

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1295

CAROLYN GARDNER

v.

KUTZTOWN UNIVERSITY; DR. KENNETH S. HAWKINSON, President of
Kutztown University, in his individual capacity; JESUS PENA, Vice-President
for Kutztown University Division of Equity, Compliance and Legal Affairs,
in his individual capacity; JENNIFER WEIDMAN, Kutztown University
Director of Human Resources, in her individual capacity,
Appellants

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D. C. No. 5:22-cv-01034)
District Judge: Honorable Jeffrey L. Schmehl

Argued on February 4, 2026

Before: HARDIMAN, MONTGOMERY-REEVES and ROTH, Circuit Judges

(Opinion filed: August 18, 2026)

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(ARGUED)

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OPINION*

ROTH, *Circuit Judge*

Appellant Carolyn Gardner sued Kutztown University (KU), alleging various theories of disability discrimination under § 504 of the Rehabilitation Act (RA) based on KU’s rejection of her requests to teach classes remotely for the Fall 2021, Spring 2022, Fall 2022, and Spring 2023 semesters. The District Court granted summary judgment to Gardner on nearly all her claims. For the reasons below, we vacate the District Court’s Order entering summary judgment for Gardner on Counts I-IV and reverse as to Counts V and VI. However, we affirm the District Court’s partial determination in Count I that KU did not fail to accommodate Gardner’s disability for the Spring 2023 semester.

I.¹

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

¹ Because we write for the parties, we recite only those facts necessary to our disposition.

In Spring 2020, during the height of the global COVID-19 pandemic, KU implemented procedures allowing faculty to teach and conduct office-hours remotely in compliance with the Pennsylvania Governor’s declared state of emergency.² The Governor’s mandate also entitled high-risk faculty to continue remote work for the remainder of the 2020-2021 academic year. Having received a diagnosis of an incurable autoimmune condition in December 2020, Gardner worked remotely until March 2021, when she took leave under the Family and Medical Leave Act for the remainder of the semester to adjust to her immunosuppressive medication.

In preparation for the Fall 2021 semester, KU planned to reopen campus and return to pre-COVID configurations—including requiring in-person course instruction—as explained in its semester guidelines. In addition, KU’s administration concluded that converting in-person classes to an online format was not considered a reasonable accommodation. However, KU’s governing written policy, Policy DIV-002, requires that formal accommodation requests for documented disabilities be evaluated individually, submitted to the Director of Disability Services, and sent to the HR Director, who determines whether the requested accommodation is reasonable.

As she had before the pandemic, Gardner was scheduled to teach at least one course online. She also requested permission to teach her scheduled in-person courses remotely for four semesters (Fall 2021, Spring 2022, Fall 2022, Spring 2023). KU either denied the requests or provided no response, relying on its newly implemented policy that

² This included installing new technology to allow for synchronous instruction “for Fall 2020 and beyond.” Joint Appendix (JA) 18.

any requests to move in-person classes to remote modalities would be considered a “fundamental alteration”³ to course modalities and student preferences and thus would be denied. However, KU twice offered Gardner alternative accommodations: for Spring 2022, she could teach behind a plexiglass podium wearing a plexiglass face shield; and for Spring 2023, in addition to the plexiglass options, KU would reconstruct her classroom to provide enhanced air filtering and promote social distancing. Gardner rejected both offers.

II.⁴

In March 2022, after the second accommodations denial, Gardner sued KU and certain individual administrators for disability discrimination. She moved for partial summary judgment on her claims for KU’s failure to accommodate (Count I), use of facially illegal discriminatory policies (Count II), intentional discrimination (Count III), disparate impact based on prohibited criteria and methods of administration (Count V), and interference (Count VI).⁵ KU and the individual defendants opposed Gardner’s partial motion and cross-moved for summary judgment on all claims. The District Court granted Gardner’s partial motion, entered summary judgment in Gardner’s favor on

³ JA 31.

⁴ The District Court had jurisdiction under 18 U.S.C. § 1331. We have appellate jurisdiction under 28 U.S.C. § 1291.

