

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' ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE JAMES WESLEY HENDRIX:

Defendants, Texas Tech University Health Sciences Center (TTUHSC), Barbara Cherry, and Michael Evans (Defendants), file this Original Answer to Plaintiff's Original Complaint (Complaint).

Pursuant to Federal Rule of Civil Procedure 8(b), Defendants deny each and every allegation contained in the Complaint except for those expressly admitted herein. The headings and numbered paragraphs below directly correlate to the sections and numbered paragraphs of the Complaint. Those titles and headings are reproduced in this Answer for organizational purposes only, and Defendants do not admit any matter contained therein.

Defendants respond to the specifically numbered allegations of the Complaint as follows:

INTRODUCTION

Defendants deny the allegations in the introductory paragraphs.

PARTIES

1. Defendants lack sufficient knowledge to admit or deny that Plaintiff currently resides in Texas. Defendants admit that Plaintiff was once a student in TTUHSC's Doctor of Nursing

Practice (DNP) and post-Master's Family Nurse Practitioner (FNP) programs.

2. Defendants admit the allegations in this paragraph except that T*TUHSC does not employ a chief executive officer.

3. Pursuant to the Court's September 23, 2021, Order Accepting in Part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], Barbara Cherry is no longer a defendant in her individual capacity. To the extent the Court did not dismiss Plaintiff's claims against Barbara Cherry in her official capacity, Defendants admit the allegations in this paragraph.

4. Pursuant to the Court's September 23, 2021, Order Accepting in Part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], Michael Evans is no longer a defendant in his individual capacity. To the extent the Court did not dismiss Plaintiff's claims against Michael Evans in his official capacity, Defendants admit the allegations in this paragraph.

5. Paragraph 5 contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny these allegations in their entirety.

6. Defendants admit the allegations in Paragraph 6.

7. Paragraph 7 contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny these allegations in their entirety.

VENUE & JURISDICTION

8. Pursuant to the Court's September 23, 2021, Order Accepting in Part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court has dismissed Plaintiff's claims against T*TUHSC under 42 U.S.C. § 1983 for lack of subject matter

jurisdiction. Defendants admit the Court has jurisdiction over Plaintiff's claims as to TTUHSC under the Rehabilitation Act, 29 U.S.C. § 701 et seq, and Plaintiff's claims for injunctive relief as to the remaining Defendants. Defendants deny that the Court has jurisdiction as to Plaintiff's claims under Title II of the ADA because of sovereign immunity.

9. Plaintiff does not assert claims under Texas state law.

10. Defendants admits the allegations in this paragraph.

11. Defendants deny that Plaintiff is entitled to costs or attorneys' fees.

GENERAL FACTUAL ALLEGATIONS

12. Defendants lack sufficient knowledge to admit or deny the allegations in this paragraph.

13. Defendants lack sufficient knowledge to admit or deny the allegations in this paragraph.

14. Defendants admit the allegations in this paragraph.

15. Defendants admit the allegations in this paragraph.

16. Paragraph 16 contains conclusory statements or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit that Plaintiff was enrolled in a Combined Post-Master's DNP with Advanced Practice Registered Nurse APRN Certificate. Defendants admit Plaintiff was scheduled to graduate as stated if she completed all required course work and clinical hours as required by her degree plan. Defendants deny all other factual allegations in this paragraph.

17. Paragraph 17 contains conclusory statements or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny these allegations.

18. Paragraph 18 contains assertions of law, conclusory statements, or arguments to which

no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit Plaintiff filed a request for accommodation with the ADA office at TTUHSC on May 8, 2017, stating that Plaintiff lives with ADHD, has trouble focusing, and would like double the available time to take exams.

19. Defendants admit the allegations in paragraph 19.

20. Defendants admit the allegations in paragraph 20.

21. Paragraph 21 contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit Plaintiff received a Letter of Accommodation (LOA) including the specified accommodations. Defendants deny all other factual allegations in this paragraph.

