No. 22-1441

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ALYSSA REID,

Plaintiff – Appellant,

v.

JAMES MADISON UNIVERSITY, *et al.*

Defendants – Appellees.

On Appeal from the United States District Court
for the Western District of Virginia, Case No. 5:21-cv-32-EKD
The Hon. Elizabeth K. Dillon, District Judge

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INTRODUCTION

Alyssa Reid, a former faculty member at James Madison University, sued the University more than two years after her supervising Dean found that she had violated University policy by having a sexual relationship with a student. She argues that her claims regarding alleged defects in the University's disciplinary procedures accrued not when she received the Dean's decision, but only after the resolution of an optional administrative appeal some two months later.

The district court correctly rejected that argument. Reid's alleged injuries occurred during the Title IX investigation and initial hearing, and she was on notice of them no later than when the Dean found her responsible for violating University policy. Her claims accrued upon receipt of that notice, and the two-year statute of limitations began to run before her administrative appeal concluded. *Del. State Coll. v. Ricks*, 449 U.S. 250, 258 (1980). Reid claims that the Dean's decision was no more than a tentative "recommendation," Br. 27, but the record contradicts this assertion. The Dean made an official finding that Reid's "relationship was inappropriate and its conduct violates the JMU policy." JA 204. His "recommendations" went only to the sanctions for that misconduct, which

Reid did not challenge. The Court should affirm the dismissal of Reid's untimely claims.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over Reid's federal civil rights claims pursuant to 28 U.S.C. § 1331. The district court dismissed Reid's suit in a final order on March 29, 2022. JA 233. Reid timely filed a notice of appeal on April 22, 2022. JA 234. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Whether the statute of limitations on Reid's claims commenced when she had notice of her injuries from an allegedly deficient Title IX disciplinary proceeding or after the conclusion of a nonmandatory administrative appeal from that proceeding.

STATEMENT OF THE CASE

Alyssa Reid worked at James Madison University (JMU or the University) as the Assistant Director for Individual Events in the JMU School of Communication Studies from 2012 until her resignation in 2019. JA 7–8, 222. Reid's job responsibilities included teaching courses and managing JMU's forensic competition team. JA 47. Reid met

Kathryn Lese[1] when Reid was the instructor of an undergraduate course in which Lese was a student, and the two became "'best friends' by the time [Lese] graduated from JMU in 2014, spending a substantial amount of time together both personally and professionally." JA 48.

After Lese completed her undergraduate studies, she remained at the University as a graduate student. JA 48. Lese also continued as a member of the "Individual Events Team" that Reid helped to manage. On an out-of-state trip for a forensics tournament in October 2015, Reid and Lese drank alcohol together in a hotel room and discussed Lese's sexuality and her romantic interest in Reid. JA 49–50. A month later, in November 2015, Reid and Lese engaged in sexual conduct while attending a school-related conference in Las Vegas. JA 50. Following this sexual encounter, they began an exclusive relationship. JA 51–52. Reid sought to keep the relationship "quiet," JA 204, and "concealed the relationship from supervisors for fear it would appear predatory." JA 193. In May 2016, Lese completed her graduate degree at JMU. The University hired

[1] JMU does not ordinarily disclose the names of sexual misconduct complainants out of respect for their privacy. Because the district court's opinion, the appellant's brief, and the record publicly refer to Lese by name, however, and in order to avoid confusion, JMU will do the same.

her as an employee a month later. JA 51. Reid and Lese remained in a relationship until February 2018. JA 52.

On December 4, 2018, Lese filed a Title IX complaint against Reid. Lese complained that Reid pursued Lese romantically while Lese was a graduate student, and that their sexual relationship began during a school-sponsored event. JA 54–55. Lese further alleged that Reid insisted that Lese keep their relationship secret so that Reid would not incur negative professional consequences due to the "problematic . . . power dynamics of the student-to-faculty relationship." *Ibid.*

On December 13, 2018, Amy Sirocky-Meck, JMU's Title IX coordinator, emailed Reid and informed her of Lese's complaint. JA 56. Sirocky-Meck's email informed Reid that Lese had alleged that Reid violated JMU Policy 1340, because they were involved in a sexual relationship in 2015, when Lese was a graduate teaching assistant with the Individual Events Team and Reid was Assistant Director. JA 187 (Sirocky-Meck email); JA 157 (Policy 1340). Sirocky-Meck told Reid that an investigation was being opened, and asked to meet with Reid to "explain [her] rights, the process, provide information about resources, answer questions . . . and discuss any interim measures." JA 188.

