

United States Court of Appeals
For the Eighth Circuit

No. 25-1092

Kelli Florek

Plaintiff - Appellant

v.

Creighton University

Defendant - Appellee

Katie Wadas-Thalken

Defendant

Rhonda Jones, also known as Rhonda Reeson; Maryann Skrabal

Defendants - Appellees

Appeal from United States District Court
for the District of Nebraska - Omaha

Submitted: May 14, 2026
Filed: September 18, 2026

Before COLLOTON, Chief Judge, SHEPHERD and KOBES, Circuit Judges.

KOBES, Circuit Judge.

After Creighton University dismissed Kelli Florek from its doctor of pharmacy program, Florek sued, alleging disability discrimination and retaliation under the Americans with Disabilities Act, 42 U.S.C. §§ 12182, 12203, and the Rehabilitation Act, 29 U.S.C. § 794. The district court¹ granted partial summary judgment in favor of Creighton and then partial judgment as a matter of law. A jury found for Creighton on the remaining retaliation claim. We affirm.

I. Background

Florek lived in Hawaii while enrolled in Creighton’s distance education program. She suffered a concussion in 2019, which caused headaches, fatigue, vision sensitivity, sluggish eye coordination, difficulty hearing in one ear, and slowed reactions. Computer use exacerbated her symptoms. Florek reported to Creighton that “[t]he recovery time for my traumatic brain injury and concussion is a year.” She asked to use blue light filtering glasses and for extra time on assignments and tests, and she provided a note from her nurse practitioner requesting “extended time to finish test[s] and assignments.” For the fall 2019 semester, Creighton’s Director of Disability Accommodations granted time and a half for exams and quizzes in a distraction-free location, permission to wear blue light filtering glasses during exams, and with instructor permission, extended due dates or exam rescheduling.

In January 2020, Florek requested the same accommodations and attached a note from her doctor asking for “extended time to complete schoolwork, tasks, tests and quizzes” due to her concussion and blue light filtering glasses to help with her migraines. Florek also asked for a “quiet/distraction free environment when taking tests or completing tasks, assignments, quizzes in zoom or online sessions” and for

¹The Honorable Joseph F. Bataillon, United States District Judge for the District of Nebraska.

closed captioning on lecture videos, explaining “[h]eavy accents are difficult to understand.” Creighton again approved the extra time for tests, blue light filtering glasses, and extended due dates and exam rescheduling as necessary and with instructor permission. Florek claims that the Director of Disability Accommodations told her on the phone the accommodations were permanent.

During the spring 2020 semester, Florek did not get extra time on an in-class oral case presentation, which was “a simulation of real-life pharmacy practice.” Florek also did not get extra time for three, five-minute quizzes. She received a perfect score on two of them and was allowed to retake the third quiz with extra time. After the spring semester, the Associate Director of Disability Services asked Florek to update her medical documentation. Florek refused because she thought her accommodations were permanent and that the information already provided was enough.

In April 2021, an assistant dean denied Florek’s request to change the time of a final exam. Florek said she could not take the exam on time “due to household members being home, which is a distraction and [she could not] concentrate or focus.” After Florek reminded the assistant dean about her disability, her request was denied again because there was no letter from disability services on file for spring 2021. Florek still refused to update her documentation, claiming it was “unlawful to ask [her] to document [a] disability that is already documented.” The Associate Director of Disability Services offered her extended time and blue light filtering glasses, but did not allow her to reschedule the exam. Florek sent a notice of disability discrimination to the dean in May 2021 but took the exam on time.

Florek attended a pharmacy skills lab in Omaha in late May 2021. She was allowed to leave early for a Covid test but missed her appointment, so she had to quarantine in Hawaii and miss a required pharmacy skills experience at a local hospital. She did not tell Creighton about the missed test and instead emailed the hospital to reschedule, saying Creighton did not give her enough time to get tested. When Creighton found out, they asked Florek to meet, but she refused and ignored

emails. Creighton issued an unprofessional behavior citation for failing to report the missed Covid test and for her lack of candor.² Florek also failed the pharmacy skills experience she did not attend and was placed on academic probation. When she tried to appeal the failing grade to the assistant dean, she was directed to first address the grade with the professor, but she never did.