⁵ Gardner also brought a separate claim for retaliation under Count VI. The District Court entered summary judgment in KU’s favor on this portion of Count VI, and KU declined to challenge this determination on appeal.

Count IV *sua sponte*,⁶ and denied KU's cross-motion except as to the portion of Count I concerning KU's reasonable accommodation of Gardner for Spring 2023.

We exercise plenary review of summary judgment decisions, construing evidence in favor of the non-moving party.⁷ Summary judgment is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”⁸ If cross-motions reveal no genuine issue of material fact, “we will order judgment to be entered in favor of the party deserving judgment in light of the law and undisputed facts.”⁹

III.

This case presents novel questions concerning the proper legal standards for analyzing employment and disability discrimination claims under the RA, but we need not resolve them today. Instead, we will allow this case to proceed to trial because a material dispute of fact exists as to the central issues on appeal.

A.

⁶ The District Court also granted summary judgment for the named individual defendants on Gardner's claims, brought pursuant to 42 U.S.C. § 1983, that the individuals violated her rights under the RA. We do not address Gardner's cross-appeal of that decision because the law is clear that individuals cannot be held liable under the RA, and no cause of action under § 1983 exists addressing RA violations where, as here, the § 1983 claim is based on the same facts as the RA claims. *See A.W. v. Jersey City Pub. Schools*, 486 F.3d 791, 805 (3d Cir. 2007) (“There is nothing in Section 504 that . . . causes us to conclude that Congress intended to allow §1983 to be available to remedy Section 504 violations such as those alleged by [plaintiff].”).

⁷ *Iberia Foods Corp. v. Romeo*, 150 F.3d 298, 302 (3d Cir. 1998).

⁸ Fed. R. Civ. P. 56(a).

⁹ *Iberia*, 150 F.3d at 302.

We start with Gardner’s claims that by denying her remote-work requests, KU intentionally discriminated against her based on her disability. She brings two separate claims based on two theories of liability: (1) direct evidence of intentional discrimination (Count III) and (2) circumstantial evidence of intentional discrimination through pretext (Count IV). Under the RA, to establish a *prima facie* claim for intentional discrimination under either theory, Gardner must show that: (1) she is disabled; (2) she is “qualified” to perform the “essential functions” of her job with or without reasonable accommodations; and (3) she was “nonetheless . . . otherwise prevented from performing [her] job.”¹⁰ An employee is “qualified” for the purposes of the RA when she “satisf[ies] the prerequisites for the position, such as possessing the appropriate educational background, employment experience, skills, licenses, etc.” and she is “able to perform the essential functions of the position . . . with or without reasonable accommodations.”¹¹

Here, the parties dispute whether teaching students and holding office hours in-person are “essential functions” of Gardner’s role as an Associate Professor and whether

¹⁰ *Shiring v. Runyon*, 90 F.3d 827, 831 (3d Cir. 1996).

¹¹ *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 311 (3d Cir. 1999) (quoting *Gaul v. Lucent Techs., Inc.*, 134 F.3d 576, 580 (3d Cir. 1998)). Neither party disputes that Gardner is disabled, nor do they dispute that she possesses the educational background and experience necessary for her role as an Associate Professor.

Gardner’s full-time remote work request is a “reasonable accommodation.”¹² But both Counts III and IV depend on the answers to these questions, which can only be determined upon weighing evidence—a task which both we and the District Court are plainly prohibited from undertaking at summary judgment.¹³ Thus, while “[w]e do not suggest that the District Court here had no basis for its conclusion that [physical presence] is [not] an essential function of [Gardner’s] position . . . or even that, if we were the triers of fact, we would not so hold,”¹⁴ we *do* conclude that the District Court erred in deciding that question as a matter of law. We will therefore vacate its order entering summary judgment on both Counts III and IV.¹⁵

B.

¹² KU’s supporting evidence includes that it has never hired a full-time faculty member to teach exclusively online; with the exception of COVID, Gardner never taught more than one class online in a single semester; and distance learning accounts for only 6% of KU’s course offerings pre-COVID and 13% post-COVID. Gardner counters that the applicable Collective Bargaining Agreement evaluates faculty performance based on “effective teaching, scholarship, and service” without any requirement of effectuating those duties in-person (JA 13, JA 32); KU admittedly has “no policy, contractual definition, or pre-existing job description” stating that teaching in-person is essential to the job (JA 21); and Gardner taught classes remotely for over a decade and completed KU’s advanced online certification program in 2013.