Sirocky-Meck investigated Lese's claims, including by interviewing witnesses identified by both Reid and Lese. JA 60. On January 3, 2019, JMU placed Reid on administrative leave while the investigation continued. JA 62. On March 13, 2019, Reid received an email from her immediate supervisor, Eric Fife, informing her that she was "no longer being considered for the Director of Individual Events position." JA 191. Also on March 13, 2019, Sirocky-Meck notified Reid of the date of the hearing and that she could participate with a support person. JA 60.

A panel of three JMU faculty members held a hearing on Lese's complaint on March 28, 2019. JA 64. The panel, "[u]pon deliberation" and "based on the evidence submitted in the case file and during the hearing, using a preponderance of the evidence standard," found Reid "responsible" for a "non-consensual relationship" with Lese. JA 193 (panel findings and recommendations). The panel noted that the relationship was considered non-consensual "because [Reid] supervised [Lese] as a graduate assistant," and had power over Lese to confer "educational benefits." *Ibid.* The panel also noted Reid's testimony that she had "concealed the relationship . . . for fear it would appear predatory." *Ibid.*

The panel's report on its findings, which was dated April 1, 2019, stated that "[t]he AVP, Dean, or VP over the Responding Party [Reid] will determine the final outcomes [*sic*] of the case. The respondent's AVP, Dean or VP may adopt the recommendation of the hearing panel, reject them [*sic*] and make a different decision on the case, or modify them as he/she deems appropriate." JA 194. The panel recommended "[a] reprimand" as the appropriate sanction, rather than a more severe penalty, because "[t]he Respondent's testimony included several examples of professional consequences that she has already suffered due to the complaint" and "[s]he is a low risk for repeating the behavior." JA 194. At some point after the panel issued its report, and before the Dean's decision, Reid resigned from JMU. See JA 191, 204, 222.

Dean Robert Aguirre reviewed the panel's findings and issued his "[w]ritten [d]ecision" on April 30, 2019. The "decision" stated that "[a]fter a thorough review of the evidence . . . I find for the complainant." JA 204. It held that "[t]he relationship was inappropriate and its conduct violates the JMU policy." *Id.* The decision noted that "[b]oth [Lese] and [Reid] agree there was a sexual relationship and that there was a power differential, as [Lese] was a student and [Reid] was in a position of authority."

Ibid. The decision further found that "[i]t was also clear that after the relationship began, [Reid] sought to keep it quiet, and that after it went sour, [Lese] was the object of verbal abuse and retaliation from [Reid]." *Ibid.* Under the heading "Sanction Recommendations," the Dean "suggested" the lightest available sanction, that "[a] letter of reprimand should be placed in [Reid]'s file," "in light of [Reid's] having already left the university for other employment." JA 205.

JMU's administrative appeal process provided that "[e]ither party may appeal the decision of the respondent's . . . dean by submitting a written appeal to the vice president over the . . . dean within five days of the decision." JA 175 (Policy 1340). The only permissible grounds for appeal were "a violation of due process, newly discovered evidence, and the harshness of the sanctions." *Ibid.*

Reid submitted an administrative appeal under this process. Reid's appeal "[did] not present any newly discovered evidence for consideration," nor did it challenge the sanction imposed by Dean Aguirre. JA 198 (June 19, 2019 letter from Provost Heather Coltman). Rather, Reid raised "a number of concerns" related to due process, including that she was allegedly "not informed of the charges against [her]," that "[her]

witnesses were interviewed before [she] knew of the charges," that "the university sanctioned [her] prior to the outcome of the hearing" by placing her on administrative leave, and that "[she] was not given adequate access to counseling service or legal counsel." JA 198–199. In a letter dated June 19, 2019, Provost Coltman rejected Reid's arguments, concluding that Reid was informed of the charges against her, that witnesses were not interviewed until after Reid had been informed of the charges, that JMU policy expressly permitted administrative leave as a temporary interim measure, and that JMU informed her "of the opportunity to have a support person, who could have been an attorney of [Reid's] choosing." JA 199. The Provost noted that the other issues Reid raised were "matters outside the scope of this appeal," which was "limited to allegations that your due process rights were violated." JA 200. "[A]fter a thorough review of the record," the Provost declined to disturb "the dean's final decision." *Ibid.*