Creighton issued a third citation after Florek sent a series of emails to faculty in May and June 2021, accusing them of cyberbullying, telling them to cease and desist, and threatening legal action. The citation was based on Florek's "lack of professionalism over the past several weeks" and because she was "disrespectful, controlling, . . . demanding" and refused to meet with professors. Florek continued to send emails insisting Creighton's response was "immoral, unethical, and illegal," but refused to meet with her professors, did not attend her probationary council meeting, and was placed on a corrective action plan.

Creighton issued a final citation after pharmacist Greg Harmon cancelled her rotation with another pharmacy so she could do more rotations with him. Creighton had already told Florek that she could complete only three rotations with Harmon and had arranged for her to do her remaining rotations elsewhere. Florek did not respond to a faculty member's inquiry and instead emailed the dean saying that any communication from faculty was unwelcome and "a form of harassment and bullying" that "exacerbate[ed]" her disability. She again threatened to sue and seek a restraining order. The dean replied, "it is not harassment for faculty or administrators to contact you and/or request meetings" and warned that "failure to participate in normal educational processes . . . could result in adverse consequences." Florek nonetheless refused to meet.

Per Creighton's policy, the fourth citation triggered a vote by the faculty on dismissal. Florek did not attend the meeting, and the faculty voted to dismiss her in

²This was Florek's second citation; her first was before her traumatic brain injury for failing to schedule an exam retake and then trying to manipulate the professor.

September 2021. Although Creighton policy provides two levels of review, Florek did not appeal and instead filed this lawsuit.

II. Discussion

Florek argues that the district court erred in granting summary judgment or judgment as a matter of law on her ADA and Rehabilitation Act disability discrimination claims. She says the error in granting judgment as a matter of law infected the jury's verdict on her retaliation claim. We review *de novo* grants of both summary judgment and judgment as a matter of law, drawing all reasonable inferences in favor of the nonmoving party. *Argenyi v. Creighton Univ.*, 703 F.3d 441, 446 (8th Cir. 2013); *Tatum v. Ark. Dep't of Health*, 411 F.3d 955, 959 (8th Cir. 2005).

A. Disability Discrimination

Title III of the ADA prohibits discrimination against an individual “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.” 42 U.S.C. § 12182(a). “Likewise, the Rehabilitation Act requires reasonable accommodations when an ‘otherwise qualified’ disabled student, 29 U.S.C. § 794(a), ‘would otherwise be denied meaningful access to a university,’ *Stern v. Univ. of Osteopathic Med. & Health Sciences*, 220 F.3d 906, 908 (8th Cir. 2000).” *Mershon v. St. Louis Univ.*, 442 F.3d 1069, 1076 (8th Cir. 2006). The differences between the ADA and the Rehabilitation Act are not material in this case, so we will “consider cases dealing with each Act as ‘applicable and interchangeable.’” *Id.* at 1076 n.4 (quoting *Stern*, 220 F.3d at 908).

For a discrimination claim under either statute, Florek “must show that (1) [s]he is disabled and academically qualified to attend Creighton, (2) Creighton is a ‘place of public accommodation (for ADA purposes) and receives federal funding (for Rehabilitation Act purposes)’ and (3) Creighton discriminated against [her]

based on [her] disability.” *Argenyi*, 703 F.3d at 447 (quoting *Mershon*, 442 F.3d at 1076). Only the third element is in dispute, and Florek claims Creighton discriminated against her by failing to accommodate her disability and by treating her disparately because of her disability. See *Peebles v. Potter*, 354 F.3d 761, 765 (8th Cir. 2004) (“Two means of discrimination are relevant to this case: disparate treatment (i.e., intentional discrimination) and the failure to make reasonable accommodations.”); see also *Withers v. Johnson*, 763 F.3d 998, 1003 (8th Cir. 2014); *Buboltz v. Residential Advantages, Inc.*, 523 F.3d 864, 870 (8th Cir. 2008), *abrogated on other grounds by Torgerson v. City of Rochester*, 643 F.3d 1031, 1043 (8th Cir. 2011) (en banc).

Failure to Accommodate

Creighton failed to accommodate Florek if it did not “make reasonable modifications that would accommodate [her] disability.” *Mershon*, 442 F.3d at 1076–77 (citation omitted). She must show that she “requested reasonable accommodations” and explain how the requested accommodations were “necessary to enable [her] to participate in light of [her] disabilities.” *Id.* at 1077.

