IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MEGAN HSIEH, Plaintiff, v. STATE OF OKLAHOMA, *ex rel.*, THE BOARD OF REGENTS FOR THE UNIVERSITY OF OKLAHOMA, et al., Defendants.	)	Case No. 5:25-cv-01160-J

PLAINTIFF'S BRIEF IN SUPPORT
OF MOTION FOR PRELIMINARY INJUNCTION

Dated: February 8, 2026

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
BACKGROUND 1
LEGAL STANDARD 6
ARGUMENT 7
I. Plaintiff is Likely To Succeed on the Merits of Her Claims 7
a. First Amendment Claim (Count I) 7
i. Plaintiff's statements were not true threats 7
ii. Plaintiff did not have a subjective *mens rea* of recklessness 11
b. Other Claims: Vagueness (Count II), Procedural Due Process (Count III), and Section 504 of the Rehabilitation Act (Count IV) 12
II. Plaintiff is Likely to Suffer Irreparable Harm 13
III. The Balance of Equities Tips in Plaintiff's Favor 23
IV. An Injunction would be in the Public Interest 24
THE BOND SHOULD BE WAIVED 25
CONCLUSION 25

TABLE OF AUTHORITIES

Cases

A.C.L.U. v. Ashcroft, 322 F.3d 240 (3d Cir. 2003), *aff'd and remanded*, 542 U.S. 656 (2004) _____ 23

Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty., 39 F.4th 95 (3d Cir. 2022) _____ 24

Bullock v. Ariz. Bd. of Regents, No. CV- 24-00520, 2024 U.S. Dist. LEXIS 200777 (D. Ariz. Nov. 5, 2024) _____ 21, 22

Carson v. Am. Brands, Inc., 450 U.S. 79 (1981) _____ 19

Cate v. Oldham, 707 F.2d 1176 (11th Cir. 1983) _____ 20

Chamber of Com. of U.S. v. Edmondson, 594 F.3d 742 (10th Cir. 2010) _____ 24

Cmty. House, Inc. v. City of Boise, 490 F.3d 1041 (9th Cir. 2007) _____ 24

Counterman v. Colorado, 600 U.S. 66 (2023) _____ 7, 11

Doe v. Pa. State Univ., 276 F.Supp.3d 300 (M.D. Pa. 2017) _____ 19

Doe v. Purdue Univ. 928 F.3d 652, 666 (7th Cir. 2019) _____ 17

Doe v. Univ. of Cincinnati, 872 F.3d 393 (6th Cir. 2017) _____ 6, 17

Enyart v. Nat'l Conf. of Bar Exam'rs, Inc., 630 F.3d 1153 (9th Cir. 2011) _____ 19

FCC v. Fox Television Stations, Inc., 567 U.S. 239 (2012) _____ 13

Goss v. Lopez, 419 U.S. 565 (1975) _____ 13, 16, 17

Guardian Life Ins. Co. of Am. v. Est. of Cerniglia, 446 F. App'x 453 (3d Cir. 2011) ____ 18

Hobby Lobby Stores, Inc. v. Sebelius, 723 F.3d 1114 (10th Cir. 2013) _____ 7, 25

J.C. v. Laverne Pub. Sch. Dist., No. CIV-18-197-M, 2018 U.S. Dist. LEXIS 57904 (W.D. Okla. Apr. 5, 2018) _____ 18, 20

Kamdem-Ouaffo v. Task Mgmt. Inc., 792 F. App'x 218 (3d Cir. 2019) _____ 19

Karem v. Trump, 960 F.3d 656 (D.C. Cir. 2020) _____ 23

Kikumura v. Hurley, 242 F.3d 950 (10th Cir. 2001) 7, 18

Kroupa v. Nielsen, 731 F.3d 813 (8th Cir. 2013) 18

Life Spine, Inc. v. Aegis Spine, Inc., 8 F.4th 531 (7th Cir. 2021) 18

Mahmoud v. Taylor, 145 S.Ct. 2332 (2025) 6, 14, 15, 16, 20, 22

Mathews v. Eldridge, 424 U.S. 319 (1976) 13

NAACP, Inc. v. Town of E. Haven, 70 F.3d 219 (2d Cir. 1995) 19

Nexstar Media, Inc. v. Walters, 776 F.Supp.3d 1053 (W.D. Okla. 2024) 25

Nken v. Holder, 556 U.S. 418 (2009) 24

Odebrecht Constr., Inc. v. Sec'y, Fla. Dep't of Transp., 715 F.3d 1268 (11th Cir. 2013) 24

Pryor v. Sch. Dist. No. 1, 99 F.4th 1243 (10th Cir. 2024) 24

Ramirez v. Collier, 595 U.S. 411 (2022) 23

Ramirez v. U.S. Immigr. & Customs Enf't, 568 F.Supp.3d 10 (D.D.C. 2021) 23

Register.com., Inc. v. Verio, Inc., 356 F.3d 393 (2d Cir. 2004) 18

Rent-a-Center, Inc. v. Canyon Television & Appliance Rental, Inc., 944 F.2d 597 (9th Cir. 1991) 19

Ritter v. Oklahoma, No. CIV-16-0438-HE, Doc. 19 (W.D. Okla. May 6, 2016) 18, 25

RoDa Drilling Co. v. Siegal, 552 F.3d 1203 (10th Cir. 2009) 20, 25

Roman Cath. Diocese of Brooklyn v. Cuomo, 592 U.S. 14 (2020) 23

Schrader v. Dist. Att'y of York Cnty., 74 F.4th 120 (3d Cir. 2023) 24

TikTok Inc. v. Trump, 490 F.Supp.3d 73 (D.D.C. 2020) 23

Valley v. Rapides Parish Sch. Bd., 118 F.3d 1047 (5th Cir. 1997) 19

Watson v. Beckel, 242 F.3d 1237 (10th Cir. 2001) 13

Watts v. United States, 394 U.S. 705 (1969) (per curiam) 7, 8, 9, 10

Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008) 6

Yang v. Kosinski, 960 F.3d 119 (2d Cir. 2020) _____24

Statutes

29 U.S.C. § 794(a) _____13

Other Authorities

ERAS Program SOAP Information (updated January 2026), https://students-residents.aamc.org/applying-residencies-eras/eras-program-soap-information _____5

