

**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.

§
§
§
§
§
§
§
§
§
§
§

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

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

TO THE HONORABLE JUDGE D. GORDON BRYANT, JR.

Pursuant to Rule 15, Plaintiff AMY PICKETT, *Pro Se*, moves the Court for leave to file the attached Amended Complaint for Permanent Injunction and Other Equitable Relief (“Amended Complaint”). Based on additional facts and supporting evidence, Plaintiff’s constitutional rights were in fact violated by the Defendants. Plaintiff identifies this is the correct jurisdiction, The United States District Court for the Northern District of Texas since Plaintiff’s constitutional rights were violated, and states claims in which relief can be granted. Plaintiff seeks leave to amend the original Complaint to the proposed Amended Complaint. A permanent injunction is being requested to prohibit Defendants from ever discriminating and retaliating against Plaintiff or any other individual.

LEGAL STANDARD AND ARGUMENT

Rule 15 provides that “a party may amend its pleading [with] the court’s leave” and that

“[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Thus, the court has the discretion to grant or deny a request for leave to file an amended pleading. See *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330, 91 S. Ct. 795, 28 L. Ed. 2d 77 (1971) (“[A] motion for leave to amend a complaint [is] addressed to the sound discretion of the district court.”). “Leave to amend must generally be granted unless equitable considerations render it otherwise unjust.” *Arthur v. Maersk, Inc.*, 434 F.3d 196, 204 (3d Cir. 2006) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962) and *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1414 (3d Cir. 1993)). “In the absence of substantial or undue prejudice, denial [of a motion to amend] must be grounded in bad faith or dilatory motives, truly undue or unexplained delay, repeated failure to cure deficiency by amendments previously allowed or futility of amendment.” *Heyl & Patterson Int’l, Inc. v. F.D. Rich Housing of V.I., Inc.*, 663 F.2d 419, 425 (3d Cir. 1981) (citing *Foman*, 371 U.S. at 182). Given the liberal standard under Rule 15(a), “the burden is on the party opposing the amendment to show prejudice, bad faith, undue delay, or futility.” *Chancellor v. Pottsgrove Sch. Dist.*, 501 F. Supp. 2d 695, 700 (E.D. Pa. 2007). Here, allowing Plaintiff to file the Amended Complaint would serve justice and promote judicial efficiency.

The Plaintiff request this Court to grant forgiveness for delay in submitting the amended complaint. Plaintiff works nights as a nurse and has been called into work on a daily basis, and days have run together dealing with the mental and emotional challenges of Covid 19. Plaintiff, in good faith, attempted to obtain permission from Defendants Council asking for permission on August 18th 2021 to submit an amended complaint. See “Appendix 2.1” for reference.

This is a unique case, in which Plaintiff has spent countless hours seeking previous case examples that are in comparison to this case’s situation. However, Plaintiff has been unsuccessful in finding cases that are similar in nature, in which discrimination and retaliation

occurred by not receiving LOA accommodations and being dismissed from academic programs with a high GPA and without cause from a university. Plaintiff was not on academic probation, suspension or proven to have any type of misconduct whatsoever. Finding similar cases in comparison to Plaintiff's case has proven to be a futile task, as there are no cases found which relate to Plaintiff in regard to a student being in good standing, no disciplinary actions, and being discriminated and retaliated against and being unjustly dismissed from academic studies.

However, *Ex parte Young* 209 U.S. 123 (1908), which was a case seen by the United States Supreme Court that allows suits in federal courts for injunctions against officials acting on behalf of states of the union to proceed despite the State's sovereign immunity, when the State acted contrary to any federal law or contrary to the constitution. The *Ex parte Young* case is applicable which supports Plaintiff's position representing her case in District Court,

The amended complaint supported by facts and information uncovers that the Defendants knew that dismissing Plaintiff from her TTUHSC SON academic studies would strip her of her liberty and property rights. Compensatory damages are available only if a plaintiff can prove that the discrimination by the public entity was intentional. Intentional discrimination means conduct that results from deliberate indifference to the rights of the individual or actual malice. Equitable relief is being requested as to cover the damages the Defendants caused on the Plaintiffs behalf by violating Pickett's 14th amendment rights.

When Pickett resigned from her employment role at TTUHSC SON, Dr. Evans and Plaintiff came to the conclusion it would be mutually beneficial for both parties if the Plaintiff would resign from her employment role and solely focus on TTUHSC SON academic studies moving forward. Approximately 43 days later, Defendants ultimately and unlawfully discriminated and retaliated against Pickett dismissing her from her academic studies.