Reid sued JMU and several other defendants[2] in federal court on May 3, 2021, JA 7, 224, alleging Fourteenth Amendment due process

[2] In addition to JMU itself, Reid sued JMU President Jonathan Alger, Provost Coltman, Dean Aguirre, and Sirocky-Meck, the Title IX

claims under 42 U.S.C. § 1983 and a claim under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681. JA 74–103. Reid's complaint sought damages, injunctive relief, and attorneys' fees. JA 117–20.

Appellees moved to dismiss Reid's complaint, contending, among other things, that Reid's claims were untimely, that defendants were entitled to sovereign immunity and qualified immunity, and that Reid had failed to state a claim. Dkt. No. 10, No. 5:21-cv-32 (EKD) (W.D. Va. filed June 2, 2021) (memorandum in support of motion to dismiss). The district court dismissed Reid's claims against Appellees as untimely, and therefore did not consider the other issues raised in the motion to dismiss. JA 213.

The court concluded that the "claims are subject to a two-year statute of limitations" borrowed from Virginia law, and that "the time of accrual is governed by federal law." JA 224. The court held that the claims accrued "in April 2019," when Reid received Dean Aguirre's "final

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coordinator, all in their official and individual capacities. See JA 7 (complaint). She also sued the U.S. Department of Education and Secretary of Education Miguel Cardona, in his official capacity, on claims involving the Department's interpretation of Title IX. *Ibid.* Reid withdrew a breach-of-contract claim against Appellees, JA 212, and does not appeal the district court's dismissal for lack of standing of her claims against the federal defendants. JA 213.

decision" in the Title IX proceeding, not in June 2019, when Reid received Provost Coltman's letter rejecting her appeal. JA 223–27. The court explained that "[u]nder federal law a cause of action accrues when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action." JA 224 (quoting *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951, 955 (4th Cir. 1995) (en banc)). Further, "[t]he proper focus is upon the time of the discriminatory acts, not upon the time at which the consequences of the acts became most painful." JA 224 (quoting *Del. State Coll. v. Ricks*, 449 U.S. 250, 258 (1980)). Here, "JMU made clear that Dean Aguirre's decision on April 30, 2019, was the final decision, even though Reid had the right to appeal that decision." JA 226. "[T]he grievance or appeals process does not extend the date of accrual," and accordingly Reid's "claims are time-barred." JA 227. Reid then appealed to this Court.

STANDARD OF REVIEW

This Court reviews a district court's decision granting a motion to dismiss *de novo*, applying the same standards as the district court. *Krueger v. Angelos*, 26 F.4th 212, 215 n.1 (4th Cir. 2022). A claim should be dismissed as time-barred when its untimeliness appears on the face of

the complaint. *Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007); *Dean v. Pilgrim's Price Corp.*, 395 F.3d 471, 474 (4th Cir. 2005). In ruling on a motion to dismiss, the Court may consider documents attached to or incorporated into the complaint. *Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 606 (4th Cir. 2015).

SUMMARY OF ARGUMENT

The limitations period began to run when Reid knew, or had reason to know, that she had been injured by JMU's allegedly deficient Title IX procedures. Reid knew all the facts establishing her causes of action, at the latest, when she received Dean Aguirre's decision holding her responsible for violating JMU's sexual misconduct policy. Because that occurred more than two years before Reid filed suit, the district court correctly held that her claims are time-barred.

Reid argues that her claims did not accrue until Provost Coltman rejected Reid's administrative appeal, because the Dean's decision was not "final." But that argument is contrary to a long line of cases holding that a civil rights claim accrues when the alleged discrimination occurs, not when all administrative appeal processes have concluded. As the Supreme Court has held, "[t]he existence of careful procedures to assure

fairness in the [employment] decision should not obscure the principle that limitations periods normally commence when the employer's decision is made." *Del. State Coll. v. Ricks*, 449 U.S. 250, 261 (1980). Reid's contention that Dean Aguirre's ruling was merely a "recommendation" is contrary to the record, which demonstrates that it was an official position that Reid had violated University policy and engaged in misconduct.