Tanya Albert Henry, *Biggest Match Day Ever: Here's What the 2025 Numbers Reveal*, Am. Med. Ass'n (Mar. 21, 2025), https://www.ama-assn.org/medical-students/preparing-residency/biggest-match-day-ever-here-s-what-2025-numbers-reveal _____5

Rules

Fed. R. Civ. P. 65(c) _____25

Treatises

11A Charles Alan Wright et al., *Federal Practice and Procedure* _____7, 18, 23

BACKGROUND

As detailed in the Amended Complaint [Doc. 35], Plaintiff is a fourth-year medical student in good academic standing at the University of Oklahoma Health Sciences Center ("OUHSC") [*id.* ¶ 1, 38]. In University proceedings during May and June of 2024, Plaintiff was found by University officials to have violated Section II.4(e) of the University's Student Rights and Responsibilities Code of Conduct ("Student Code") which prohibits "threatening behavior" defined as a "serious expression of intent to commit an act of unlawful violence against a particular individual, identifiable group, or damage to property. The threatening violence, including intimidation, causes reasonable fear of injury to the health or safety of any person, group, or property." [*id.* ¶ 24]. The sole basis for this violation was statements which the 988 Suicide and Crisis Lifeline claimed Plaintiff made to them during a confidential call for mental health support.

As presented at the University's disciplinary panel hearing against Plaintiff, the 988 supervisor Jim Black contacted OUHSC Police who claimed that on April 27, 2024 "Black stated [Plaintiff] made some concerning comments about how she *wished* [University official Kate] Stanton was dead. Black also stated [Plaintiff] *wanted* all of the medical staff members to die. Black advised [Plaintiff] made the comments in general (*no plan*)." [*Id.* ¶ 27 (emphasis added)].[1] Two screenshots of text messages between Plaintiff and 988 from April 27, 2024 were also presented to the hearing panel in which Plaintiff answered 988 that she was "just very down and panicked and freaked out and pissed off

[1] However, Plaintiff did not actually make those statements. [Doc. 35 at 20-21 n.5].

[at] the world that I don't even have the energy to go and get anything [to drink];" and that she had no means to harm herself or do anything, did not have the energy to get off her floor, and was "just very fucking upset." [*Id.* ¶ 28].

Even though there had been no concerns or issues with Plaintiff having been on the University's campus [*id.* ¶ 29], four days later on May 1, 2024, OUHSC Police Deputy Chief Terry Schofield contacted and enlisted a 988 counselor to act as a *de facto* undercover police informant to call and elicit statements from Plaintiff under the guise of a follow-up wellness check [*id.* ¶ 10-13]. In a phone conversation recorded by Schofield and presented to the University hearing panel, the 988 counselor Joy reported back the following after speaking with Plaintiff on May 1st that:

> [Plaintiff] said -- whenever I asked her, due to her frustrations, if she was having any thoughts of harm, she said *she has nothing to do it with*. And then she said that she *wanted* to end it all at the school and, five minutes before, post it to the news and publish it to all medical schools and take the administrators with her. And then I asked for clarification on what she meant when she said take the administrators with her, and she said she *wanted* to yeet off the planet and yeet them all too. …. And then she said, I *want* her to pay in one way or another.

[*Id.* ¶ 27 (emphasis added)].

Plaintiff testified to the hearing panel that when she first contacted 988 on April 27, 2024 she was having a "mental breakdown," "panic attacks," "thoughts of wanting to hurt [her]self and a lot of frustration with the school at the time," and thought her conversation was confidential. [*Id.* ¶ 31]. Plaintiff testified that she never told 988 that she wanted to kill or harm Stanton, that she wished anyone was dead, or that she had a plan or was going to do anything to physically harm another person. [*Id.*]. Instead,

Plaintiff made clear to 988 on both dates that she had no plan and was just frustrated and not going to harm anyone. [*Id.*].

Plaintiff explained to the hearing panel that when 988 called her on May 1, 2024 under Deputy Chief Schofield's direction, she was asked about and was referring to how she had previously felt on April 27th. [*Id.* ¶ 33]. Plaintiff also told the panel that when she said, "I want to yeet off the planet and yeet them all too," "[w]hat I really meant by that is I'm so frustrated right now I want to -- basically I wish I could just not exist, but if I -- something happens to me or if I hurt myself, to let the news and medical schools know that it's because of this place." [*Id.*]. Plaintiff also explained that when she said "I want [Stanton] to pay in one way or another," Plaintiff "meant I'm so frustrated that all these things keep happening, and I think she's behind it, so I want her to lose her career, lose her reputation, like I want to expose her." [*Id.* ¶ 32-33].

Indeed, OUHSC Police Deputy Chief Schofield told 988 on May 1, 2024 that Plaintiff's reported statements from April 27, 2024 were "***not…a threat***…not hate speech, ***it's free speech***." [*Id.* ¶¶ 10, 45 (emphasis added)]. Likewise, the University's Hearing Panel, stated in its decision letter that the "panel did not find compelling evidence to believe that [Plaintiff] used the word 'kill' *or implied the word 'kill' at any time*." [*Id.* ¶ 35 (emphasis added)]. The letter further stated that the "panel finds that the testimony and documentary evidence showed that [Plaintiff] was in an emotional crisis, and she was using the tools available to her to stay safe." [*Id.*]. Nevertheless, the University's Hearing Panel still found Plaintiff in violation of Section II.4(e), which was affirmed on appeal. [*Id.* ¶¶ 35, 37].