¹³ Indeed, even in a disability case where the record almost unequivocally answered whether the function at-issue was “essential” at the summary judgment stage, we remanded for a jury’s determination. *See Skerski v. Time Warner Cable Co., a Div. of Time Warner Ent. Co., L.P.*, 257 F.3d 273, 280, 283 (3d Cir. 2001) (cleaned up); *see also Turner v. Hershey Chocolate U.S.*, 440 F.3d 604, 614 (3d Cir. 2006) (noting that the essential function determination is a factual issue that “must be decided by a jury”).

¹⁴ *Skerski*, 257 F.3d at 283.

¹⁵ KU also challenges the District Court’s grant of summary judgment in Gardner’s favor on her Count II claim for Discrimination Pursuant to a Blanket Policy. KU’s arguments mirror those in Counts III and IV. We therefore vacate the District Court’s grant of summary judgment on Count II for the reasons explained above.

Next, KU challenges the District Court’s grant of summary judgment to Gardner for her Count I claim that KU failed to accommodate her disability for Fall 2021, Spring 2022, and Fall 2022. KU argues that the record proves it engaged in good faith in the interactive process to consider Gardner’s requested accommodations. KU is not correct.

The record reveals a dispute of material fact regarding whether KU sufficiently engaged in the interactive accommodations process. To establish an employer’s failure to accommodate, Gardner must show: “(1) [s]he was disabled and h[er] employer knew it; (2) [s]he requested an accommodation or assistance; (3) h[er] employer did not make a good faith effort to assist; and (4) [s]he could have been reasonably accommodated.”¹⁶

An accommodation is reasonable where it enables an individual with a disability who is qualified to “perform the essential functions of that position; or . . . to enjoy equal benefits and privileges of employment.”¹⁷ Because the reasonableness determination hinges on weighing the same competing facts that foreclose summary judgment on Gardner’s intentional discrimination claims, we leave this claim to a jury as well.

However, concerning the Spring 2023 semester—when KU offered to construct a classroom with limited student capacity, a separate entrance, specialized air filters, and a plexiglass podium compliant with the Americans Disabilities Act (ADA)—we agree with the District Court’s decision to grant summary judgment in KU’s favor. We find that no reasonable juror could conclude that KU’s proposed accommodation was not a

¹⁶ *Capps v. Mondelez Glob., LLC*, 847 F.3d 144, 157 (3d Cir. 2017) (quoting *Armstrong v. Burdette Tomlin Mem’l Hosp.*, 438 F.3d 240, 246 (3d Cir. 2006)).

¹⁷ 29 C.F.R. § 1630.2(o)(1)(ii)-(iii).

reasonable means to accommodate Gardner’s need to minimize her risk of illness exposure. Indeed, an employer’s obligation is only to provide an accommodation that is *reasonable* in and of itself—not the accommodation that “is the *most* reasonable or the employee’s prefer[ence].”¹⁸ Accordingly, we will affirm the District Court’s decision as to Spring 2023 and vacate the District Court’s grant of summary judgment as to Fall 2021, Spring 2022, and Fall 2022.

C.

On Gardner’s claim in Count V—that KU’s unofficial policy requiring full in-person teaching and office hours disparately impacts her as a disabled individual—the parties dispute whether Gardner must provide comparative evidence to show the policy’s disproportionate effect, and if so, whether she has met her burden of production.¹⁹ Simply put: yes, she must provide comparative evidence, but no, she did not meet her burden to do so.

¹⁸ *United States v. Bd. of Educ. for Sch. Dist. of Philadelphia*, 911 F.2d 882, 886 (3d Cir. 1990) (emphasis added) (citing *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 69 (1986)); see also *Hankins v. The Gap, Inc.*, 84 F.3d 797, 800–01 (6th Cir. 1996) (“[A]n employee cannot make his employer provide a specific accommodation if another reasonable accommodation is instead provided.”).