Reid's contrary view depends entirely on a single out-of-circuit case, *J. Endres v. Northeast Ohio Medical University*, 938 F.3d 281, 296 (6th Cir. 2019). But as the district court held, *Endres* is not persuasive here because the initial determination in that case was remanded to consider different evidence, and the school's decision was not "final" until the second evidentiary hearing concluded. Here, by contrast, Reid's appeal was highly limited and did not require a new evidentiary hearing. The mere possibility that the Provost could have reversed the Dean's ruling on appeal does not mean that the Dean's decision was "tentative." *Ricks*, 449 U.S. at 261.

Finally, the Court should decline to consider Reid's remaining arguments regarding sovereign immunity and whether her complaint

stated a claim. Those arguments are irrelevant given that her complaint is untimely, and the district court never reached those issues below.

ARGUMENT

I. Reid's claims are untimely because they accrued no later than when Reid received Dean Aguirre's decision against her

A. Reid's claims accrued no later than the date she received Dean Aguirre's decision

Neither Title IX nor Section 1983 contains a statute of limitations, so the limitations period is borrowed from state law. *Wilmink v. Kanawha Cnty. Bd. of Educ.*, 214 F. App'x 294, 296 n.3 (4th Cir. 2007) ("It is well-settled that 'the statute of limitations for a claim under 42 U.S.C. § 1983 is borrowed from state law'" and "every circuit to consider the issue has held that Title IX also borrows the relevant state's statute of limitations for personal injury." (quoting *Nasim v. Warden, Md House of Corr.*, 64 F.3d 951, 955 (4th Cir. 1995) (en banc); *Stanley v. Trustees of Cal. State Univ.*, 433 F.3d 1129, 1134 (9th Cir. 2006))).

The parties agree that the relevant limitations period for both claims is Virginia's two-year limitations period, see Va. Code § 8.01-243(A), and that Reid's claims are therefore untimely unless they accrued on or after May 3, 2019. See JA 120 (complaint filed May 3, 2021). Here, Reid's claims accrued, at the latest, by April 30, 2019, when Reid received

Dean Aguirre's written decision informing her that "[a]fter a thorough review of the evidence . . . I find for the complainant." JA 204. Because Reid's claims "accrued in April 2019," and she did not file her complaint until May 2021, more than two years later, "her claims are time-barred." JA 227.

The accrual of a Title IX or Section 1983 cause of action is governed by federal law. See *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 320 (4th Cir. 2006); *Nasim*, 64 F.3d at 955. "A federal cause of action accrues 'when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action.'" *Baldwin v. City of Greensboro*, 714 F.3d 828, 839 (4th Cir. 2013) (quoting *Battle v. Seibels Bruce Ins. Co.*, 288 F.3d 596, 604 (4th Cir. 2002)). In a Title IX discrimination case, this Court asks whether "the alleged facts, if true, raise a plausible inference that the university discriminated against [the plaintiff] on the basis of sex." *Sheppard v. Visitors of Virginia State Univ.*, 993 F.3d 230, 235 (4th Cir. 2021) (quoting *Doe v. Purdue Univ.*, 928 F.3d 652, 667 (7th Cir. 2019)). A due process claim requires "the deprivation by state action of a constitutionally protected interest in life, liberty, or property . . . without due process of law." *Kerr v. Marshall Univ. Bd. of*

Governors, 824 F.3d 62, 80 (4th Cir. 2016) (quoting *Zinermon v. Burch*, 494 U.S. 113, 125 (1990) (emphasis omitted)).

Here, Reid possessed all the necessary facts to plead both her Title IX claim and her due process claim well before she received Provost Coltman's letter denying her appeal. By the time Dean Aguirre issued his decision, Reid knew that JMU had found her "responsible" on the charge of a "Non-Consensual Relationship," because it found that her relationship with Lese was "inappropriate and . . . violates the JMU policy." JA 204. Dean Aguirre's written decision also made clear that the finding of responsibility was based on JMU Policy 1340. JA 204. The hearing panel's recommendation further notified Reid that the Dean's ruling "will determine the final outcome[] of the case." JA 194; see JA 200 (Provost Coltman letter referring to "the dean's final decision.").