Florek first argues that she should have been given closed captioning for lectures. She listed closed captioning in her request for accommodation in spring 2020 but did not submit any supporting medical documentation. Florek claims that Creighton should have understood that she needed closed captioning because of her concussion or traumatic brain injury symptoms, but neither she nor her doctor explained why closed captioning was necessary to enable her to understand lectures “in light of [her] disability.” See *Mershon*, 442 F.3d at 1077 (potential student did not “explain how each requested accommodation was necessary to enable him to participate in light of his disabilities and the particular course requirements”); *Rossley v. Drake Univ.*, 979 F.3d 1184, 1197 (8th Cir. 2020) (student failed to connect his demand for more time to his disability); *Stern*, 220 F.3d at 909 (student “failed to establish a nexus between his requested testing scheme and his dyslexia”).

Florek should have received extra time on the three, five-minute quizzes during the spring 2020 semester. So when a professor inadvertently gave Florek only five minutes, Creighton remedied the problem by allowing her to retake one quiz with additional time. She received perfect scores on the other two. *Cf. Gustafson v. Bi-State Dev. Agency*, 29 F.4th 406, 412 (8th Cir. 2022) (three “frustrating, but isolated, instances” when public buses drove by disabled plaintiff did not establish an ADA violation (citation omitted)). Creighton denied Florek extra time on an oral presentation because it was a simulation of pharmacy practice. We give Creighton “some deference” on that academic decision, *Power v. Univ. of N.D. Sch. of L.*, 954 F.3d 1047, 1053 (8th Cir. 2020), and Florek has no evidence that Creighton’s “academic policy is a pretext for discrimination,” *see Amir v. St. Louis Univ.*, 184 F.3d 1017, 1029 (8th Cir. 1999).³

Finally, Creighton did not fail to accommodate Florek when it denied her request to change the date and time of her spring 2021 final exam. Florek asked to reschedule because she would be distracted by “household members”—an environment over which Creighton had no control. She did not have any accommodations on file in 2021 because she refused to provide the information Creighton asked for to renew them. And even if the previously granted accommodations were in effect, she still would not be allowed to change the date and time of an exam without professor approval.

³Florek claims that giving deference to the university is part of the affirmative defenses of undue burden or fundamental alteration, which Creighton did not raise. *See Childress v. Fox Assocs., LLC*, 932 F.3d 1165, 1171–72 (8th Cir. 2019). Even so, the district court did not err in considering the policy because the record established that it was the reason Creighton denied her request. *See King v. Hardesty*, 517 F.3d 1049, 1061 (8th Cir. 2008) (affirming summary judgment where the issue was addressed in the movant’s supporting affidavits, even though the argument was not made in the motion), *abrogated on other grounds by Torgerson*, 643 F.3d at 1043.

Relying on *Argenyi*, Florek argues that (1) Creighton had a duty to provide all reasonable accommodations once it knew she had a disability and (2) she had no obligation to request specific accommodations or to provide medical documentation. That’s not what *Argenyi* said. There, a deaf student repeatedly asked for specific accommodations, his otolaryngologist recommended the same accommodations, and both student and doctor explained why the “auxiliary aids and services” were necessary. 703 F.3d at 444–45. We held that there was a genuine dispute “whether Creighton denied Argenyi an equal opportunity to gain the same benefit from medical schools as his nondisabled peers by refusing to provide his requested accommodations.” *Id.* at 451. Nothing in *Argenyi* requires Creighton to provide accommodations a student didn’t request and—because the student requested the accommodations and showed why they were necessary—*Argenyi* did not say anything about whether a request or an explanation was required. Other cases have. *E.g.*, *Mershon*, 442 F.3d at 1077 (plaintiff “bears the initial burden of demonstrating that he requested reasonable accommodations”); *Rossley*, 979 F.3d at 1197 (plaintiff must “connect his demands to his disability”). And finally, we reject Florek’s contention that the district court erred by individually considering each accommodation she said she didn’t receive, which is based on her misguided reading of *Argenyi*. *See, e.g.*, *Amir*, 184 F.3d at 1028–29.

