

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

SCHYLER Z. GRODMAN, M.D.,
Plaintiff

v.

TEXAS TECH UNIVERSITY
HEALTH SCIENCES CENTER and
DR. SAMER ZAID-KAYLANI
Defendant

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Civil Action No. 5:23-cv-00210-H

**DEFENDANT’S REPLY TO PLAINTIFF’S RESPONSE TO
DEFENDANT’S PARTIAL MOTION TO DISMISS**

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ATTORNEYS FOR DEFENDANTS

TO THE HONORABLE JAMES WESLEY HENDRIX:

Defendant Texas Tech University Health Sciences Center (“Defendant” or “TTUHSC”), by and through their undersigned attorney, file this Reply to Plaintiffs’ Response to Defendant’s Partial Motion to Dismiss and in support thereof, respectfully show the Court as follows:

I. Grodman cannot bring a Section 1983 claim against the State.

Grodman’s Response egregiously misrepresents well-settled caselaw. His assertion that one can bring a claim against a state entity under *Ex Parte Young* is patently false. *See City of Austin v. Paxton*, 943 F.3d 993, 1003 (5th Cir. 2019) (“[T]he [state] is immune to suit and not subject to the *Young* exception. State agencies are entitled to Eleventh Amendment sovereign immunity.”); *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) (holding that *Ex Parte Young* has no application in suits against the States and their agencies, which are barred regardless of the relief sought). Neither suits for money damages nor for declaratory or injunctive relief may be brought against a state agency absent a valid waiver or Congressional abrogation of sovereign immunity. *See Cozzo v. Tangipahoa Par. Council-President Gov’t*, 279 F.3d 273, 280–81 (5th Cir. 2002); *Raj v. La. State Univ.*, 714 F.3d 322, 328 (5th Cir. 2013).

As shown by the some of very cases Grodman cites in Response, the *Ex Parte Young* exception is only available for suits against an officer—not the state entity itself. *See Nelson v. Univ. of Texas at Dallas*, 535 F.3d 318, 319–20 (5th Cir. 2008) (“The district court granted the motions brought by UTD, Jarrell, and Rutlege, holding that UTD was protected by Eleventh Amendment immunity ... Nelson has not appealed the dismissal of these parties.”); *see also Harrison v. Young*, 48 F.4th 331, 337 (5th Cir. 2022) (“A state official violating federal law can be sued for prospective relief.”); *Corn v. Mississippi Dep’t of Pub. Safety*, 954 F.3d 268, 275 (5th Cir. 2020) (“[D]espite Plaintiffs’ prayer requesting an injunction, MDPS is nonetheless protected under the Eleventh Amendment.”).

Moreover, Grodman does not respond to the argument that Section 1983 simply does not authorize suit against state entities. *See generally* (ECF No. 24). To do so would be pointless, in any event. Even apart from Eleventh Amendment immunity, there is simply no cause of action against a state entity under Section 1983.¹ *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989).

These arguments are dispositive of Grodman's remaining arguments that he can proceed on his due process claims against TTUHSC. And TTUHSC's arguments concerning Grodman's failure to adequately plead a viable due process claim do not warrant repetition. *See generally* (ECF No. 22). Accordingly, the Court should dismiss Grodman's procedural due process claim with prejudice.

II. The allegations in Grodman's Complaint defeat his reasonable accommodation claim.

Taking Grodman's allegations as true, which the Court must do at this stage, he has still failed to plead an actionable reasonable accommodation claim. As a basic logical premise, it does not follow from the allegation that Grodman had previously received informal accommodations upon request, that TTUHSC knew the precise limitations of his mental disorder. Whether a TTUHSC supervisor may have provided accommodations to Grodman in the past, it is not reasonable to infer that the supervisor, much less the University, knew those accommodations were necessary. The precise limitations of Grodman's alleged disability—and any justification for an accommodation from the employer—would be, as indicated by Grodman's own statements, ever-changing depending on his medication. *See* (ECF No. 21, ¶ 16) (alleging that “[i]n its active state [the fact of which would be unknown to TTUHSC], and in the absence of mitigating measures like sufficient medication, Grodman's ADHD condition significantly limits Grodman's major life activities,” as well as alleging that the medication itself impacts his limitations); (ECF No. 21, ¶ 16)

¹ As for *Shurb v. Univ. of Texas Health Sci. Ctr. at Houston-Sch. of Med.*, it appears that the Defendant did not raise the argument that *Ex Parte Young* only applies to officers and states are not “persons.” No. 4:13-CV-271, 2013 WL 4096826, at *8 (S.D. Tex. Aug. 13, 2013). In any event, that Court was simply wrong not to dismiss the Section 1983 claim against the University in *Shurb*. *See Hernandez v. Texas Tech Univ. Health Sci. Ctr.*, No. 2:09-CV-0140, 2009 WL 2422890, at *2 (N.D. Tex. Aug. 6, 2009).

(alleging Grodman “sometimes” requires accommodations); (ECF No. 21, ¶ 21) (alleging Grodman struggled to adjust his medications); *see also* (ECF No. 21, ¶ 48) (alleging he disclosed “the extent” of “his psychiatric problems” only after he was aware termination was looming). Also telling is the fact that Grodman alleges he did not request the same “informal accommodations” he allegedly received in the past—thus indicating that his limitations had changed without providing any inference that TTUHSC was aware of the change. *Compare* (ECF No. 21, ¶ 25) *with* (ECF No. 21, ¶ 43).

In short, to the extent Grodman’s Amended Complaint makes the conclusory allegation that TTUHSC knew and was able to track Grodman’s precise limitations and necessary accommodations at any given time, those allegations are implausible, contradictory, and defeated by the allegations cited above. Plaintiffs’ own statements show that the precise limitations, especially at any given time, could not have been known by TTUHSC.

Finally, as discussed, Grodman’s formal request for accommodation was not a true disability accommodation request, but a request for a second chance. *See Trahan v. Wayfair Maine, LLC*, 957 F.3d 54, 65 (1st Cir. 2020). “An employee in need of an accommodation has the responsibility of informing her employer of this need.” *Hebert v. Ascension Par. Sch. Bd.*, 396 F. Supp. 3d 686, 701 (M.D. La. 2019). When the precise limitations are unknown, the employee has the duty to not only request an accommodation, but also to specifically identify those limitations and the accommodation needed from the employer. *Griffin v. United Parcel Service, Inc.*, 661 F.3d 216, 224 (5th Cir. 2011). Even assuming the Complaints’ allegations as true, Grodman would have still had an obligation to request specific accommodations tied to specifically-identified limitations the moment accommodations were allegedly withdrawn. But he did not raise any concern until it was too late, and he had committed misconduct warranting termination. As such, TTUHSC cannot be held liable on a reasonable accommodation claim.

CONCLUSION

For the foregoing reasons, Grodman's procedural due process claim under Section 1983 is barred by sovereign immunity and the Eleventh Amendment. Further, Grodman's Amended Complaint fails to state a reasonable accommodation claim under the Rehabilitation Act. Defendant, therefore, respectfully requests that this Court grant this motion and dismiss these claims.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed via the *CM/ECF system* on February 28, 2024, to all counsel of record.

/s/ Joseph Keeney
JOSEPH KEENEY
Assistant Attorney General