Plaintiff's reputation and ability to apply for a medical residency following graduation from medical school—a necessary step to becoming a licensed physician—has been effectively destroyed by Defendants' disciplinary actions. [*Id.* ¶ 38]; Ex. 1 (Plaintiff's Affidavit). To practice medicine, Plaintiff must obtain a residency through the National Resident Matching Program ("the Match"). Ex. 1 ¶ 4.

But Plaintiff ***cannot*** realistically apply for a residency with a violation for "threatening behavior" against staff and a resulting one-year suspension on her record, which must be reported to any residency program she applies to in the required Dean's Letter and application with the Electronic Residency Application Service ("ERAS"), which can cause her to be filtered out by residency programs. Ex. 1 ¶¶ 9-10; Ex. 2 at 3 (2026 ERAS Applicant Worksheet pages); Ex. 3 (Dean's Letter info from University's webpage); Ex. 4 (Dean's Letter for Plaintiff); Ex. 5 (ERAS User Guide). Any allegation implying a threat of violence would likely destroy one's career in medicine and even cause difficulty getting malpractice insurance. Ex. 1 ¶¶ 11-14. Additionally, once Plaintiff applies with this violation on her record, her reputation will be permanently ruined even if this violation is subsequently removed and she reapplies to residencies in a following year, because the information from her prior application will still be on file. Ex. 1 ¶¶ 12-13; Ex. 6 (ERAS correspondence).

The likely irreparable harm from this disciplinary record is clearly shown in that, over the past few months, Plaintiff has applied for and been rejected from various volunteer positions because of the "threatening behavior" violation on her school record. Ex. 1 ¶ 15; Ex. 7 (volunteer rejection emails). These organizations see Plaintiff as a risk

and liability—just like residency programs would—rather than as an asset. If these organizations will not even accept Plaintiff's offer of free volunteer work to help them because of this disciplinary violation on her record, then there is no chance that a highly competitive residency program will accept her over all the other candidates. Ex. 1 ¶ 5, 11. For the 2025 Match, over 52,000 applicants competed for about 43,000 positions.[2]

Therefore, Plaintiff has not submitted a residency application for fear of incurring permanent injury to her reputation and career. Ex. 1 ¶ 9. But Plaintiff may apply for any remaining unfilled openings in the Supplemental Offers and Acceptance Program ("SOAP"), which takes place during the week of March 16, 2026.[3] Ex. 1 ¶¶ 7, 20.

If Plaintiff cannot apply or match in the SOAP, then Plaintiff cannot apply again until after she graduates. But applying after she graduates will harm Plaintiff by creating a gap and outdating her training, and it will reduce the likelihood of her matching from approximately 93.5% to 45.9%. Ex. 1 ¶¶ 16-18; Ex. 2 at 2; Ex. 8 (National Resident Matching Program 2025 Results and Data). If Plaintiff is able to delay her graduation so that she can apply for residency while still a student during the next school year, that will also harm Plaintiff's chances of matching by prolonging her medical schooling, delay her career, and cause Plaintiff to incur substantial financial costs for additional tuition and related expenses. Ex. 1 ¶ 19; Ex. 2 at 2.

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[2] Tanya Albert Henry, *Biggest Match Day Ever: Here's What the 2025 Numbers Reveal*, Am. Med. Ass'n (Mar. 21, 2025), https://www.ama-assn.org/medical-students/preparing-residency/biggest-match-day-ever-here-s-what-2025-numbers-reveal (last visited Oct. 10, 2025).

[3] ERAS Program SOAP Information (updated January 2026), https://students-residents.aamc.org/applying-residencies-eras/eras-program-soap-information.

Although the SOAP is approaching soon, Plaintiff diligently sought for an attorney to file this lawsuit from the time she was disciplined back in May 2024. Ex. 1 ¶¶ 21-28. After retaining undersigned counsel in June 2025, Plaintiff stressed the urgency of getting preliminary relief as soon as possible. Ex. 1 ¶¶ 24-25. Undersigned counsel reviewed volumes of records and initially sought to negotiate. Ex. 1 ¶¶ 25-26. Soon after this lawsuit was filed, a temporary restraining order was sought, seeking similar relief. [Doc. 14]. That Motion was denied [Doc. 16], and undersigned counsel had to reconsider and adjust arguments and respond to Defendants' motions to strike [Doc. 27] and dismiss [Doc. 36] before being able to file this Motion.

LEGAL STANDARD

To obtain a preliminary injunction, plaintiffs "must show that they are *likely* to succeed on the merits, that they are *likely* to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction would be in the public interest." *Mahmoud v. Taylor*, 145 S.Ct. 2332, 2350 (2025) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)) (emphasis added). As emphasized above, Plaintiff does not have to show that she is definitely or certainly going to succeed or suffer irreparable harm, but only that she is *likely* to do so.

Also, "these are factors to be balanced, not prerequisites to be met," *Doe v. Univ. of Cincinnati*, 872 F.3d 393, 399 (6th Cir. 2017), and "in First Amendment cases, the likelihood of success on the merits will often be the determinative factor." *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013) (internal quotation marks omitted). Thus, "[w]hen an alleged constitutional right is involved, most courts hold that

no further showing of irreparable injury is necessary." *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2948.1 (2d ed. 1995)).

ARGUMENT

I. Plaintiff is Likely To Succeed on the Merits of Her Claims

a. First Amendment Claim (Count I)

Defendants can only justify the violation and punishment of Plaintiff for her speech if her statements are unprotected by the First Amendment as "true threats" *and* if Defendants have shown that she had a subjective *mens rea* of recklessness in making those statements. Defendants can show neither. Therefore, Plaintiff is likely to succeed on the merits of her First Amendment claim.

i. Plaintiff's statements were not true threats

"True threats" are "*serious* expressions conveying that a speaker *means to* commit an act of *unlawful violence*." *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (cleaned up) (emphasis added). Plaintiff's statements clearly do not meet that definition.