For instance, Reid's complaint alleges that she was "forced to give up her dream job at JMU," and was "prohibited from even interviewing for the head coaching position at JMU," because the Title IX investigation and hearing occurred without due process or fair notice, "wreaking havoc on her career and destroying her personal reputation and ability to continue working for the University." JA 8–10. All of these alleged harms

occurred well before Provost Coltman's decision on Reid's administrative appeal. The alleged due process issues regarding notice and access to counsel occurred between December 2018 and March 2019, during the investigation and panel hearing. See pp. 4–6, *supra*. Reid was informed that she would not be considered for the Director of Individual Events position in March 2019. See p. 5, *supra*. And Reid resigned from JMU at some point in March or April 2019. See p. 6, *supra*. Thus, not only before the conclusion of her administrative appeal, but even before the Dean had adopted the panel's decision, Reid had already concluded that the Title IX procedure had injured her "good name, reputation, honor and integrity in such a manner as to have made it impossible for her to continue her employment with JMU." JA 84. Reid could have brought this action by the point that she received Dean Aguirre's decision, and the limitations period accordingly commenced no later than that day.

Indeed, Reid's appeal to Provost Coltman itself demonstrates that Reid was already aware of her alleged injuries. Reid's complaints to Provost Coltman that the Title IX proceeding was not conducted fairly closely parallel her claims in this lawsuit, demonstrating that she was already fully aware of those issues. Compare, *e.g.*, JA 68–85 (complaint count I,

alleging that JMU failed to inform Reid of the charges against her) and JA 102–103 (complaint count IV, alleging the same, as well as that JMU failed to provide Reid with an "advisor" and applied the wrong evidentiary standard), with JA 198–200 (same claims raised in appeal to Provost Coltman); see *Printup v. Dir., Ohio Dep't of Job & Family Servs.*, 654 Fed. App'x. 781, 787–88 (6th Cir. 2016); *Evans v. Vanderbilt Univ. Sch. of Med.*, No. 3:21-cv-439, 2022 WL 666971, at *7 (M.D. Tenn. Mar. 4, 2022); *J.H. v. Ohio Dep't of Job & Fam. Servs.*, No. 2:21-CV-206, 2021 WL 5240231, at *3 (S.D. Ohio Sept. 14, 2021) ("[T]he plaintiff's awareness of her injury was evidenced by seeking an administrative hearing to challenge her designation.").

As the Supreme Court has instructed, "the proper focus is upon the time of the [alleged] discriminatory acts." *Del. State Col. v. Ricks*, 449 U.S. 250, 258 (1980). Here, the alleged wrongful acts occurred during the Title IX investigation and hearing, and Reid was aware of all the facts underlying her causes of action no later than April 2019, when Dean Aguirre issued a decision finding that Reid had violated University policy. Because Reid's claims accrued, and she could have brought this

lawsuit, without waiting for the conclusion of her administrative appeal, her claims are untimely.

B. Reid's argument that her claims did not accrue until Provost Coltman rejected her appeal is incorrect

Reid's argument that her claims are timely because they did not accrue until Provost Coltman rejected her administrative appeal is incorrect. Reid asserts that "Dean Aguirre's determination was not the University's final decision—and thus it was not actionable until any appeal . . . was disposed of (or the time for filing an appeal had run)," Br. 24, but the accrual of Reid's federal claims depends only on when she "possesse[d] sufficient facts about the harm done to [her] that reasonable inquiry [would] reveal [her] cause of action." *Baldwin*, 714 F.3d at 839 (quoting *Battle*, 288 F.3d at 604). Here, that clearly occurred before her administrative appeal concluded. See pp. 15–17, *supra*.

