

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

AMY PICKETT,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
TEXAS TECH UNIVERSITY HEALTH	§	
SCIENCES CENTER; BARBARA	§	Civil Action No. 5:20-CV-00232-H-BQ
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,	§	
<i>Defendants.</i>	§	

TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER,
BARBARA CHERRY, & MICHAEL EVANS'S
REPLY IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS

ARGUMENTS & AUTHORITIES

1. Pickett Did Not Respond to Any of Defendants' Arguments.

Defendants presented legal authority in support of their arguments that Pickett failed to state any claims for which relief can be granted and that the court lacks subject-matter jurisdiction over some of her claims.¹ Pickett has not provided "contentions of fact and/or law, and arguments and authorities" to dispute the reasons why the claims against Defendants must be dismissed, as required by the Local Rules.² Rather, Pickett simply argues that she filed the lawsuit in the "correct Federal jurisdiction" and then copies the language of the ADA and RA.³

¹ Dkt. 12.

² Dkt. 13; Local Rule 7.1(d).

³ Dkt. 13 at pg. 3.

As discussed in Defendants’ Motion to Dismiss and reincorporated herein, Pickett fails to state a claim under the ADA and RA for discrimination, fails to allege any due process violations, and her claims are barred by qualified immunity and sovereign immunity.⁴ Pickett’s Complaint fails to “plead factual allegations that raise the right to relief above the speculative level,” and her Response, filled with unsubstantiated legal conclusions, only reinforces the bases for dismissal. The facts alleged do not allow the Court to draw the reasonable inference that Defendants are liable for any misconduct alleged.⁵ As a result, Pickett has not opposed the dismissal of her claims against Defendants and her claims should be dismissed.

a. Pickett fails to rebut Defendants’ argument and supporting authorities that her ADA and RA claims are not plausible.

Pickett’s Response does not address the reasonableness of her accommodations, nor how her poor academic performance formed a legitimate, non-discriminatory basis for her low grades and subsequent dismissal. Pickett’s factual allegations demonstrate that TTUHSC provided her with reasonable accommodations for the reasons explained in the motion to dismiss. “The ADA provides a right to reasonable accommodation, not to the [plaintiff’s] preferred accommodation.”⁶ Pickett’s response does not explain why the accommodations she received were so deficient as to violate federal law. And, when presented with similar fact-patterns, other courts have held that accommodations almost identical to those provided by TTUHSC were reasonable.⁷ Pickett failed to state a plausible ADA or RA claim.

⁴ Dkt. 12.

⁵ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

⁶ *E.E.O.C. v. Agro Distrib., LLC*, 555 F.3d 462, 471 (5th Cir. 2009).

⁷ See, e.g., *Maples v. Univ. of Texas Med. Branch at Galveston*, 901 F. Supp.2d 874, 883–84 (S.D. Tex. 2012) (holding that the “UTMB’s decision not to allow [the plaintiff] to retake the tests or submit extra credit was reasonable” because “UTMB [had] already accommodated [the plaintiff’s] ADHD by providing her with additional time and a distraction-free environment for tests”), *aff’d* 524 F. App’x 93 (5th Cir. 2013).

b. Pickett did not address the reason why her due process claims should not be dismissed for failure to state a claim.

Pickett's Response does not discuss any of Defendants' due process arguments. As such, Pickett failed to state a claim for any due process violation and her claims should be dismissed.

c. Pickett fails to rebut Defendants' immunity arguments and supporting authorities.

Defendants presented legal authority proving Drs. Cherry or Evans are entitled to qualified immunity from Pickett's claims against them in their individual capacities, that Pickett's ADA claims against TTUHSC are barred by sovereign immunity, and that Pickett's §1983 claims for monetary relief against Drs. Cherry and Evans in their official capacities are also barred by sovereign immunity. Here, Pickett did not point to any controlling authority or even argue otherwise.

The only immunity argument Pickett addresses in her response is TTUHSC's sovereign immunity from her ADA claim.⁸ As Pickett notes, the ADA contains language that purports to abrogate sovereign immunity.⁹ But that language is the beginning—not the end—of the inquiry.¹⁰ While “Congress expressly declared that states ‘shall not be immune’ from suit for a violation of the ADA,” “whether Congress’s purported abrogation was a valid exercise of its § 5 power—is more complicated.”¹¹ Here, “[b]ecause [Pickett] has alleged no conduct that violates Title II, [TTUHSC] is entitled to [sovereign] immunity.”¹²

⁸ See Dkt. 13 at pg. 3.

⁹ *Id.*

¹⁰ *Block v. Texas Bd. of Law Examiners*, 952 F.3d 613, 617 (5th Cir. 2020).

¹¹ *Id.*

¹² See *id.* at 618–19. Here, Defendants use the more accurate term “sovereign immunity,” but Eleventh Amendment immunity and sovereign immunity are effectively synonyms in this context. See *Alden v. Maine*, 527 U.S. 706, 713 (1999) (noting that Eleventh Amendment immunity is something of a misnomer, as sovereign immunity predates the Eleventh Amendment).

But even if that were otherwise, a plaintiff seeking to overcome sovereign immunity for a claim brought under Title II of the ADA at the motion to dismiss stage must allege facts creating a plausible inference that the defendant both violated Title II *and* the Fourteenth Amendment or, lacking an alleged violation of the Fourteenth Amendment, that Congress's purported abrogation of sovereign immunity is nevertheless valid.¹³ When the plaintiff fails to plead such facts, she also fails to overcome sovereign immunity.¹⁴ As such, this Court does not have jurisdiction over claims brought under Title II of the ADA.

PRAYER

For all the reasons stated above, Defendants TTUHSC, Dr. Cherry and Dr. Evans respectfully request this Court dismiss Pickett's lawsuit for failure to state a claim and lack of jurisdiction.

Respectfully submitted,

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¹³ *Smith v. Hood*, 900 F.3d 180, 184 (5th Cir. 2018).

¹⁴ *Id.*

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CENTER, DR. BARBARA CHERRY, and DR.
MICHAEL EVANS**

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 the 11th day of February 2021, to:

Amy Pickett
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PLAINTIFF, PRO SE

/s/ Francesca A. Di Troia
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