¹⁹ KU asserts that similar to Title VII claims, Gardner must demonstrate a disparate impact on a class of statutorily protected individuals, generally through statistics or equivalent empirical evidence. See 42 U.S.C. § 2000e-2(k)(1)(A)(i); *Newark Branch, N.A.A.C.P. v. Town of Harrison, N.J.*, 940 F.2d 792, 798 (3d Cir. 1991). Gardner counters that she may simply establish that she *alone* was “screened out” in violation of the ADA’s prohibition of employers’ use of qualification standards, tests, or other criteria that “screen out or tend to screen out an individual with a disability or a class of individuals with disabilities.” 42 U.S.C. § 12112(b)(6).

Though we have not directly established the requirements for showing disparate impact under the RA in the employment discrimination context, this case does not require us to do so. Gardner has offered *no* legitimate or measurable evidence that would allow us—let alone the District Court—to determine as a matter of law that KU’s “no remote-work” policy disproportionately impacted disabled employees.²⁰ Nor could she adduce such evidence at this stage. Thus, we will reverse the District Court’s decision granting summary judgment to Gardner and denying KU’s cross-motion for summary judgment as to Count V.

D.

Finally, KU contends the District Court improperly entered summary judgment for Gardner on her Count VI claim that KU interfered with her ability to enjoy her protected rights under the ADA by denying her remote-work accommodation requests.²¹ KU takes issue with the District Court’s recognition of interference claims under the RA as well as the District Court’s adoption of the Fair Housing Act’s standard for analyzing interference claims.

While we have yet to definitively address whether cognizable interference claims extend to the RA, assuming without deciding that they do, we agree that the District

²⁰ See *NAACP v. Medical Ctr., Inc.*, 657 F.2d 1322, 1334–35 (3d Cir. 1981) (rejecting plaintiff’s RA claim that the defendant medical center’s planned relocation would disparately impact disabled individuals because the plaintiff produced no credible evidence indicating any disproportionate adverse effect).

²¹ Section 12203(b) of the ADA prohibits an employer from coercing, intimidating, threatening, or interfering with any individual in the exercise or enjoyment of any right protected by the statute. 42 U.S.C. § 12203(b).

Court’s summary judgment decision warrants reversal. But first, we recognize that the “novel and complex question[.]”²² of how to analyze these claims required the District Court to land between a rock and a hard place. In this case, the court reasonably selected a legal framework that we have endorsed for analyzing the same cause of action under the Fair Housing Act,²³ in which we use the dictionary’s definition of “interference,” which is “the act of meddling in or hampering an activity or process.”²⁴

Under this framework, we disagree with the District Court’s conclusion that KU “clearly meddled” with Gardner’s ability to receive an accommodation for Fall 2021.²⁵ No evidence supports Gardner’s contention that as of Fall 2021, KU’s blanket decision to deny all employees’ remote-teaching requests constituted “meddling” with Gardner’s statutory ability to *seek* a reasonable accommodation. Again, while the law entitles Gardner to generally request accommodations, as she did, an open question exists regarding whether the law required KU to fulfil Gardner’s *specific* requested accommodation.²⁶ We therefore reverse the District Court’s entry of summary judgment on Count VI.

III.

²² *Sikkelee v. Precision Airmotive Corp.*, 822 F.3d 680, 686–87 (3d Cir. 2016) (acknowledging that the district court faced a “conundrum” when summary judgment proceedings required it to decide an unprecedented issue involving federal aviation law’s preemption of state law).

²³ *See Revock v. Cowpet Bay W. Condo. Ass’n.*, 853 F.3d 96, 112–13 (3d Cir. 2017) (citing 42 U.S.C. § 3617).

²⁴ *Id.*

²⁵ JA 70.

²⁶ *See supra* Part III.B.

For the foregoing reasons, we affirm the District Court's grant of summary judgment to KU only as to the Spring 2023 semester in Count I, vacate the judgment as to the remainder of Counts I and the entirety of Counts II, III, and IV, reverse as to Counts V and VI, and remand for further proceedings consistent with this opinion.