

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

AMY PICKETT,
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,
Defendant.

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

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S
OBJECTIONS TO FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Defendants Texas Tech University Health Sciences Center (TTUHSC), and Barbara Cherry and Michael Evans in both their official and individual capacities, file this Response in Opposition to Plaintiff Amy Pickett's Objections to Findings, Conclusions, and Recommendations (FCR) of the United States Magistrate Judge (Dkt. 30). Defendants respectfully request the Court overrule Plaintiff's objection.

ARGUMENT

Plaintiff's sole objection appears to challenge the FCR's finding that Pickett received the reasonable accommodations to which she was entitled under the Americans with Disabilities Act (ADA) and Rehabilitation Act (RA) as to the October 2, 2018 exam. Dkt. 30 at p. 1. As she explains, she felt obligated to proceed with the exam based on an alleged comment from Dr. Miller that counseled against further changes in the exam schedule. *Id.* But the FCR's finding regarding whether reasonable accommodations were afforded was that Pickett did not request any further

accommodation regarding the exam period, no matter how she “felt” at the time that decision was made, and Pickett makes no allegations about further accommodations she requested at that time. Dkt. 28 at 16–17. The FCR correctly found that “TTUHSC cannot be liable for failing to provide accommodations Pickett did not request.” Dkt. 28 at 16 (citing *Jenkins v. Cleco Power, LLC*, 487 F.3d 309, 315 (5th Cir. 2007)). Pickett offers no legal authority for the contrary proposition that a student who subjectively feels that she cannot request further accommodation on top of what she is already provided states a plausible claim under the ADA or RA for failure to accommodate.

CONCLUSION

The Court should overrule Pickett’s objection and adopt the FCR as to the recommendation that Defendants’ Motion to Dismiss be granted.

Dated: August 27, 2021

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2021, a true and correct copy of the foregoing document was served via Certified Mail, Return Receipt Requested and email as follows:

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