earned a 3.1 grade-point average in the first three years of the program. In his final year, appellant was required to take eight courses, which were comprised of rotations, lasting five weeks or 200 hours, at different pharmacies and supervised by pharmacists or “preceptors.”

Appellant alleges several wrongdoings by the program’s faculty members. He claims that, at some point during his fourth year, he requested a course syllabus from Dr. Rodriguez. She did not provide him with one, or, when she did, she provided the syllabus for a different course. Further, during his rotations, appellant claims his preceptor,

Dr. Johnson, as well as two other preceptors, treated him in a disparate fashion because of his disabilities, national origin, and race.

Appellant alleges that, in August 2012, he asked Dr. Rodriguez and another professor to move him from the Medication History (PHAR 7126) class into the Leadership Administration class, because that class did not involve patient interaction. Appellant states that, despite his request, he was enrolled in the 7126 course anyway.

Appellant also alleges that, in August of 2012, one of his preceptors gave him a “C” grade at his midterm evaluation for 7126 without first consulting with his supervising pharmacist. As a result, appellant asked the supervising pharmacist to give him “good feedback.” This led, at least in part, to his ejection from the course for attempting to interfere with the supervising pharmacist’s evaluation of appellant’s work. Appellant claims he was never instructed how to interact as a pharmacist, so he should not have been punished for not having the skills that were to be acquired from taking the class. Appellant alleges other wrongdoings with regard to this course, including being placed at a hospital where he had already worked, which, therefore, did not provide him with a “diverse mixture of sites” for his rotations and that the course was an elective that UMN faculty treated as required, contrary to school policy.

Appellant claims that, on September 12, 2012, Dr. Rodriguez informed him that a patient had complained about him based on his “national dialect.” Appellant alleges that he was immediately removed from his Infusion (PHAR 7211) course and prohibited from completing it. At the time he was removed from the course, he had worked at the rotation location for about three-and-a-half days. Shortly after appellant’s removal, he requested

details regarding the patient's complaint. Appellant was told that he was removed from the course due to the affiliated pharmacy's concern that he had compromised patient safety, and that his removal was allowed under the affiliation agreement between the pharmacy and UMN. Appellant requested a copy of the affiliation agreement, but never received one.

Appellant claims that he requested further information regarding his ejection from the two courses, but did not receive these documents until more than a year after he requested them. Appellant asserts that this delay violated UMN policy and did not afford him due process. Further, appellant states that he paid over \$17,700 for three courses at the hospital pharmacy to which he was assigned and never received a refund for the 7126 course from which he was ejected or from the two courses he was allegedly prevented from taking. In total, appellant claims he had paid UMN more than \$163,000 for program-related tuition and expenses at the time of his dismissal from the program.

Appellant also alleges that he was removed from 7126 and 7211 without notice and given two "F" grades instead of "Incomplete" or "Withdrawn" grades. He claims this allowed UMN to keep his tuition instead of reimbursing him or reapplying the fees to other courses. Appellant states that UMN placed him on academic probation after he received the two failing grades. He insists that, because it was a violation of UMN policies to fail him, it was also a violation to place him on probation.

Appellant claims that respondents' actions violated his Fourteenth Amendment right to equal protection. Specifically, he alleges that non-disabled, American-born, non-minority students were given one to two extra weeks to complete their rotations, were given syllabi when requested, were allowed to access patients' medical records, were allowed to

treat the “Fagron Compounding” course as a 7211 course, and were allowed to graduate without taking a “patient care” elective. Appellant alleges that he was denied these opportunities.

Appellant alleges that, in December 2012, Dr. Rodriguez and appellant came to a written agreement regarding the “time and manner” in which he would complete courses qualifying as 7211 and 7126 and receive grades of “incomplete.” In January 2013, the Academic Standing Committee (“ASC”) informed appellant that, once he successfully completed the two courses, he would be removed from academic probation. Likewise, appellant alleges that Dr. Rodriguez told appellant that he would be “automatically” removed from academic probation once he passed 7126, which was scheduled to end on March 29, 2013. Appellant states that in February 2013, he received a grade of “A” in his 7211 course. However, he alleges the course was registered as 7213 in his enrollment, while it was registered as 7211 for other students. According to appellant, this was because all electives are the same. Appellant successfully passed 7126 on March 29, 2013.

