

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2796

ROGER SOLANO,
Appellant

v.

SLIPPERY ROCK UNIVERSITY OF PENNSYLVANIA; HOLLY MCCOY

On Appeal from the U.S. District Court, W.D. Pa.
Judge William S. Stickman, IV, No. 2:24-cv-01542

Before: BIBAS, MATEY, and BOVE, *Circuit Judges*
Submitted: Oct. 19, 2026; Filed: Oct. 21, 2026

NONPRECEDENTIAL OPINION*

BIBAS, *Circuit Judge*. Without discriminatory intent, criticism does not violate the civil-rights laws. Roger Solano is a professor who chairs the management and marketing department of the business school at Slippery Rock, a public university. He is a homosexual man and was born in Venezuela; his native language is Spanish.

Jeananne Nicholls is another professor in his department. She and Solano have a “strained relationship.” App. 35 ¶37. Nicholls frequently criticizes him and has filed many internal complaints about him. Once, she complained about the wording of his emails. She also filed internal and EEOC complaints (allegedly false) that Solano favored younger male faculty. After investigating, the university cleared him, and the EEOC closed out the matter. As a result of her campaign of criticism, he suffers from stress, depression, insomnia, anxiety, fatigue, and poor appetite.

*This is not an opinion of the full Court and, under 3d Cir. IOP 5.7, is not binding precedent.

In early 2024, Slippery Rock reorganized several units in the business school, creating a new management department. Solano was one of two candidates to chair the new department. But four hours before voting closed, the university cancelled the election. Eventually, Solano was chosen to chair the department. But the university transferred a three-professor unit out of his department, decreasing his responsibilities and income while increasing his teaching load.

Solano filed administrative complaints with the EEOC and Pennsylvania Human Relations Commission, alleging discrimination (including a hostile work environment) and retaliation based on his sex, sexual orientation, and national origin. Then he filed this lawsuit, raising the same claims under Title VII, Title IX, and the Pennsylvania Human Relations Act, as well as disability discrimination and failure to accommodate under the Americans with Disabilities Act and the Rehabilitation Act. The District Court dismissed his entire amended complaint. We review *de novo*, asking whether the complaint details “enough facts to state a claim to relief that is plausible on its face.” *Martinez v. UPMC Susquehanna*, 986 F.3d 261, 265 (3d Cir. 2021) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). It does not.

Solano’s evidence of intent to discriminate is insufficient. He reads one of Nichols’s critiques about how he had worded an email as a veiled attack on his English proficiency. But that bare-bones assertion is not enough to show intent to discriminate based on his national origin. He also cites her (allegedly false) complaint about favoring young male faculty, but that single grievance does not show animus based on his sex or sexual

orientation. And the university had to treat her complaint as protected activity and investigate it before finding it unfounded. In any event, even if Nicholls did harbor any bias, Solano offers no reason to believe that her bias was the proximate cause of the ultimate decisions. Plus, these two incidents fall well short of being severe or pervasive, as required for a hostile work environment. *Gabriel. v. DSM Biomedical, Inc.*, 187 F.4th 77, 81 (3d Cir. 2026). His subjective psychological suffering, though regrettable, does not make the stressful environment objectively intolerable. *Id.* He also asserts that similarly situated employees who were not members of his minority groups were treated differently, but he offers no specifics plausibly linking the university's actions to discriminatory intent. And because the evidence is insufficient to make out a viable PHRA claim against the university, Solano's PHRA claim against the director of human resources also fails.

Nor does Solano offer any evidence of retaliation. He objects that the university cancelled and rescheduled the election for department chair. But that happened well over two years after he first complained about Nicholls's criticisms. There is no reason to infer that the university did it to retaliate against him. And he eventually got the chair. He further argues that, after he was elected, he was bombarded with "baseless complaints" and constant surveillance. Appellant's Br. 25–26. But where you stand depends on where you sit: Nicholls's allegedly "baseless complaints" are charges ordinarily protected by statute. *See Slagle v. Cnty. of Clarion*, 435 F.3d 262, 268 (3d Cir. 2006). Solano cannot use the mantle of retaliation to punish the university when in fact Nicholls is the one who engaged in presumptively protected conduct.

Finally, Solano offers no evidence of disability discrimination or failure to accommodate. He argues that the university had a duty to raise the issue and volunteer an accommodation because it knew of his ADHD and mental-health problems. Not so. An employee must first ask for one. Occasionally, “[w]hen an employee’s need for accommodation is obvious from visible or known facts, an employer may need to construe even a vague remark generously and follow up.” *Hileman v. W. Penn. Allegheny Health Sys.*, 182 F.4th 283, 287 (3d Cir. 2026) (ADA and PHRA); *see also Chambers v. Sch. Dist. of Phila. Bd. of Educ.*, 587 F. 3d 176, 189 (3d Cir. 2009) (same standard for Rehabilitation Act). But most of the time, the employee must request an accommodation explicitly. Solano never did. And he never says what specific accommodation he needed and should have gotten. But the District Court should have granted him leave to amend, as it never found that doing so would be futile or inequitable. We will thus AFFIRM, modifying its dismissal to be without prejudice because the dismissal order did not conclude that amendment would be futile or inequitable.