In *Watts v. United States*, the U.S. Supreme Court held that a statute which prohibited threats against the President of the United States was unconstitutional as applied against the defendant's protected speech, which was not a "true threat." 394 U.S. 705, 707-08 (1969) (per curiam). Watts was frustrated about the draft, and vented to a discussion group at a public rally:

> I have already received my draft classification as 1—A and I have got to report for my physical this Monday coming. I am not going. If they ever

> make me carry a rifle the first man I *want* to get in my sights is [President] L.B.J. They are not going to make me kill my black brothers.

Id. at 706 (emphasis added). Watts was charged and convicted by a jury for threatening the President. *Id.* The U.S. Supreme Court reversed and ordered an acquittal. *Id.* at 708.

The Court explained that even though "the statute under which [Watts] was convicted is constitutional on its face," it "must be interpreted with the commands of the First Amendment clearly in mind. What is a threat must be distinguished from what is constitutionally protected speech." *Id.* at 707. Regardless of the speaker's *mens rea*, "the statute initially requires the Government to prove a true 'threat,'" which the Government had not proven. *Id.* at 708. The Court concluded that when "taken in context," the statement could not be interpreted as a true threat, despite the jury's finding. *Id.* The Court explained that:

> debate on public issues should be uninhibited, robust, and wide open, and that *it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials*. The language of the political arena, like the language used in labor disputes, is *often vituperative, abusive, and inexact*. We agree with [Watts] that his only offense here was a kind of very crude offensive method of stating a political opposition to the President.

Id. (emphasis added) (internal citations and quotation marks omitted).

Similar to Watts, who was expressing his frustration with the future impact on his life from the President's policies and said "the first man I *want* to get in my sights is L.B.J.," but did not say that he was actually "going to" do that, *id.* at 706 (emphasis added), Plaintiff never said she was "going to" do anything—rather, she only said she felt like she "*wanted* to" do something (but not "an act of unlawful violence") [Doc. 35 ¶ 27 (emphasis added)].

And Watts's statement was even more of a threat than anything which Plaintiff said, because Watts explicitly stated that he wanted to commit an act of unlawful violence by putting the President in the sights of his rifle and also gave ultimatums: "If they ever make me carry a rifle . . .," and "They are not going to make me kill my black brothers." 394 U.S. at 706. Here, however, the University's Hearing Panel concluded in its written decision that the "panel did not find compelling evidence to believe that [Plaintiff] used the word 'kill' or implied the word 'kill' at any time." [Doc. 35 ¶ 35; *see also id.* ¶¶ 31-34]. Thus, the University's own Hearing Panel acknowledged that the phrases "end it all," "take the administrators with her," "yeet them all," and "I want her to pay in one way or another" [*id.* ¶ 27], could not be considered to refer to or imply any acts of "unlawful violence," but, as Plaintiff testified, meant "I want her to lose her career, lose her reputation, like I want to expose her" [*id.* ¶ 33], which is why Plaintiff told 988 she wanted to "post it to the news and publish it to all medical schools" [*id.* ¶ 27]. It therefore makes no sense why or how the Panel, and Defendant Surratt on appeal, still held Plaintiff to be in violation of Section II.4(e) of the Student Code in contradiction to the Panel's own findings of fact. [*Id.* ¶ 35].

Additionally, OUHSC Police Deputy Chief Schofield, in referring to Plaintiff's statements reported by 988 on April 27th, 2024, conceded in his testimony at the University's Hearing Panel that "[Plaintiff] didn't say ['']I'm *going to* kill Kate Stanton.['] She said, ['']I *wish* Kate Stanton was dead,['']" [*id.* ¶ 27 (emphasis added)] (even though Plaintiff did not actually say or mean that [*id.* 35 ¶ 27 & n.5]), and Schofield also told 988 that Plaintiff's statements were "***not…a threat***…not hate speech, ***it's free speech***" [*id.* ¶¶ 10, 45 (emphasis added)].

Like Watts, Plaintiff was venting about government and public officials (University employees) whose actions she was frustrated with. As the Court noted in *Watts*, such statements are protected even if they "include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials" and even if they are "vituperative, abusive, and inexact." 394 U.S. at 708. But it is significantly more clear that Plaintiff's statements do not constitute true threats than Watts's statements, because Watts did not explicitly state or clarify that he would not actually harm the President; however, Plaintiff did explicitly state that she did not plan, intend, or "mean to" commit any unlawful violent act, and the 988 counselor specifically told Schofield in the recording presented at the University's panel hearing that Plaintiff "said she has nothing to do it with." [Doc. 35 ¶ 27]. Plaintiff's text messages with 988 and testimony at the panel hearing, as well as 988 supervisor Jim Black's message ("no plan"), further confirmed that Plaintiff made explicitly clear she was not going to harm anyone and was just venting. [*Id.* ¶¶ 27-28, 33-34]. Therefore, Plaintiff made even less of a "serious expression" conveying that she "means to" do anything than Watts did.

Additionally, the Court explained in *Watts* that the statements must be "taken in context." 394 U.S. at 708. Plaintiff's explicit statements that she had no plan, intent, or ability to commit an act of unlawful violence and was just seeking help in a confidential phone call to 988 on April 27, 2024 show that her statements were not true threats. [Doc. 35 ¶¶ 27, 33-34]. Likewise, Plaintiff's statements four days later on May 1, 2024 in response to what she thought was a confidential call from 988 under the direction of Defendant Schofield, talking about how she was feeling previously on April 27, 2024,

show that her statements that day were not true threats either. [*Id.*]. And just as Watts did not communicate his statements to the people whom he was frustrated with, neither did Plaintiff; but even more so than Watts, Plaintiff did not expect her confidential statements to be reported to anyone outside of 988. Therefore, even more so than the statements in *Watts*, Plaintiff's statements do not constitute true threats.

ii. Plaintiff did not have a subjective *mens rea* of recklessness

But this Court does not even have to decide whether or not Plaintiff's statements constitute "true threats," because even assuming they do, it is clear that Defendants failed to show and could not show that she had a subjective *mens rea* of recklessness in making the statements.