In April 2013, appellant began Acute Care I (PHAR 7122) with Dr. Johnson as the preceptor. Appellant alleges that, on April 25, 2013, Dr. Johnson, in the presence of another student, held up appellant’s marked exam, called him “one of the worst students he has had in 35 or 36 years of teaching,” and accused appellant of unprofessional behavior. Additionally, Dr. Johnson, in front of others, allegedly accused appellant of cheating, forced appellant to acknowledge the accusation, and threatened to send appellant to a separate “small room.” Appellant alleges that Dr. Johnson’s behavior violated UMN’s policy to “be respectful, fair, and civil” and also discriminated against him because of his

disability. Appellant reported Dr. Johnson directly to UMN, rather than reporting the incident to Dr. Johnson's supervisor, Dr. Rodriguez. Appellant claims that his decision to bypass Dr. Rodriguez resulted in her initiating numerous retaliations against him.

Soon after these events, Dr. Johnson gave appellant a "D" for PHAR 7122. Appellant requested to be moved from Dr. Johnson's rotation. Dr. Rodriguez denied appellant's request and told him that if he did not remain with Dr. Johnson, appellant would need to go before the ASC and that Dr. Rodriguez would propose appellant's dismissal from the program. The next week, Dr. Johnson allegedly sent appellant two text messages instructing appellant to move out of his apartment and contacted appellant's landlord to discuss the same topic. He then allegedly went to appellant's apartment, confronted appellant in a parking lot, and ordered him to move out.

Appellant alleges that Dr. Rodriguez made false statements that adversely affected his enrollment in the program. He claims that, in May 2013, Dr. Rodriguez falsely informed UMN that appellant had "never repeated 7211" because "the three elective courses are treated substantially different." He alleges that Dr. Rodriguez's statement caused him to be kept on probation past March 29, 2013. In June 2013, appellant was allowed to briefly address the ASC regarding his potential dismissal from the program. At the hearing, and outside the presence of appellant, Dr. Rodriguez allegedly proposed that appellant be dismissed from the program. Consequently, according to appellant, he was dismissed from the program in June 2013.

On July 22, 2013, appellant filed his first internal complaint with UMN. Appellant alleged respondents violated university rules, policies, and established practices by

removing him from 7211 and 7126, issuing non-passing grades, improperly continuing his probation beyond March 29, 2013, and dismissing him from the pharmacy program. UMN upheld Dr. Rodriguez's finding that appellant never repeated the failed course.

On November 4, 2013, appellant requested extra time for completing rotations as a disability accommodation. His request was denied, and no UMN employees engaged appellant in "the interactive process."

On April 30, 2014, appellant filed a second internal complaint with UMN. He asserted that, because UMN violated its own rules, policies, and established practices, particularly in regard to its anti-racial discrimination measures, he was entitled to a tuition refund, monetary reimbursements, and an apology from respondents.

In September 2014, UMN held a nine-hour evidentiary hearing to address appellant's allegations. On October 8, 2014, the ASC found that UMN and its employees did not violate any rules, policies, or established practice in relation to appellant's enrollment or education. Appellant appealed the decision to UMN Vice President Brooks Jackson. Vice President Jackson reviewed the complaints and denied appellant's appeal.

District court procedural history

In August 2016, appellant filed a complaint in district court based on the same allegations presented to UMN. Respondents filed a motion to dismiss for failure to state a claim and lack of subject-matter jurisdiction. See Minn. R. Civ. P. 12.02(a), (e). The district court dismissed all claims except appellant's claim against respondents Rodriguez and Johnson for retaliation.