Disparate Treatment Claims

Florek claims that evidence of Creighton faculty’s hostility toward her is direct evidence of discrimination. But the allegedly hostile statements questioned her professionalism and truthfulness; none involved her concussion or traumatic brain injury. *See Schaffhauser v. United Parcel Serv., Inc.*, 794 F.3d 899, 902 (8th Cir. 2015) (direct evidence shows “a specific link between the alleged discriminatory animus and the challenged decision” (citation omitted)).

Turning to the *McDonnell Douglas* burden-shifting framework, see *Power*, 954 F.3d at 1052, we assume Florek has shown a prima facie case of discrimination.⁴ Creighton has met its burden “to articulate a legitimate, nondiscriminatory reason” for her second, third, and fourth citations and her dismissal. *Id.* For the second citation, Creighton points to Florek’s failure to communicate with faculty and her lack of candor with the hospital contact. The third citation was issued because of her “disrespectful, controlling, and demanding” communications with faculty and her refusal to meet. And the final citation came after Florek stopped responding to faculty and did not show up to a meeting. These are the nondiscriminatory reasons that led to her dismissal.

Florek cannot show pretext—that is, that “disability discrimination, and not [Creighton’s] stated reasons, motivated the” citations and dismissal. *Id.* at 1053. She argues that Creighton gave contradictory reasons for the citations, that it never confirmed the basis for the final citation, that she was penalized twice for the same conduct, and that a faculty member solicited evidence to try to justify a citation. But she has not shown a connection between the citations and her disability. Nor has she undermined Creighton’s good reasons for issuing them. See *Lors v. Dean*, 595 F.3d 831, 834 (8th Cir. 2010) (per curiam) (“[T]he plaintiff must do more than simply create a factual dispute as to the issue of pretext; [s]he must offer sufficient evidence for a reasonable trier of fact to infer discrimination.” (citation omitted)); cf. *Huber v. Westar Foods, Inc.*, 139 F.4th 615, 627 (8th Cir. 2025) (en banc) (“[T]erminating an employee for workplace misconduct, ‘even misconduct related to a disability,’ is not discrimination ‘on the basis of disability.’” (citations omitted)).

⁴Florek suggests that Creighton’s discriminatory actions were not limited to the citations and dismissal but included “a range of instances of unequal treatment,” including things like faculty “singling out Florek” or “labeling her manipulative, unprofessional or irresponsible.” But “[a] person alleging discrimination under Title III must show . . . that the defendant took *adverse action* against the plaintiff that was *based upon the plaintiff’s disability*.” *Amir*, 184 F.3d at 1027 (emphasis added); see *Mershon*, 442 F.3d at 1077 n.5 (explaining failure to accommodate is itself an adverse action). The other instances Florek points to are not adverse actions against her based on her disability.

The record reveals only frustration with Florek’s tone and demeanor, with passing references to her accommodations and disability. And contrary to Florek’s argument, the district court did not require “evidence of animus against all individuals with [traumatic brain injuries] or animus based on her specific diagnosis.” Instead, it concluded that she did not present evidence that her “disability served as a factor motivating” Creighton’s decisions to discipline her. *Amir*, 184 F.3d at 1028.

B. ADA Retaliation

Florek argues that the partial grant of judgment as a matter of law prejudiced the jury’s consideration of her ADA retaliation claim. Having found no error in that decision, there is no reason to vacate the verdict.⁵ *Griffith v. Edwards*, 493 F.2d 495, 496 (8th Cir. 1974) (per curiam) (“[I]t has never been the function of a reviewing court to reverse a jury verdict unless some error of a prejudicial nature was committed.”).

III. Conclusion

The judgment is affirmed.

⁵The district court did not abuse its discretion by denying Florek’s motion in limine to exclude evidence about her relationship with Harmon and his financial support of this litigation. *Sayger v. Riceland Foods, Inc.*, 735 F.3d 1025, 1034 (8th Cir. 2013) (standard of review). Harmon testified at trial, and the evidence Florek sought to exclude went to his credibility and potential bias. See *Johnson v. Brewer*, 521 F.2d 556, 561 (8th Cir. 1975) (“The partiality of a witness is subject to exploration at trial, and is ‘always relevant as discrediting the witness and affecting the weight of his testimony.’” (citation omitted)).