22. Defendants admit the allegations in this paragraph.

23. Paragraph 23 contains conclusory statements or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants lack sufficient knowledge to admit or deny the allegations in this paragraph.

24. Paragraph 24 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny any TTUHSC employee had “negative reactions and hostility” to any alleged request for accommodation. Defendants otherwise lack sufficient knowledge to admit or deny the remaining allegations in this paragraph, and on that basis deny them.

25. Defendants admit that Plaintiff’s clinical hours for course 7311 were questioned. Defendants lack sufficient knowledge to admit or deny that Plaintiff completed and reported all clinical hours.

26. Defendants deny the allegations in paragraph 26.

27. Paragraph 27 contains assertions of law, conclusory statements, or argument to which

no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny the allegations in this paragraph in their entirety.

28. Paragraph 28 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny the allegations in this paragraph in their entirety.

29. Paragraph 29 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit that Plaintiff had an approval to take leave under the Family Medical Leave Act in the summer of 2018 related to her employment. Defendants otherwise lack sufficient knowledge to admit or deny the remaining allegations in this paragraph, and on that basis deny them.

30. Defendants admit that Plaintiff received a complaint of misconduct regarding the falsification of hours in course 7311 and that TTUHSC recommended dismissal of Plaintiff from the program.

31. Defendants lack sufficient knowledge to admit or deny the allegations in this paragraph, and on that basis deny them.

32. Paragraph 32 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit Plaintiff was permitted to remain in the program at that time. Defendants otherwise deny the remaining factual allegations in this paragraph.

33. Defendants admit that Plaintiff was given an “Incomplete” in course 6201 and that the deadline to submit the paper was moved to September 2018. Defendants otherwise lack sufficient knowledge to admit or deny the remaining allegations in this paragraph, and on that basis deny them.

34. Defendants lack sufficient knowledge to admit or deny whether Plaintiff’s symptoms were exacerbated or whether she had technical difficulties when she turned in her paper 30 hours late.

Defendants otherwise admit the allegations in this paragraph as they apply to a student who completes all required course work within the semester enrolled.

35. Paragraph 35 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit Plaintiff received 0 for the 30-hour late paper and failed the course. Defendants otherwise deny the remaining factual allegations in this paragraph.

36. Defendants admit the allegations in this paragraph.

37. Paragraph 37 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit Plaintiff received a 0 on her paper for failing to meet course requirements. Defendants deny the remaining allegations in this paragraph.

38. Paragraph 38 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit that policy allows for a student who fails an assignment to request a blind faculty grader. Defendants deny the remaining allegations in this paragraph.

39. Paragraph 39 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit Plaintiff's grade was capped at 79 and that she received a 59 on the regrade.

40. Paragraph 40 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit Plaintiff received a grade of 29.5. Defendants deny all other allegations in this paragraph.

41. Paragraph 41 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response,

Defendants admit Plaintiff received an 89 on presentation of her paper. Defendants deny the remaining allegations in this paragraph.

42. Paragraph 42 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit Plaintiff received a C in course 6210. Defendants deny the remaining allegations in this paragraph.

43. Defendants admit the allegations in this paragraph.

44. Defendants admit the allegations in this paragraph.

45. Defendants admit the allegations in this paragraph.

46. Defendants lack sufficient knowledge to admit or deny the allegations in this paragraph.

47. Defendants lack sufficient knowledge to admit or deny the allegations in this paragraph.

48. Defendants lack sufficient knowledge to admit or deny that Plaintiff was experiencing pressure, stress, heightened anxiety, or other ADHD-related symptoms. Defendants otherwise admit the allegations in this paragraph.

49. Defendants admit that the start time of the October 2, 2018, exam was extended to 10:30 AM. Defendants deny the remaining allegations in this paragraph.

50. Defendants lack sufficient knowledge to admit or deny the allegations in this paragraph.

51. Paragraph 51 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit that Plaintiff received a 62% on the exam for course 5440. Defendants deny that Plaintiff has not received any reasonable accommodation she has requested. Defendants otherwise

lack sufficient knowledge to admit or deny the remaining allegations in this paragraph.