In November 2017, respondents filed a motion for summary judgement on the remaining retaliation claims. After a hearing, the district court granted respondents' summary-judgment motion, thus dismissing appellant's last remaining claim. Appellant appeals from the final judgment.

D E C I S I O N

I. The district court did not err in dismissing, for lack of subject-matter jurisdiction, appellant's state-law claims for breach of contract, unjust enrichment, and promissory estoppel.

Subject-matter jurisdiction refers to a court's authority to consider an action or issue a ruling that will decide the issues raised by the pleadings. *See Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 432 (Minn. App. 1995), *review denied* (Minn. May 31, 1995). Without subject-matter jurisdiction, a court must dismiss a claim. *See Tischer v. Hous. & Redev. Auth. of Cambridge*, 693 N.W.2d 426, 427 (Minn. 2005) (holding that the district court erred by failing to dismiss a claim for lack of subject-matter jurisdiction). Whether subject-matter jurisdiction exists presents an issue of law, which we review de novo. *Id.* at 428.

The district court concluded that it did not have subject-matter jurisdiction over appellant's state-law claims for breach of contract, unjust enrichment, and promissory estoppel. It ruled that the law required appellant to pursue these claims through a writ of certiorari to the court of appeals. It reasoned that appellant's claims implicated review of an administrative body's quasi-judicial decisions, which necessitated a deferential test, not a de novo review. The district court determined that the two complaints appellant brought before UMN contained the same claims that he brought in his complaint filed in district

court. We conclude that appellant's failure to appeal UMN's decision via a writ of certiorari is fatal to the state-law claims in the matter before us.

Absent "an adequate method of review or legal remedy, judicial review of the quasi-judicial decisions of administrative bodies, if available, must be invoked by writ of certiorari." *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992). "Because it mandates nonintrusive and expedient judicial review, certiorari is compatible with the maintenance of fundamental separation of power principles, and thus is a particularly appropriate method of limiting and coordinating judicial review of the quasi-judicial decisions of executive bodies." *Id.*

"If a writ of certiorari . . . is the exclusive method by which to challenge an [administrative body's] decision, then the district court lacks subject-matter jurisdiction to hear the case." *County of Washington v. City of Oak Park Heights*, 818 N.W.2d 533, 538 (Minn. 2012) (citation omitted); see *Shaw v. Bd. of Regents of Univ. of Minn.*, 594 N.W.2d 187, 190-92 (Minn. App. 1999) (holding that "[a] breach of contract claim based on a termination decision by the University of Minnesota is reviewed only on a writ of certiorari" and affirming the district court's determination that it lacked subject-matter jurisdiction to review the claim), *review denied* (Minn. July 28, 1999); see also *Maye v. Univ. of Minn.*, 615 N.W.2d 383, 385-87 (Minn. App. 2000) (affirming a district court's determination that it lacked subject-matter jurisdiction to review a breach-of-contract claim based on the university's failure to promote the appellant). A party must apply to the court of appeals for a writ of certiorari "within 60 days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby." Minn. Stat.

§ 606.01 (2018). And, when a litigant aggrieved by a quasi-judicial decision fails to obtain a timely writ of certiorari, that litigant is not entitled to review on the merits of the challenge by way of some other remedy. *See in re Occupational License of Haymes*, 444 N.W.2d 257, 259 (Minn. 1989) (reversing review on the merits of quasi-judicial decision because of failure to timely petition for writ of certiorari).

Appellant argues that, contrary to the district court's ruling, the court had subject-matter jurisdiction over the matter. He contends that the court had jurisdiction for several reasons: the complaint filed in district court alleged facts sufficient to establish a claim for breach of educational contract, the contractual violations were not substantially related to his dismissal from the program, the district court's review of the claims would not necessarily require a determination as to whether dismissal was appropriate, and that such a review would not result in a substantial intrusion or challenge to UMN's internal decision-making process.

We are not persuaded. The district court properly dismissed appellant's state-law claims for lack of subject-matter jurisdiction. The allegations made by appellant in his district court complaint, although he attempts to distinguish them, are substantially the same as the claims adjudicated by UMN.