In *Counterman*, the U.S. Supreme Court held that in order to penalize someone based on threatening speech, government officials "must show that the [speaker] consciously disregarded a substantial risk that his communications would be viewed as threatening violence"—i.e., government officials must establish that the speaker had a subjective *mens rea* of recklessness, which is in contrast to a mere objective negligence standard. 600 U.S. at 69, 79 & n.5. This burden on the government applies when "school administrators . . . discipline individuals who make true threats," and the subjective recklessness standard "can make all the difference in some cases," including when a "delusional speaker may lack awareness of the threatening nature of her speech." *Id.* at 120 (Barrett, J., dissenting).

Indeed, because of Plaintiff's undisputed mental health crisis, she was obviously not thinking clearly and lacked awareness of any threatening nature of her speech. The

University Hearing Panel's decision letter stated that the "panel finds that the testimony and documentary evidence showed that [Plaintiff] was *in an emotional crisis*, and she was using the tools available to her to stay safe." [Doc. 35 ¶¶ 35, 47 (emphasis added)]. Plaintiff testified to the Hearing Panel and explained that she was having a "mental breakdown," "panic attacks," "thoughts of wanting to hurt [her]self and a lot of frustration with the school at the time." [*Id.* ¶ 31]. Yet, even then, Plaintiff made clear in both calls with 988 that she had no plan, no intent or means of harm, but was just frustrated and was not going to harm anyone. [*Id.* ¶¶ 31, 47]. Plaintiff also testified to explain the non-threatening meaning she intended and meant to convey in her statements to 988. [*Id.* ¶¶ 31-34].

Even if Defendants thought Plaintiff was no longer in a mental health crisis during the phone call from 988 to her four days later on May 1, 2024 under the direction of Defendant Schofield, Plaintiff made clear at the panel hearing that she was answering the 988 counselor's questions about what happened four days earlier on Saturday, April 27th, and not her current feelings or thoughts, which is confirmed by the 988 call transcript, and Plaintiff also explained what she intended and understood her statements to mean. [*Id.* ¶¶ 13-14, 33]. Thus, even if any of Plaintiff's statements are considered to be true threats, she clearly had no subjective awareness where she consciously disregarded a substantial risk that her communications would be viewed as threatening violence.

b. Other Claims: Vagueness (Count II), Procedural Due Process (Count III), and Section 504 of the Rehabilitation Act (Count IV)

If the Court finds that Plaintiff is likely to succeed on the merits of her First Amendment claim, then the Court does not need to address the merits of Plaintiff's three

remaining claims. However, Plaintiff is also likely to succeed on the merits of those other three claims for the reasons already set forth in the Amended Complaint [Doc 35 ¶¶ 54-78] and Response to the Motion to Dismiss [Doc 41 at 22-29, 30-34].

Defendants found Plaintiff in violation of a provision of the University's Student Code which was too vague to give Plaintiff sufficiently fair notice that it would include her confidential statements to 988 , which is in violation of Plaintiff's due process right to fair notice as alleged in Count II. [Doc 35 ¶¶ 54-61; Doc 41 at 22-25]; *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253-54 (2012).

Defendants' actions also violated her procedural due process rights by relying on hearsay, denying cross-examination, and allowing conflicted administrators to participate as alleged in Count III. [Doc 35 ¶¶ 62-69; Doc 41 at 25-29]; *Goss v. Lopez*, 419 U.S. 565, 581, 584 (1975); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Watson v. Beckel*, 242 F.3d 1237, 1240 (10th Cir. 2001).

And Plaintiff was penalized for disability-related manifestations of mental health conditions, in violation of Section 504 of the Rehabilitation Act as alleged in Count IV. [Doc 35 ¶¶ 70-78; Doc 41 at 30-34]; 29 U.S.C. § 794(a).

II. Plaintiff is Likely to Suffer Irreparable Harm

The purpose of a preliminary injunction is to prevent irreparable harm *before* it occurs. Even if a plaintiff might have to show more than a mere possibility of a speculative injury, a plaintiff does not have to show that she is definitely going to suffer irreparable harm with 100% certainty, but only that she is "*likely* to suffer irreparable harm in the absence of preliminary relief." *Mahmoud v. Taylor*, 145 S.Ct. 2332, 2350

(2025) (emphasis added). Therefore, it is error for a court to require proof that irreparable harm is certain to occur or has already occurred. *See id.* at 2363-64. It is likewise error for a court to deny a preliminary injunction based on speculation or conjecture that there is a mere chance or remote possibility that such irreparable harm might not occur. *See id.* at 2349-50. As long as Plaintiff shows that a likelihood of ongoing or future irreparable harm, then she has met her burden. *See id.* at 2363-64.

For example, in *Mahmoud v. Taylor*, several parents challenged a school board's refusal to allow them to opt out their young children from class readings and lessons using storybooks which promoted sexual norms and values that burdened the parents' religious exercise by "requir[ing] them to submit their children to instruction that *poses* 'a very real *threat*'"—but not certainty—"'of undermining' the religious beliefs and practices that the parents wish to instill." *Id.* at 2341-42 (emphasis added). The plaintiffs, rather than risk having their children taught the values in these storybooks, "were 'religiously compelled' to remove their [children] from public school" and "'send their [children] to private school, at significant expense.'" *Id.* at 2347-49.