52. Paragraph 52 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny that Plaintiff has not received any reasonable accommodation she has requested. Defendants admit that Plaintiff was not permitted to retake the exam for which she already accepted reasonable accommodations.

53. Paragraph 53 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny that Plaintiff has not received any reasonable accommodation she has requested.

54. Paragraph 54 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny that Plaintiff has not received any reasonable accommodation she has requested. Defendants lack sufficient knowledge to admit or deny that Plaintiff experiences migraines. Defendants deny that TTUHSC “mishandle[ed] the situation.”

55. Defendants deny the allegations in this paragraph.

56. Paragraph 56 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny the allegations in this paragraph.

57. Defendants admit the allegations in this paragraph.

58. Defendants admit the allegations in this paragraph.

59. Defendants admit the allegations in this paragraph.

60. Defendants deny the allegations in this paragraph.

61. Defendants deny the allegations in this paragraph.

62. Defendants admit the allegations in this paragraph.

63. Defendants deny the allegations in this paragraph.

64. Defendants admit the allegations in this paragraph.

65. Defendants admit Plaintiff failed to update her email password, which automatically restricted access to her email. Defendant admits the remaining allegations in this paragraph.

66. Paragraph 66 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit that Dr. Cherry instructed Plaintiff that she could remain in either the DNP or FNP program, but not both.

67. Paragraph 67 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants lack sufficient knowledge to admit or deny whether Plaintiff was concerned about her appeal. Defendants admit Plaintiff requested additional time to address Dr. Cherry's offer to choose one program or the other.

68. Paragraph 68 contains assertions of law, conclusory statements, or argument to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants admit that Dr. Cherry informed Plaintiff that she was to be dismissed from the Combined Post-Master's DNP with APRN Certificate because Plaintiff had not timely responded according to Dr. Cherry's instructions. Defendants deny the remaining factual allegations in this paragraph.

FIRST CAUSE OF ACTION

**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)

Against Defendant TTUHSC and Defendants Evans and Cherry in their official capacities

69. Defendants repeat and reaffirm their answers to each and every allegation contained in the paragraphs above and incorporates the same herein as though fully set forth.

70. Paragraph 70 contains only assertions of law, conclusory statements, or arguments to

which no response is required.

71. Paragraph 71 contains only assertions of law, conclusory statements, or arguments to which no response is required.

72. Paragraph 72 contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, TTUHSC admits it is a public entity receiving federal funds. Defendants deny the remaining factual allegations in this paragraph.

73. Paragraph 73 contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendant lacks sufficient knowledge to admit or deny the symptoms or extent of Plaintiff's claimed disabilities. Defendants are unable to admit or deny that Plaintiff was able to perform the essential functions for participation in TTUHSC's curriculum with or without reasonable accommodation.

74. Paragraph 74 contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny the allegations in Paragraph 74.

75. Paragraph 75 contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny the allegations in Paragraph 75.

a. Defendants deny the allegations in this subparagraph.

b. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims premised on Defendants' failure to extend the start time of Plaintiff's October 2018 examination and to allow her to retake exams or substitute exam grades. Therefore, no response is required to the allegations in this subparagraph. To the extent that

this subparagraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

c. Defendants deny the allegations in this subparagraph.

d. Subparagraph 75d contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this subparagraph contains factual allegations requiring a response, Defendants deny the allegations in subparagraph 75d.

e. Subparagraph 75e contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this subparagraph contains factual allegations requiring a response, Defendants admit that Plaintiff was dismissed from the Combined Post-Master's DNP with APRN Certificate program. Defendants otherwise deny the allegations in subparagraph 75e.

f. Subparagraph 75f contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this subparagraph contains factual allegations requiring a response, Defendants deny the allegations in this subparagraph.

76. Paragraph 76 contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny the allegations in Paragraph 76.

77. Paragraph 77 contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny the allegations in Paragraph 77.

78. Paragraph 78 contains assertions of law, conclusory statements, or arguments to which no response is required. To the extent this paragraph contains factual allegations requiring a response, Defendants deny the allegations in Paragraph 78.