Further, UMN's decision-making process was quasi-judicial in nature and, thus, necessitated certiorari review to maintain separation of powers principles. *See id.* Quasi-judicial actions include the following: "(1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim." *Minn. Ctr. for Env't Advocacy v. Metro. Council*,

587 N.W.2d 838, 842 (Minn. 1999). Appellant's UMN complaints highlighted factual allegations, disputed by respondents, which were then reviewed and weighed by an administrative panel. Appellant was represented by counsel, presented evidence, and cross-examined witnesses. The prescribed standard to which the facts were applied at the hearing were the rules, policies, and established practices of the program. The panel issued a decision, and appellant sought review. Vice President Jackson then reviewed the matter and issued a final, binding decision denying appellant's appeal.

Appellant's assertion that the district court's review of his claims would not result in an intrusion upon UMN's decision is without merit. The district court is not equipped to review the types of academic decisions appellant asserts could be reviewed, such as the program's choice of rotation locations, the tasks appellant was assigned on rotation, appellant's access to patients' medical records, or whether courses satisfied graduation requirements. *See Zinter v. Univ. of Minn.*, 799 N.W.2d 243, 246 (Minn. App. 2011) (concluding courts are not equipped to analyze the goals of a UMN degree program), *review denied* (Minn. Aug. 16, 2011).

Appellant further argues that the district court had subject-matter jurisdiction over his claims because it could grant certain monetary damages that UMN does not have the authority to award. This distinction does not extinguish the policy concern that a district court should not be conducting a de novo review of issues already adjudicated before an administrative body through a quasi-judicial proceeding. We, therefore, discern no error by the district court in dismissing appellant's state-law claims for lack of subject-matter jurisdiction.

II. The district court did not err in dismissing appellant’s 42 U.S.C. § 1983 Fourteenth Amendment equal-protection claims for failure to state a claim upon which relief could be granted.

The United States and the Minnesota Constitutions guarantee citizens equal protection of the laws. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 2. 42 U.S.C. § 1983 (2018) provides a private right of action for violations of constitutional provisions, including the Equal Protection Clause, and a party bringing a section 1983 claim may seek monetary damages for violations of their constitutional rights. An equal-protection challenge requires an initial showing by the plaintiff that “similarly situated persons have been treated differently.” *State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011) (quotation omitted). In determining whether two groups are similarly situated, we focus on “whether they are alike in all relevant respects.” *Id.* at 522. Appellate courts routinely reject equal-protection claims of parties who fail to establish that they are similarly situated to those from whom they contend to be treated differently. *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 656 (Minn. 2012).

A complaint must “contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought.” Minn. R. Civ. P. 8.01. A party may move to dismiss a complaint for failure to state a claim upon which relief can be granted. *See* Minn. R. Civ. P. 12.02(e). “We review de novo whether a complaint sets forth a legally sufficient claim for relief.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). We must accept the allegations contained in the complaint as true; whether the plaintiff can prove the alleged facts is immaterial to our analysis. *See Elzie v. Comm’r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980). We will not uphold a

dismissal “if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.” *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739-40 (Minn. 2000) (quotation omitted).

The district court concluded that there was an insufficient basis for an equal-protection claim. The district court ruled that appellant had not alleged a direct motive of discrimination, failed to identify similarly situated persons who received accommodations or passing grades that he did not receive, and did not provide precise descriptions of facts explaining how non-disabled and non-minority students were treated more favorably. The district court’s conclusion was not error.

Appellant disputes that he failed to allege sufficient facts to sustain his equal-protection claim. Appellant points to allegations from his complaint of Caucasian students being treated favorably. For example, the complaint alleged that appellant was not given extra training on patient interaction when compared to other students, was denied access to patient profiles while white students’ access was not similarly barred, was not given a course schedule while white students received those materials, and was required to take a “patient care” elective while other students were not. Appellant’s argument, however, does not adequately address the district court’s conclusion that the allegations are too vague and do not identify how the students in question were similarly situated to himself.