Indeed, a wealth of precedent, including from the Supreme Court, has held that "the pendency of a grievance, or some other method of collateral review of an employment decision, does not toll the running of the limitations periods." *Ricks*, 449 U.S. at 261; see also *Int'l Union of Elec. Workers Loc. 790 v. Robbins & Myers, Inc.*, 429 U.S. 229, 236 (1976) (providing that filing of a union grievance does not toll the statute of

limitations for a Title VII discrimination claim). *Ricks* concerned a decision denying a professor tenure. The Supreme Court noted that "it could be contended that the Trustees' initial decision was only an expression of intent that did not become final until the grievance was denied," particularly given that the Trustees' decision letter "explicitly held out to Ricks the possibility that he would receive tenure if the Board sustained his grievance." *Ricks*, 449 U.S. at 260. The Supreme Court, however, rejected this position. The Trustees expressed an "official position" in their initial letter, and the fact that the college "indicated a willingness to change its prior decision if Ricks' grievance were found to be meritorious" did not demonstrate that the Trustees' letter was too "tentative" for the claim to accrue. *Id.* at 261. To the contrary, the Court explained that "the existence of careful procedures to assure fairness in the tenure decision should not obscure the principle that limitations periods normally commence when the employer's decision is made." *Ibid.*

This Court applied *Ricks* to hold that a discrimination claim accrued before the resolution of an internal appeal in *Mezu v. Morgan State University*, 367 F. App'x 385, 386 (4th Cir. 2010) (per curiam). There, the university denied the plaintiff a promotion to full professor, and at the

same time informed her that she had a right to appeal the denial. *Mezu*, 367 F. App'x at 387. The plaintiff appealed. *Ibid.* While the appeal was pending, the plaintiff filed a Title VII race-discrimination claim; that claim was filed outside of the statutory limitations period if her claim accrued when the university first notified her of the denial of her promotion, but was filed within the limitations period if her claim did not accrue until the resolution of the appeal. *Ibid.* This Court held that the plaintiff's claims were time-barred because "[t]he time the initial employment decision was made and communicated triggered the commencement of the limitations period despite the pendency of the internal appeal and the possibility of a reversal of the initial decision." *Id.* at 389 (citing *Ricks*, 449 U.S. at 261–62). Here, just as in *Ricks* and *Mezu*, Reid was fully on notice of the alleged discrimination and denial of due process when she received Dean Aguirre's decision informing her of the University's official position, even though she had a right to appeal it. Her pursuit of an appeal did not delay the accrual of her claims, despite the possibility that the appeal could have resulted in the reversal of Dean Aguirre's decision.

While *Ricks* and *Mezu* concerned Title VII claims, numerous courts have held that the same analysis governs claims challenging Title IX

procedures, and that a pending Title IX administrative appeal likewise does not toll or delay the accrual of a federal cause of action regarding the Title IX proceeding. See, *e.g.*, *Moore v. Temple Univ.*, 674 F. App'x 239, 241 (3d Cir. 2017) ("[Plaintiff's] claims concerning the non-renewal of her athletic scholarship accrued . . . when she received formal notice of the non-renewal, and thus these claims are untimely. [Plaintiff] filed a grievance to the Appeals Panel as to this decision, but because the grievance procedure here 'is a remedy for a prior decision, not an opportunity to influence that decision before it is made,' the grievance does not delay the accrual of the cause of action." (quoting *Ricks*, 449 U.S. at 261)); *Green v. Bastyr Univ., LLC*, 295 F. App'x 128, 129 (9th Cir. 2008) ("The district court properly dismissed [plaintiff's] action as untimely because the statute of limitations was not tolled while [plaintiff] pursued other remedies that he was not required to exhaust before filing suit against defendant."); *Marsh v. Univ. of N. Carolina at Wilmington*, No. 7:21-CV-189-BO, 2022 WL 3590322, at *4 (E.D.N.C. Aug. 22, 2022) ("Although there appears to be no binding authority on this issue, other courts have considered and rejected Title IX plaintiffs' arguments that the filing of an internal appeal should toll the limitations period."); *Doe v. Va.*

Polytechnic Inst. & State Univ., 400 F. Supp. 3d 479, 491 (W.D. Va. 2019) ("[T]he mere fact that there is an administrative appeal process does not negate the fact that the initial decision gives the plaintiff notice of his claim.").[3]

Reid relies almost entirely on the Sixth Circuit's decision in *J. Endres v. Northeast Ohio Medical University*, 938 F.3d 281, 296 (6th Cir. 2019), which she asserts is "nearly identical" to this case. Br. 29. But the district court was correct: *Endres* is inapposite. JA 225. In *Endres*, a