The parents filed a lawsuit and "asked for a preliminary injunction permitting their children to opt out of the challenged instruction pending the completion of their lawsuit," even though their children could continue in private school. *Id.* at 2349. The Fourth Circuit erroneously denied the plaintiffs' request for a preliminary injunction, reasoning "that the evidence in the record was insufficient to make [a] showing" of "coercion arising out of the exposure to the storybooks," and that without evidence of "how the Storybooks are actually being used in classrooms . . . petitioners could not obtain a

preliminary injunction because it could not simply be assumed that any past lessons had or that any future lessons would cross the line and pressure students to change their views or act contrary to their faith." *Id.* at 2349-50 (cleaned up).

But the Fourth Circuit got the preliminary injunction standard backwards by requiring the plaintiffs to show evidence that they had already suffered the exact irreparable harm which they were seeking to prevent, and by assuming there was a chance that the plaintiffs' children might not "change their views or act contrary to their faith" if taught from the storybooks. *Id.* at 2350. The Supreme Court therefore reversed the Fourth Circuit's ruling and held that the plaintiffs "should receive preliminary relief while this lawsuit proceeds" because "[i]n the absence of an injunction, the parents will continue to be put to a choice: either *risk*"—though not guarantee—"their child's exposure to burdensome instruction, or pay substantial sums for alternative educational services;" and that "choice" "unquestionably constitutes irreparable injury" and the loss of First Amendment freedoms. *Id.* at 2363-64 (emphasis added).

As the plaintiff-parents in *Mahmoud* faced "a very real *threat*" of undermining their religious beliefs by submitting their children to the school's instruction, *id.* at 2342 (emphasis added)—even if it was not an absolute certainty that it would cause the children to "change their views or act contrary to their faith," *id.* at 2350—Plaintiff is similarly *likely* to suffer irreparable harm of undermining her reputation, career, and chance for a residency position by submitting her application for a residency with this unconstitutional violation on her school record. And while it might be said, as the Fourth Circuit in *Mahmoud* essentially did, *id.* at 2349-50, that "it could not simply be assumed

that" Plaintiff will be rejected from every residency program, it is error to require Plaintiff to show certainty of irreparable harm or to assume that the disciplinary record might have absolutely no impact at all on Plaintiff obtaining her desired residency or on the rest of her career. After all, the entire point and obvious effect of a disciplinary record is to disadvantage students in their future prospects.

And just as the plaintiff-parents in *Mahmoud* were "put to a choice" of having to either "*risk*"—even though there was a theoretical chance that it might not happen—"their child's exposure to burdensome instruction, or pay substantial sums for alternative educational services," *id.* at 2363-64 (emphasis added), Plaintiff is being put to a choice of having to either *risk* applying for residency with this unconstitutional violation on her record and irreparably damaging her reputation and career or paying substantial sums to delay her graduation and career and/or foregoing her medical career after having invested significant time and money into over three years of medical school.

Further, in *Goss v. Lopez*, the U.S. Supreme Court affirmed a lower court enjoining public school administrators to remove all references to "past suspensions," which had already been served, from high school students' records because the statute permitting such suspensions was unconstitutional as applied. 419 U.S. 565, 567, 569, 584 (1975). Like Plaintiff, who has already served a past suspension and seeks to apply to residency programs, the Court noted that the students "assert in their brief that four of 12 randomly selected Ohio colleges specifically inquire of the high school of every applicant for admission whether the applicant has ever been suspended. [The students] also contend that many employers request similar information." *Id.* at 575 n.7 (internal citations

omitted) [see Doc. 35 ¶¶ 38, 41]. The Court found that, "[i]f sustained and recorded, those charges [of misconduct] *could seriously damage* the students' standing with their fellow pupils and their teachers *as well as interfere with later opportunities for higher education and employment."* 419 U.S. at 575 (emphasis added).

Likewise, the unconstitutional violation for "threatening behavior" in Plaintiff's school record establishes a likelihood of irreparable harm as Plaintiff seeks to apply for residency programs and jobs, and it also damages Plaintiff's standing and reputation with her fellow pupils and teachers, whom she needs recommendations from for residency. [Doc. 35, ¶¶ 38, 41]. While the students in *Goss* showed a possibility that only one-third of Ohio colleges and some employers ask about school suspensions, Plaintiff faces a greater likelihood or even certainty of irreparable harm because *all* of her residency applications require disclosure of disciplinary actions. Each time Plaintiff participates in the residency matching program or applies for a position, Defendants' notation will be disclosed and harm her reputation and opportunities. [*Id*.]

This is why a school disciplinary violation and suspension remaining on a student's record is an ongoing and "continuing harm." *Doe v. Purdue Univ.*, 928 F.3d 652, 666 (7th Cir. 2019) (collecting cases). This harm continues to injure Plaintiff based on her past protected speech and causes her to refrain from applying for residency so that she does not damage her reputation. Records of school disciplinary suspensions cause irreparable harm due to the reputational damage and harmful impact on school and employment opportunities. *See*, *e.g.*, *Doe v. Univ. of Cincinnati*, 872 F.3d 393, 407 (6th Cir. 2017) ("reputational harm both on and off campus" resulting from a college

disciplinary violation established likelihood of irreparable harm). This Court has found in multiple cases that damage to one's reputation and likelihood of acceptance for educational programs and employment opportunities caused by school disciplinary action constitutes irreparable harm warranting a preliminary injunction. *Ritter v. Oklahoma*, No. CIV-16-0438-HE, Doc. 19 at 6 (W.D. Okla. May 6, 2016) (issuing a preliminary injunction for a student against a university and finding that the "loss of educational and career opportunities" likely resulting from the school's disciplinary action constitutes irreparable harm and is not readily compensable in money damages) (citing *Kroupa v. Nielsen*, 731 F.3d 813, 821 (8th Cir. 2013) (irreparable injury included loss of educational and professional opportunities)); *J.C. v. Laverne Pub. Sch. Dist.*, No. CIV-18-197-M, 2018 U.S. Dist. LEXIS 57904, at *11 (W.D. Okla. Apr. 5, 2018) (granting preliminary injunction for student against school and finding that damage to "reputation and standing in his school and community, and his opportunities to pursue college aspirations" from the school's disciplinary action constitutes irreparable injury).