Our review of the complaint is consistent with the district court’s ruling. Appellant failed to sufficiently allege that other students treated more favorably were similarly situated to appellant and alike in all relevant ways. Therefore, the district court did not err in dismissing appellant’s equal-protection claims pursuant to Minn. R. Civ. P. 12.02(e).

III. The district court did not err in dismissing appellant's 42 U.S.C. § 1983 Fourteenth Amendment due-process claims for failure to state a claim upon which relief can be granted.

Appellant argues the district court's dismissal of his due-process claims was error because his complaint sufficiently alleged that he was deprived of both a property and liberty interest. The state cannot "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1; *see also* Minn. Const. art. I, § 7. However, the United States Supreme Court has held that "far less stringent procedural requirements" are necessary "in the case of an academic dismissal." *Bd. Of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 86, 98 S. Ct. 948, 953 (1978).

The district court determined that appellant failed to plead facts sufficient to support a section 1983 due-process claim because he was afforded more than the prescribed constitutional procedures require. We agree.

A. Property interest

Appellant concedes that, to show he was deprived of a property interest, he must establish that UMN failed to provide him with written notice and an opportunity to be heard prior to taking adverse action against him. However, he contends that he was deprived of a property interest because he did not receive notice of his removal from two courses or notice of receiving failing grades. Appellant cites to no authority that qualifies these actions as depriving him of a property interest and consequently deserving of due-process protections.

Regarding his dismissal, appellant was provided with notice, was represented by counsel, was allowed to present evidence and cross-examine witnesses, and was allowed a

nine-hour hearing prior to being dismissed from the program. This was sufficient due process to protect appellant's constitutional rights. Therefore, the district court did not err in ruling that appellant failed to state a claim upon which relief can be granted.

B. Liberty interest

Appellant cites *Greenhill v. Bailey*, 519 F.2d 5 (8th Cir. 1975) to support the proposition that students attending public universities have a protected liberty interest in their good name and reputation—both of which, according to appellant, he was deprived. He alleges that both Dr. Johnson and Dr. Rodriguez made several false statements about him. Specifically, he alleges that Dr. Johnson falsely accused him of cheating and taking a patient profile without permission. He alleges that Dr. Rodriguez falsely stated that he had “never repeated 7211,” that failed rotations were placed “at the end of all scheduled rotation[s],” and that appellant needed to complete a “patient care” elective in order to be removed from academic probation.

As an initial matter, *Greenhill* is not controlling as it predates *Horowitz*. Additionally, *Greenhill*'s holding does not support appellant's due-process claim. 519 F.2d at 8. The *Greenhill* court held that the plaintiff, who had been dismissed from medical school, without the opportunity to be heard, was entitled to an administrative hearing based on the broad and damaging dissemination of information denigrating his academic ability. *Id.* at 7-8. The *Greenhill* court cautioned, however, that most academic dismissals do not require more than “an informal give-and-take,” between the student and the administration, and that “trial-type procedures” should be reserved for only particular circumstances. *Id.* at 8-9. Appellant's circumstances are distinguishable from *Greenhill*, and, further, the

amount of due process appellant received, including a lengthy evidentiary hearing before an administrative panel, was sufficient under *Horowitz*. See 435 U.S. at 86, 98 S. Ct. at 953; 519 F.2d at 8-9. We, therefore, conclude that the district court did not err in dismissing, pursuant to Minn. R. Civ. P. 12.02(e), appellant's due-process claims.

IV. The district court did not err in dismissing appellant's 42 U.S.C. § 1983 First Amendment retaliation claims.

Appellant argues that the district court erred in dismissing his retaliation claims. To successfully establish a prima facie case of retaliation under the First Amendment, plaintiffs must demonstrate that (1) they engaged in statutorily protected conduct; (2) the defendant committed an adverse action; and (3) a causal connection exists between the two. *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 444 (Minn. 1983).