SECOND CAUSE OF ACTION

**Civil Rights Violations of 42 U.S.C. § 1983 (Denial of Procedural Due Process)
Against Defendants Evans and Cherry in their official capacities**

79. Defendants repeat and reaffirm their answers to each and every allegation contained in the paragraphs above and incorporates the same herein as though fully set forth.

80. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

81. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

82. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

83. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

84. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

85. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

86. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

87. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

88. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the

allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

89. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

90. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

91. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

92. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

93. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims

for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

94. Pursuant to the Court's Order Accepting in part Findings, Conclusions, and Recommendation of the United States Magistrate Judge [dkt. 35], the Court dismissed Plaintiff's claims for denial of procedural due process in their entirety. Therefore, no response is required to the allegations in this paragraph. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

THIRD CAUSE OF ACTION

Civil Rights Violations of 42 U.S.C. § 1983 (Denial of Substantive Due Process) Against Defendants Evans and Cherry in their official capacities

95. Defendants repeat and reaffirm their answers to each and every allegation contained in the paragraphs above and incorporates the same herein as though fully set forth.

96. Paragraph 96 contains only assertions of law, conclusory statements, or arguments to which no response is required.

97. Paragraph 97 contains only assertions of law, conclusory statements, or arguments to which no response is required.

98. Paragraph 98 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

99. Paragraph 99 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

100. Paragraph 100 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

101. Defendants admit the allegations in this paragraph.

102. Defendants deny the allegations in this paragraph.

103. Paragraph 103 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

104. Paragraph 104 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

105. Paragraph 105 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

106. Paragraph 106 contains conclusory statements or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

107. Defendants admit Dr. Cherry told Plaintiff she could either enroll in the DNP program or the FNP certificate. Defendants deny the remaining allegations in this paragraph.

108. Paragraph 108 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

109. Paragraph 109 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

110. Paragraph 110 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

111. Paragraph 111 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

112. Paragraph 112 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

113. Paragraph 113 contains only assertions of law, conclusory statements, or arguments to which no response is required. To the extent that this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety.

DEMAND FOR JURY TRIAL

This paragraph contains Plaintiff's jury demand to which no response is required.

RELIEF REQUESTED

This paragraph contains Plaintiff's recitation of the relief sought in this action to which no response is required. To the extent this paragraph contains any factual allegations requiring a response, Defendants deny the allegations in their entirety and further deny that any relief is appropriate or warranted in this case.

DEFENSES AND AFFIRMATIVE DEFENSES

Pleading further, Defendants assert the following defenses and affirmative defenses to Plaintiff's remaining claims:

1. Defendants assert the defense of Eleventh Amendment immunity to all claims to which that defense applies.
2. Defendants assert the defense of qualified immunity to all claims to which that defense applies.
3. Defendants assert the defense of limitations.
4. Defendants assert the defense of failure to exhaust administrative remedies.
5. Defendants assert the defense of estoppel.
6. Defendants assert that Plaintiff has failed to state claims upon which relief can be granted.
7. Defendants assert the doctrine of laches as an affirmative defense, as Plaintiff unreasonably delayed asserting the rights and claims herein, that delay was not excusable, and the delay results in undue prejudice to Defendants.
8. Defendants' conduct was in good faith and based upon reasonable grounds for believing they acted within the law. Defendants acted with reasoned academic judgment for any and all actions taken with respect to Plaintiff.
9. Plaintiff has failed to mitigate her damages, if any, by misrepresenting her employment history and by failing to apply for equivalent employment.
10. Defendants reserve the right to raise additional affirmative defenses as they become apparent during the development of the case.

DEFENDANTS' PRAYER

For the foregoing reasons, Defendants ask the Court to enter judgment that Plaintiff take nothing, dismiss Plaintiff's suit with prejudice, assess costs against Plaintiff, and award Defendants all other relief the Court deems appropriate.

Respectfully submitted.

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Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 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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