"A plaintiff suffers irreparable injury when the court would be unable to grant an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain." *Kikumura*, 242 F.3d at 963 (10th Cir. 2001). Thus, "[i]njury to reputation . . . is not easily measurable in monetary terms, and so often is viewed as irreparable." 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2948.1 (4th ed. 2025); *see also*, *e.g.*, *Guardian Life Ins. Co. of Am. v. Est. of Cerniglia, 446 F. App'x 453, 456 (3d Cir. 2011)*; *Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 546 (7th Cir. 2021); *Register.com., Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004);

Rent-a-Center, Inc. v. Canyon Television & Appliance Rental, Inc., 944 F.2d 597, 603 (9th Cir. 1991). Likewise, serious long-term damage to career prospects or the loss of opportunity to pursue one's chosen profession is widely recognized as constituting an irreparable injury. *See*, *e.g.*, *Enyart v. Nat'l Conf. of Bar Exam'rs, Inc.*, 630 F.3d 1153, 1165 (9th Cir. 2011) (plaintiff "demonstrated irreparable harm in the form of the loss of opportunity to pursue her chosen profession"); *Kamdem-Ouaffo v. Task Mgmt. Inc.*, 792 F. App'x 218, 222 (3d Cir. 2019); *Carson v. Am. Brands, Inc*., 450 U.S. 79, 89 & n.16 (1981); *Valley v. Rapides Parish Sch. Bd*., 118 F.3d 1047, 1055-56 (5th Cir. 1997); *NAACP, Inc. v. Town of E. Haven*, 70 F.3d 219, 224 (2d Cir. 1995).

And, in addition to the direct damage to Plaintiff's reputation, the damage to her residency and future career opportunities caused by having to delay either her residency applications or graduation due to the unconstitutional violation and suspension on her record should also be considered part of the irreparable harm. *See Doe v. Pa. State Univ*., 276 F.Supp.3d 300, 315 & n.104 (M.D. Pa. 2017) (collecting cases and holding that a "gap" caused by a university's disciplinary action against a student "would constitute irreparable harm as he would forever be forced to explain his lengthy tenure within this program and, ultimately, his delayed entry into the professional workforce").

Further, like the parents in *Mahmoud*, Plaintiff is also put to another choice of having to either *risk* discipline for freely expressing her feelings for mental health treatment and having those statements wrongly and unconstitutionally interpreted by the University as a "threat," or suffering distress without being able to obtain proper counseling and treatment. [Doc. 35 ¶ 39]. Thus, Plaintiff's protected speech has been

chilled by this punishment. [*Id.*]. As the Court noted in *Mahmoud*, "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." 145 S.Ct. at 2364 (cleaned up). "This does not mean, however, that only if a plaintiff can prove actual, current chill can he prove irreparable injury. On the contrary, direct retaliation by the state for having exercised First Amendment freedoms in the past is particularly proscribed by the First Amendment." *Cate v. Oldham*, 707 F.2d 1176, 1189 (11th Cir. 1983); *see also J.C.*, No. CIV-18-197-M, 2018 U.S. Dist. LEXIS 57904, at *10 (W.D. Okla. Apr. 5, 2018) (holding that "any violation of [the student's] due process rights would constitute irreparable injury").

While there has unfortunately been a delay in Plaintiff being able to find counsel to file this lawsuit and seek a preliminary injunction, that is no fault of Plaintiff's. Ex. 1 ¶¶ 21-28. Additionally, "delay is but one factor in the irreparable harm analysis." *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1211 (10th Cir. 2009). In *RoDa*, the plaintiff became aware of concerns underlying the lawsuit in 2005, but tried to resolve the dispute and did not file a complaint until July 19, 2007 and then a motion for a preliminary injunction until October 31, 2007 which it amended in January 28, 2008. *Id.* at 1206, 1212. The Tenth Circuit affirmed the grant of a preliminary injunction noting there was no evidence "that the delay in any way disadvantaged [defendant's] interests" and finding "that the delay in this case was not unreasonable and did not alter the irreparable harm analysis." *Id.* at 1212. Therefore, a delay does not necessarily "alter" the irreparable harm analysis at all. As long as the irreparable injury is still likely to occur, then there is no reason why a delay seeking it should negate preliminary relief. Like RoDa, Plaintiff tried

multiple times to resolve this with the University and sought evidence and counsel which were needed for bringing this lawsuit. Ex. 1 ¶¶ 21-28. Defendants are not prejudiced in any way by the timing of the lawsuit and this Motion, and are likely pleased that Plaintiff has already served her one-year suspension. Thus, as in *RoDa*, any delay should not alter the irreparable harm analysis.

Further, in *Bullock v. Ariz. Bd. of Regents*, a medical residency student sought a temporary restraining order to be allowed to return to her residency program without being placed on a probationary status. No. CV- 24-00520, 2024 U.S. Dist. LEXIS 200777, at *1, *24 (D. Ariz. Nov. 5, 2024). The court noted:

> [the Plaintiff residency student] asserts "any further delay in returning to her Program will result in significant training gaps that will impair ability to continue her education in a fellowship program." Specifically, she argues her "training includes technical surgical skills that she must practice regularly" and "will have to explain any training gaps to any fellowship program" she will attend following residency. Moreover, Plaintiff argues, she should be permitted to return to the Program without probationary status because the harm and resulting damage to her "professional reputation by having a permanent disciplinary action (probation or dismissal) on her residency record" poses an "insurmountable barrier" to "highly competitive vitreoretinal surgery fellowship positions."
>
> The Court agrees the denial of Plaintiff's TRO Motion will likely cause her irreparable harm. Plaintiff's dismissal from the Program effectively denies her the benefit of the work already performed in her fourth year of residency and will delay or prevent her completion of the Program. And, although Plaintiff has already been dismissed from the Program, her dismissal, or, alternatively, her placement on probation, will appear on her record, which will impact her ability to enroll at another institution or her future career possibilities.