[3] See also *Doe v. Loyola Univ.*, No. CV 18-6880, 2020 WL 1030844, at *7 (E.D. La. Mar. 3, 2020) ("The focus is on when the plaintiff is aware of the injury . . . . This is so notwithstanding the availability of grievance procedures such as an opportunity to appeal the decision causing the injury; that is, claims must be filed within the prescriptive period from the date of notice of the original decision."); *Oirya v. Auburn Univ.*, No. 3:17-CV-681-WC, 2019 WL 4876705, at *14 (M.D. Ala. Oct. 2, 2019) ("[T]he statute of limitations on [plaintiff's] claims began to run on May 7, 2015, and Auburn's willingness to review that decision and allow him to reapply if ever submits documentation showing his eligibility to re-enter BYU does not convert any of his claims into a continuing tort."); *Tolliver v. Prairie View A&M, Univ.*, No. CV H-18-1192, 2018 WL 4701571, at *2 (S.D. Tex. Oct. 1, 2018) ("[Plaintiff's] claims were based on events that occurred in June 2015. He knew that he was expelled, the grounds, and the procedure that was followed. [Plaintiff's] request to overturn the expulsion did not delay the accrual of his claims arising from the expulsion."); *Mabie v. Harrisburg Area Cmty. Coll.*, No. CV 16-1969, 2017 WL 3724157, at *3 (E.D. Pa. Aug. 28, 2017) ("[Plaintiff's] claims accrued on March 17, 2014, and April 8, 2014, and his internal appeal and various complaints to HACC administrators did not delay the accrual of his claims or toll the limitations period.").

medical student appealed an administrative finding that he had cheated on a test, contending that "new evidence" demonstrated that a statistical analysis introduced at the initial hearing was incorrect. 938 F.3d at 290. The administrative appeals committee then "grant[ed] him a rehearing" before the administrative panel. *Ibid.* The panel then conducted a second evidentiary hearing, excluding the challenged statistical analysis, and again held that the student had cheated on the test. *Id.* at 291. The rehearing decision and remand "effectively gives the accused student another shot at proving his innocence. That is, the student gets another 'opportunity to influence [the] decision before it is made.'" *Id.* at 295 (quoting *Ricks*, 449 U.S. at 261); see JA 225. Because the administrative appeal required the panel to conduct a new evidentiary hearing and reconsider whether the plaintiff had committed misconduct, the Sixth Circuit held that the "alleged wrong giving rise to the claim—here, [the school's] dismissal decision," did not occur "until the second [hearing] panel voted to dismiss him." *Endres*, 938 F.3d at 295.

This Court should not adopt Reid's far broader interpretation of *Endres*, that a claim does not accrue until all administrative appeals have been exhausted and there is no longer any possibility that the initial

decision will be reversed. That position would be contrary to the Supreme Court's ruling in *Ricks*, which held that the claim accrued when the decision to deny tenure was made, despite the fact that the college would have "change[d] its prior decision if Ricks' grievance were found to be meritorious." 449 U.S. at 261. And it would also be contrary to the numerous cases holding that a pending administrative appeal does not affect when claims accrue. See pp. 20–22 & n.3, *supra*; see also *Printup*, 654 F. App'x at 788 ("[Plaintiff's] cause of action accrued and the statutory period began to run when she lost her job based on her designation by [defendants] as a child abuser without due process of law, not when the hearing officer issued his decision upholding that designation.").[4]

[4] Reid asserts that the mere possibility of a different outcome from an administrative appeal "necessarily means that no cause of action can accrue until the Provost renders a final decision," positing several "hypotheticals" involving rulings being modified or rejected during administrative appeals. Br. 34–35. But those hypotheticals—like *Endres*—demonstrate only that an administrative appeal can affect accrual when the administrative appeal itself gives rise to the claim, because it leads to a new proceeding or a different result. For instance, if the panel and Dean found that Reid had not violated University policy, but the Provost disagreed, then Reid would not have a cause of action until the Provost's decision. See Br. 35. Or if the Dean found that Reid violated University policy, and the Provost rejected that finding, then the Provost's decision would moot any cause of action. But here, Reid's administrative appeal had no effect on the Dean's decision and did not give rise to her claims. See pp. 7, 23–