Defendants knowingly violated Pickett's liberty and property knowing what was at stake for the Plaintiff, being that there was a special relationship among the parties in which the Plaintiff was recently an employee under Dr. Evans leadership. See "Appendix 2.2", which is an example of Dr. Evans giving Amy Pickett a faculty award. Defendants striped Plaintiff of her liberty and property rights as evidence by removing Pickett unlawfully for unjust reasons from her academic studies. Pickett's property was identified as her advanced nursing TTUHSC studies, as the Plaintiff is a Registered Nurse.

Pickett is afforded rights under the Fourteenth Amendment's substantive due process clause that enables this Court to override a post-secondary public university's academic decision where the School's actions were such a substantial departure from accepted academic norms as to demonstrate that they did not actually exercise professional judgment when stripping Plaintiff of that protected liability and property interest.

Defendants are not entitled to qualified or sovereign immunity being that they acted in bad faith under the color of the law and abused their power of authority and violated Pickett's 1st and 14th amendment rights. The 14th amendment protects persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. The Fourteenth Amendment to the United States Constitution requires states to guarantee the same rights, privileges, and protections to all citizens. This doctrine reinforces that of due process of law and prevents states from passing or

enforcing laws that arbitrarily discriminate against anyone. Defendants violated Pickett's liberty, property, due process rights under the 14th amendment, and 1st amendment rights when Pickett was abruptly dismissed from school. Pickett's property rights were violated when Defendants removed Plaintiff from her academic studies, and then gave an unjust ultimatum having Pickett choose which academic program to continue with. Qualified immunity is voided when (1) the defendant violates a constitutional right; and (2) that right was clearly established. *Schulkers v. Kammer*, 955 F.3d 520, 532 (6th Cir. 2020) (quoting *Kovacic Case No. 19-1571*, *Fakhoury, et al. v. O'Reilly, et al.* - 9 - *v. Cuyahoga Cty. Dep't of Children & Family Servs.*, 724 F.3d 687, 695 (6th Cir. 2013)). Plaintiff's constitutional rights were clearly established at the time of the alleged violations. When a state deprives a person of property without just compensation due process demands a remedy- state sovereign immunity is notwithstanding. Rights for which the Fourteenth Amendment itself provides a cause of action cannot be shielded from the courts.

There is no undue delay, bad faith, or dilatory motive by Plaintiff in this case. A permanent injunction is being requested by the Plaintiff to prohibit Defendants from ever discriminating and retaliating against Plaintiff or any other individual.

The Plaintiff respectfully request the court to accept the amended complaint.

CONCLUSION

For these reasons, Plaintiff respectfully ask that the Court to grant leave to file the attached Amended Complaint for Permanent Injunction and Other Equitable Relief, in which

the Plaintiff is entitled to from the Defendants unlawful actions. Attached is a proposed order.

Respectfully submitted,

DATED this 27th day of August 2021.

/s/ Amy Pickett
AMY PICKETT
P.O. Box 543
Buffalo Gap, Texas 79508
apickett1010@yahoo.com
(682) 258-4558
PLAINTIFF, PRO SE

APPENDIX

Appendix 2.1

-----Original Message-----

From: Amy Pickett

<apickett1010@yahoo.com>

Sent: Wednesday, August 18, 2021 2:36 PM

To: Scanlon, Cory

<Cory.Scanlon@oag.texas.gov>

Subject: Request

Mr. Scanlon,

I am writing to request permission from the Defendants to amend the complaint.

Thank you for your time,
Amy Pickett

Sent from my iPhone

 From: [Cory Scanlon](#) >
To: [Amy Pickett](#) >
Cc: [Rona Edward](#) >
August 18, 2021 at 3:58 PM

RE: Request

Ms. Pickett,

We will not oppose your amendment as long as you comply with the U.S. Magistrate Judge's Recommendation that you amend only the failure-to-accommodate claim as it relates to the October 2, 2018 exam and only if you have your amended complaint on file by next Wednesday. Otherwise, Defendants oppose the amendment.

Kind regards,

Cory Scanlon
Assistant Attorney General
General Litigation Division

Appendix 2.2



In 2015, Defendant, Dr. Evans, giving Plaintiff, Amy Pickett, *Pro Se* a faculty award.

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 27th day of August 2021. to:

CORY A. SCANLON
State Bar No. 24104599
Assistant Attorney General
General Litigation Division
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Tel: (512) 463-2120
Fax: (512) 463-2120
Cory.scanlon@oag.texas.gov

**COUNSEL FOR DEFENDANTS TEXAS
TECH UNIVERSITY HEALTH SCIENCES
CENTER, DR. BARBARA CHERRY, and DR.
MICHAEL EVANS**

/s/ Amy Pickett
AMY PICKETT
P.O. Box 543
Buffalo Gap, Texas 79508
apickett1010@yahoo.com
(682) 258-4558

PLAINTIFF, PRO SE