A. Vice President Jackson

Appellant argues that Vice President Jackson's denial of his administrative appeal was retaliatory in nature. Specifically, appellant alleged, in his district court complaint, that Vice President Jackson issued his decision on appellant's appeal past the 30-day deadline provided by UMN policies and that this delay demonstrated a conspiracy to prevent appellant's complaint from reaching the next level of the UMN administrative process.

Rejecting appellant's allegations, the district court determined that he had not pleaded sufficient facts to implicate Vice President Jackson in a retaliation claim. The district court's rationale was that there were insufficient allegations that Vice President Jackson acted adversely toward appellant, beyond denying his appeal on its merits. The

district court reasoned that, if such allegations were enough to support a retaliation claim, then any student who appealed UMN decisions would have a retaliation claim. Because appellant failed to allege that Vice President's adverse action was malicious in nature, or outside the purview of his duties as vice president, the district court concluded that qualified immunity was a bar to appellant's claim against him. We agree.

Qualified immunity is intended to shield, in certain circumstances, government officials from liability and the burdens of litigating a section 1983 claim for damages. *Robbins v. Becker*, 794 F.3d 988, 993 (8th Cir. 2015). "State officials are entitled to qualified immunity when 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Elec. Fetus Co., Inc., v. City of Duluth*, 547 N.W.2d 448, 452 (Minn. App. 1996) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982)), *review denied* (Minn. Aug. 6, 1996). A clearly established right is one that is "sufficiently clear [so] that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 3039 (1987). We review the applicability of immunity *de novo*. *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599 (Minn. 2016).

The "allegations in a complaint *may* provide the basis for denying an immunity defense." *Gleason v. Metro. Council Transit Operations*, 563 N.W.2d 309, 318 (Minn. App. 1997) (emphasis in original), *aff'd in part*, 582 N.W.2d 216 (Minn. 1998). Cases implicating immunity, however, are subject to a somewhat heightened pleading standard. *See Elwood v. Rice Cty.*, 423 N.W.2d 671, 676 (Minn. 1988). That is, plaintiffs "should supply in their complaints or other supporting materials greater factual specificity and

particularity than is usually required.” *Id.* (quotation omitted). And, immunity should be determined “at the earliest possible stage to shield officers from disruptive effects of broad-ranging discovery and effects of litigation.” *Id.* at 675.

On appeal, we “need not consider the correctness of the plaintiff’s version of the facts, nor even determine whether the plaintiff’s allegations actually state a claim.” *Mitchell v. Forsyth*, 472 U.S. 511, 528, 105 S. Ct. 2806, 2816 (1985). Rather, we must merely decide “whether the legal norms allegedly violated by the defendant were clearly established at the time of the challenged actions.” *Id.*

Taking appellant’s allegations as true, Vice President Jackson’s alleged delay in the decision-making process does not imply impropriety on a level that would implicate him in retaliation against appellant or bar him from qualified immunity. The relevant portions of appellant’s complaint do not raise these theories of impropriety, and the record does not support such an implication. As such, the district court did not err in dismissing appellant’s retaliation claim against Vice President Jackson.

B. Dr. Johnson and Dr. Rodriguez

Appellant also argues that the conduct of Dr. Johnson and Dr. Rodriguez was retaliatory in nature. In his district court complaint, appellant alleged that respondents retaliated against him after he took the protected action of filing a complaint against Dr. Johnson without first bringing the matter to Dr. Rodriguez. Appellant claims that respondents’ retaliatory actions included issuing him poor grades, advocating for his dismissal from the program, accusing him of cheating, ridiculing him in front of a peer, and attempting to force him to move out of his apartment.

The district court concluded that appellant had alleged enough facts that, if true, could potentially support a retaliation claim against Dr. Johnson and Dr. Rodriguez. Accordingly, the court denied their motion to dismiss and allowed the parties to proceed with discovery. Approximately one year later, however, the district court concluded that, “[w]hile some of [respondents’] conduct was questionable, there [were] no pliable facts establishing a retaliatory animus.” Thus, the district court granted respondents’ motion for summary judgment.