Id. at *20-21 (internal citations omitted). Therefore, the court held that "[d]espite Plaintiff's delay in seeking injunctive relief, the Court finds this factor [of irreparable

harm] weighs in favor of granting the TRO Motion." *Id.* at *22. Similarly here, Plaintiff will be harmed by the delay in applying to residency and any further gaps in her education and training, and the violation and suspension on her record will pose an insurmountable barrier to highly competitive residency spots and impact her future career possibilities. Ex. 1 ¶¶ 16-19. Thus, despite any delay, irreparable harm still weighs heavily in favor of granting the preliminary injunction for Plaintiff.

Additionally, the weight which delay carries should typically be minimal anyway. The plaintiffs in *Mahmoud* were told in March 2023 that they could not opt out their children from the storybook lessons, and they were not granted the preliminary injunction until after the Supreme Court's decision was issued over two years later on June 27, 2025. 145 S.Ct. at 2346. The need and justification for a preliminary injunction and the likelihood of irreparable harm does not necessarily lessen simply due to the passage of time. Since Plaintiff urgently and diligently sought injunctive relief and continues to face irreparable harm, any delay should not be held against her. Regardless, the other factors significantly outweigh any delay.

Plaintiff has met her burden and shown that she is *likely* to suffer irreparable harm in the absence of preliminary relief removing this unconstitutional violation and suspension from her school record in time for her to apply to residency positions in the SOAP. And if there was any question previously, Plaintiff's rejection from volunteer opportunities because of this disciplinary record makes it abundantly clear that she is likely to suffer irreparable harm in applying for residency. Ex. 1 ¶ 15; Ex. 7.

III. The Balance of Equities Tips in Plaintiff's Favor

The balance of harms overwhelmingly favors Plaintiff. Without preliminary relief, she faces permanent exclusion from her profession. Defendants, by contrast, suffer absolutely no cognizable harm or cost if ordered to simply remove the disciplinary violation and suspension from Plaintiff's record while this case proceeds, especially since Plaintiff has already suffered the suspension and returned to OUHSC. An unconstitutional enforcement or application of a policy or law cannot be a legitimate governmental interest. *See A.C.L.U. v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003), *aff'd and remanded*, 542 U.S. 656 (2004) ("neither the Government nor the public generally can claim an interest in the enforcement of an unconstitutional law"). This is because "enforcement of an unconstitutional law is always contrary to the public interest." *Karem v. Trump*, 960 F.3d 656, 668 (D.C. Cir. 2020). And "the government 'cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required.'" *TikTok Inc. v. Trump*, 490 F.Supp.3d 73, 85 (D.D.C. 2020); *Ramirez v. U.S. Immigr. & Customs Enf't*, 568 F.Supp.3d 10, 34 (D.D.C. 2021) (concluding that when balancing the equities of unlawful governmental conduct, any hardship that the government might identify is not legally relevant).

And "[w]hen a plaintiff is claiming the loss of a First Amendment right, courts commonly rule that even a temporary loss outweighs any harm to defendant and that a preliminary injunction should issue." 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2948.2 (3d ed. 2025) (citing *Ramirez v. Collier*, 595 U.S. 411, 433 (2022); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020);

Yang v. Kosinski, 960 F.3d 119, 136 (2d Cir. 2020); *Cmty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1059 (9th Cir. 2007)); *see also Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty.*, 39 F.4th 95, 109 (3d Cir. 2022).

IV. An Injunction would be in the Public Interest

"There is a strong public interest in upholding the requirements of the First Amendment. And, if a plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the plaintiff." *Amalgamated Transit Union Loc. 85*, 39 F.4th at 109 (cleaned up). Also, the third and fourth factors to consider for a preliminary injunction merge "when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). And "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243, 1254 (10th Cir. 2024) (internal quotation marks omitted).

Further, protecting students' ability to seek mental health support without fear of punishment likewise serves the broader public interest, and "the public has no interest in the enforcement of what is very likely an unconstitutional statute" or in the unconstitutional application of a statute. *See*, *e.g.*, *Odebrecht Constr., Inc. v. Sec'y, Fla. Dep't of Transp.*, 715 F.3d 1268, 1290 (11th Cir. 2013); *Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010); *Schrader v. Dist. Att'y of York Cnty.*, 74 F.4th 120, 128–29 (3d Cir. 2023).

Thus, Plaintiff has shown that all four factors for a preliminary injunction are met; but even if the Court considers some not to be met, on balance, the factors favor the grant

of preliminary relief, especially the "likelihood of success on the merits [which] will often be the determinative factor." *Hobby Lobby Stores, Inc.*, 723 F.3d at 1145.

THE BOND SHOULD BE WAIVED

"[T]rial courts have 'wide discretion under Rule 65(c) in determining whether to require security.'" *RoDa Drilling Co.*, 552 F.3d at 1215 (10th Cir. 2009) (affirming the lack of any bond required of plaintiff for a preliminary injunction). This Court should waive the bond requirement under Fed. R. Civ. P. 65(c). *See Nexstar Media, Inc. v. Walters*, 776 F.Supp.3d 1053, 1060 (W.D. Okla. 2024) (finding, in a First Amendment case against government officials, that "[n]o security bond is required" for preliminary relief); *Ritter v. Oklahoma*, No. CIV-16-0438-HE, Doc. 19 at 7 (W.D. Okla. May 6, 2016) (concluding no bond was required for student's preliminary injunction against a university).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant her Motion for Preliminary Injunction.

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CERTIFICATE OF MAILING

I hereby certify that, on the 8th day of February 2026, a copy of the foregoing was filed with the Court using the ECF system, which sent electronic notification to all counsel of record.

s/ Rand C. Eddy
Rand C. Eddy