

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

AMY PICKETT, Pro Se
Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER; BARBARA
CHERRY, individually and in her official
capacity as Department Chair of Leadership
Studies; and MICHAEL EVANS,
individually and in his official capacity as
Dean of School of Nursing,
Defendants.

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Civil Action No. 5:20-CV-00232-H-BQ

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO
DEFENDANTS’ MOTION TO DISMISS**

Plaintiff AMY PICKETT, *Pro Se*, Federal rights were violated as a student with a documented disability, ADHD, while attending Texas Tech University Health Sciences Center (TTUHSC) in 2018. ADHD is covered under both the Rehabilitation Act of 1973, section 504, and the Americans with Disabilities Act (ADA). Plaintiff was denied ADA accommodation needs by professors related to a qualified, and documented disability, and then retaliated against by Defendants being dismissed from school. Exhibit 1 and Exhibit 2 are illustrations of documentation, referred to as a “Letter of Accommodations” (LOA) received from the TTUHSC Office of Accommodations in Summer and Fall 2018 outlining and approving Plaintiff’s needs for accommodations in course studies. LOA states,

“Amy LeAnn Pickett is registered with my office and has provided sufficient evidence of a disability, which is covered by federal law (Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973 as amended).”

Plaintiff provided Exhibit 1 and Exhibit 2 to professors in Summer and Fall 2018 per academic policy and professors denied ADA accommodations, in which Plaintiff was entitled to, such as double time on an exam and PowerPoint presentations per LOA. Since Plaintiff's constitutional rights were violated by TTUHSC located in Lubbock, Texas, and Defendants are being represented by the Texas Attorney General, this case is filed within the correct Federal jurisdiction United States District Court for the Northern District of Texas Lubbock Division. As a punitive result of TTUHSC violating Plaintiffs constitutional rights, Defendants retaliated, discriminated, and dismissed Plaintiff abruptly from TTUHSC in December 2018, refer to Exhibit 4. Exhibit 3 outlines Plaintiffs academic achievement and success in DNP and Post-Master's FNP coursework before being discriminated against and unjustly dismissed from her academic studies, halting Plaintiffs nursing career path. Plaintiff is seeking a fair jury trial, and that this court grant equitable relief, monetary damages, and further relief as justice requires.

VENUE & JURISDICTION

As referenced in the complaint Paragraph 1-3, this Court has jurisdiction over the claims set forth in this action pursuant to 28 U.S.C. § 1331 (question of federal law) based upon 28 U.S.C. § 1343 (civil rights), as the claims are based upon 42 U.S.C. §§ 12101-12213, 29 U.S.C. § 701, *et seq.*, and 42 U.S.C. § 1983. Supplemental jurisdiction over my pendant state law claims are proper pursuant to 28 U.S.C. § 1367(a), as there exist claims arising out of the same transaction and occurrence as my federal claims. Venue in this jurisdiction is proper pursuant to 28 U.S.C. § 1391(b), as Defendants are in this District and the events giving rise to my claims occurred therein.

***VIOLATIONS OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12101, et seq., and SECTION 504 OF THE REHABILITATION ACT OF 1973, 29 U.S.C § 701, et seq.
(DISABILITY DISCRIMINATION)***

According to Title II of the Americans with Disabilities Act, TTUHSC, under color of law does not obtain immunity for violating constitutional rights of students who have an ADA disability. § 35.178 states,

“A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.”

As referenced in the complaint Paragraph 70-72, Title II of the American with Disabilities Act (ADA) states that, “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 ADA is a federal anti-discrimination statute designed to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. The Rehabilitation Act (RA) provides that, “No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” 29 U.S.C. § 794(a). TTUHSC receives federal financial assistance, as defined by 29 U.S.C. § 794, through receipt of federal financial aid and other funds, and is a public entity. As such, it is subject to the mandate of RA and ADA and may not discriminate against a person because of her disabilities.

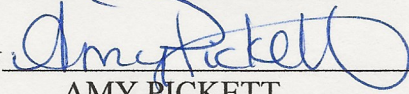
INCONCLUSION

For all reasons set forth above, Plaintiff, AMY PICKETT, respectfully requests that this

Court deny defendant's Motion to Dismiss Plaintiff's Original Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) in its entirety. Pursuant to Federal Rule of Civil Procedure 38(b), a jury trial is demanded moving forward for all issues in this matter.

Respectfully submitted,

DATED this 5th day of February 2021.

By 
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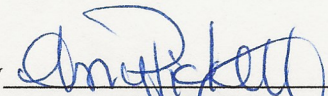
PLAINTIFF, PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served electronically through the Court's Electronic Case File Notification on this 5th day of February 2021, to:

/s/ Francesca A. Di Troia FRANCESCA A. DI TROIA
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