Summary judgment is appropriate when “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. No genuine issue for trial exists “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (alteration in original) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)). A party moving for summary judgment may support the motion by “citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials.” Minn. R. Civ. P. 56.03(a)(1).

“The test for qualified immunity at the summary judgment stage is an objective one.” *Elec. Fetus*, 547 N.W.2d at 452 (quotation omitted). “The district court’s function on a motion for summary judgment is not to decide issues of fact, but solely to determine whether genuine factual issues exist.” *DLH*, 566 N.W.2d at 70. As such, “a court deciding a summary-judgment motion must not make factual findings or credibility determinations

or otherwise weigh evidence relevant to disputed facts.” *Geist-Miller v. Mitchell*, 783 N.W.2d 197, 201 (Minn. App. 2010).

On appeal, we review de novo a district court’s summary-judgment decision. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). “In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Id.* We “must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

The district court properly granted respondents’ summary-judgment motion, concluding that there were no genuine issues of material fact and respondents were entitled to qualified-immunity protection. In support of its decision, the court determined that (1) appellant was unable to demonstrate that respondents deprived him of a constitutional right and (2) the constitutional right was not clearly established at the time of the alleged violation. *See Elec. Fetus*, 547 N.W.2d at 452. The district court reasoned that, while appellant made allegations of “questionable conduct” by respondents, the alleged actions took place either before appellant’s protected activity or the conduct was not of a type and quality definitive of a retaliatory animus. We agree.

Appellant filed with UMN an internal complaint against Dr. Johnson on April 26, 2013. The record shows that the complaint was not discussed with Dr. Johnson until on or about April 30, 2013, when Dr. Rodriquez relayed the allegations to him. Viewing the facts in the light most favorable to the nonmoving party, Dr. Johnson’s alleged conduct of accusing appellant of cheating and ridiculing him in front of peers would have occurred

before Dr. Johnson was made aware of appellant's complaint. Therefore, appellant's evidence of these claimed adverse events do not show actions that were taken during the pendency of his protected actions.

Dr. Johnson's issuance of poor grades to appellant do not support a retaliation claim either. Appellant received a grade of "D" from Dr. Johnson on May 3, 2013, the day grades were due, and there is no evidence in the record that this grade was influenced by appellant's complaint. Appellant's own allegation that Dr. Johnson considered him to be "one of his worst students" indicates that appellant was, in fact, struggling academically before his complaint was filed. Nor do appellant's allegations that Dr. Johnson contacted appellant's landlord and spoke condescendingly to appellant in a parking lot support a retaliation claim, as neither action would chill a person of ordinary firmness from continuing to engage in a protected activity. *See Bernini v. City of St. Paul*, 665 F.3d 997, 1007 (8th Cir. 2012).

Similarly, appellant's evidence against Dr. Rodriguez does not support a retaliation claim. While Dr. Rodriguez was present for the hearing before the ASC, the record does not support the claim that she advocated for appellant's dismissal.

Additionally, appellant's "right to speak out" had not been "clearly established" at the time of the alleged retaliation. *See White v. Pauly*, 137 S. Ct. 548, 552 (2017) (reiterating the "longstanding principle that clearly established law should not be defined at a high level of generality") (quotations omitted). To show that a right is "clearly established," a plaintiff must identify a case where state officials, acting under similar circumstances, were held to have violated the right at issue. *See id.* at 552. Appellant has

not met this burden. Instead of identifying a case in which state officials, acting under similar circumstances, were held to violate First Amendment rights through retaliation, he points to a Fourth Amendment case regarding an arrest and a claim regarding excessive force and retaliation in the prison system.

In sum, the district court did not err in granting summary judgment on appellant's First Amendment retaliation claims against Dr. Johnson and Dr. Rodriguez. There were no genuine issues of material fact, and both respondents were entitled to qualified-immunity protection.

Affirmed.