Reid further contends that *Ricks* is inapposite because Dean Aguirre's ruling was no more than a "recommendation" that "does not 'make clear' that either the finding of responsibility or the sanction imposed is the University's 'official position.'" Br. 27, citing JA 205. This argument plainly misreads the ruling. The term "recommendation" applied only to the "sanction" to be imposed for Reid's misconduct. JA 205 (under "Sanction Recommendations," stating "[i]f the decision is Responsibility, the Dean/AVP also recommend sanctions."). As to the decision whether Reid had violated University policy, the Dean's ruling is clearly an official finding, *not* a "recommendation." The Dean's ruling states "I find for the complainant," and that "the relationship was inappropriate and its conduct violates the JMU policy." JA 204. There is nothing "tentative" about this language. *Ricks*, 449 U.S. at 261.[5]

24, *supra*. As *Ricks*, *Mezu*, and numerous other cases have held, the simple pendency of the administrative appeal does not delay accrual of her claims. See pp. 20–22 & n.3, *supra*.

[5] Reid also contends that the statement in JMU's rules that "in the absence of a timely written appeal, the decision of the respondent's associate or assistant vice president or dean is final" demonstrates that the decision is not final when an appeal is filed. See Br. 28 (quoting JA 175) (contending that the "decision of the Dean is final only '[i]n the absence of a timely written appeal'"). But JMU elsewhere made clear that the Dean's decision was considered "final." JA 194 (Dean's ruling "will

Here, Reid did not challenge the recommended sanction (which was the mildest available sanction, a reprimand), in either her administrative appeal or her complaint. See generally JA 7–120 (complaint); JA 198 ("The sanction imposed in this case was a reprimand and your appeal does not challenge this sanction."). Nor did Reid seek a remand for the panel to consider new evidence, and the Provost did not direct the Dean or the panel to hold a new hearing and re-consider their finding that Reid violated University policy. Compare *Endres*, 938 F.3d at 289. Accordingly, her claims accrued no later than the date Dean Aguirre issued his ruling. That ruling occurred more than two years before Reid filed her complaint. Because Reid's claims were untimely, the Court should affirm the district court's order of dismissal.

II. The Court should not consider Reid's remaining arguments, which were not decided below

Reid argues at length that her complaint adequately stated due process and Title IX claims and that sovereign immunity is no bar to her

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determine the final outcome[] of the case."); JA 200 (Provost Coltman letter referring to "the dean's final decision."). In any event, accrual does not turn upon the concept of "finality," nor upon some obscure technical distinction between "direct" and "collateral" administrative appeals, but rather whether Reid was on notice of the facts underlying her claim. See pp. 14–17, *supra*. Dean Aguirre's decision plainly placed Reid on notice.

claims. Br. 36–49. The Court need not, and should not, consider these arguments, because the district court dismissed Reid's claims against JMU and its officers *only* on the ground that they were time-barred. The district court therefore did not consider Defendants' alternative arguments below that Reid failed to state a claim and that sovereign immunity barred some of her claims, and this Court should not consider those arguments now. *Singleton v. Wulff*, 428 U.S. 106, 120 (1976) ("It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below."); *Goldfarb v. Mayor of Balt.*, 791 F.3d 500, 515 (4th Cir. 2015) ("declin[ing] to engage in . . . lengthy alternative analyses" of an argument that could otherwise allow this Court to affirm the district court decision but that the district court did not address); *Lovelace v. Lee*, 472 F.3d 174, 203 (4th Cir. 2006) ("[W]e are a court of review, not of first view." (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005))).

Because Reid's claims are time-barred, those arguments are irrelevant and there is no need for this Court to reach them. See *Outdoor Amusement Bus. Ass'n v. Dep't of Homeland Sec.*, 983 F.3d 671, 683–84 (4th Cir. 2020) (declining to answer a question of statutory interpretation

where "the challenge . . . is time-barred"). And in the event that the Court were to conclude that Reid's claims are not time-barred, the Court should remand for the district court to consider appellees' additional arguments for dismissal in the first instance. See *Smith v. Collins*, 964 F.3d 266, 292 (4th Cir. 2020); *Goldfarb*, 791 F.3d at 515.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's order dismissing Reid's claims.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) because it contains 6,087 words, excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century typeface.

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CERTIFICATE OF SERVICE

I certify that on September 19, 2022, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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