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 RESPONSE TO
DEFENDANTS' MOTION TO DISMISS AND BRIEF IN SUPPORT

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INTRODUCTION

Plaintiff, Megan Hsieh, hereby submits her Response and brief in support to Defendants' Motion to Dismiss. Based on the arguments set forth herein, Plaintiff respectfully requests Defendants' Motion be denied in all respects.

MOTION TO DISMISS STANDARD OF REVIEW

The U.S. Supreme Court has held a trial court should consider the following:

> [F]or purposes of the motion to dismiss, (1) the complaint is construed in the light most favorable to the plaintiff, (2) its allegations are taken as true, and (3) all reasonable inferences that can be drawn from the pleading are drawn in favor of the pleader.

5B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357 (3d ed. 2008) (citing *Erickson v. Pardus*, 2007, 127 S.Ct. 2197, 551 U.S. 89, 167 L.Ed.2d 1081; and citing *Bell Atl. Corp. v. Twombly*, 2007, 127 S.Ct. 1955, 550 U.S. 544, 167 L.Ed.2d 929).

"Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 563 (2007).

ARGUMENTS AND AUTHORITIES

I. MERITS OF PLAINTIFF'S CLAIMS

a. The University And Its Officials Can Be Sued Pursuant To § 1983

Defendants claim that "the plaintiff may not sue the University or University employees in their official capacities for monetary damages." [Doc. 36 at 3]. But none of the Defendants are sued "in their official capacities for monetary damages"—rather, all Defendants except for Schofield are sued in their official capacities for injunctive relief; and Defendants Surratt, Cavazos, and Schofield are sued in their individual capacities for monetary damages. [Doc. 35 at 2-4]. In this respect, Defendants' Motion to Dismiss should be denied.

b. <u>The Plaintiff's Equitable Claims Are For:</u>

1. Prospective Injunctive Relief

Defendants argue that "all claims for prospective relief are inappropriate because the challenged suspension is complete and Plaintiff has returned to school, thus there is no ongoing violation of federal law." [Doc. 36 at 3]. But Defendants do not contest that the Plaintiff would be entitled to prospective relief in general [Doc. 36 at 7], and Defendants provide no authority stating that the removal of an unlawful suspension or the expungement of related disciplinary records from a student's record is not prospective relief, but is instead "impermissible retrospective relief" [Doc. 36 at 8]. None of the cases which Defendants cite deal with an ongoing harm like that caused by the disciplinary record of a student's unlawful suspension.

2. And Are Not 'Disallowed Retrospective Relief'

Contrary to Defendants characterization of Plaintiff's claims as seeking "impermissible retrospective relief," courts consistently recognize that maintaining a

disciplinary record imposes ongoing harm, and that removing such a record is therefore prospective relief. In *Goss v. Lopez*, the U.S. Supreme Court affirmed a lower court's Order 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). Similar to 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. Appellees also contend that many employers request similar information." *Id.* at 575 n.7 (internal citations omitted); see also 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).

In contrast to Defendants' lack of any authority on point, many courts have reached similar conclusions as *Goss* in allowing plaintiffs to remove disciplinary records from their files. For example, in *Doe v. Purdue Univ.*, the Seventh Circuit listed several cases supporting such a holding:

> [Plaintiff] argued that he is also entitled to an injunction ordering university officials to expunge the finding of guilt from his disciplinary record. For this relief, [plaintiff] has standing: [Plaintiff's] marred record is a continuing harm for which he can seek redress. *See, e.g., Flint v. Dennison*, 488 F.3d 816, 825 (9th Cir. 2007) (pursuing expungement of university

> records "serve[s] the purpose of preventing present and future harm"); *Doe v. Cummins*, 662 F. App'x 437, 444 (6th Cir. 2016) (seeking to "remove the negative notation from appellants' disciplinary records" is "nothing more than prospective remedial action"); *Shepard v. Irving*, 77 F. App'x 615, 620 (4th Cir. 2003) (an "F" grade and a plagiarism conviction "constitute[d] a continuing injury to the plaintiff" and an action to remove them was "prospective in nature"). And he claims that if the guilty finding is expunged, a career in the Navy may once again be open to him.

928 F.3d 652, 666 (7th Cir. 2019).

Likewise, the unconstitutional Student Code violation for "threatening behavior" under Section II.4(e) in Plaintiff's school record causes continuing harm as Plaintiff seeks to apply for residency programs and jobs. [Doc. 35, ¶¶ 38, 41]. The residency application requires disclosure of disciplinary actions; so, 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.*] Plaintiff's school record may later be requested by state medical boards, hospitals, and other employers, and thus the stigma of the disciplinary finding will continue to impair her career opportunities well into the future. [*Id.*]

Defendants rely on *Buchwald v. Univ. of N.M. Sch. of Med.*, 159 F.3d 487 (10th Cir. 1998). But Defendants misread *Buchwald*, which supports Plaintiff because it held that the "plaintiff may maintain an action against the individual defendants in their official capacities to the extent she seeks a prospective injunction ordering her admission into [the medical school]" if "she will re-apply to [the school] and will thus be evaluated under the disputed policy again." *Id.* at 493–96. Here, Plaintiff's injury will continue to recur every

time her record is transmitted or disclosed by Defendants, [Doc. 35, ¶¶ 38, 41], and so she likewise may maintain an action against Defendants in their official capacities for the prospective injunctive relief of expunging records of that unlawful disciplinary suspension.

3. Plaintiff Does Not Bring Any Claims Based On Threat Of Future Discipline

Defendants argue that Plaintiff lacks standing to bring a claim based on "speculation about potential future mental health crises and resulting statements." [Doc. 36 at 9]. But Plaintiff does not bring any such claim. As part of her Prayer for Relief, Plaintiff requested that part of an injunction "direct[] the Defendants . . . not to pursue future disciplinary action against Plaintiff based on *these* statements to 988." [Doc. 35, ¶ 79 (emphasis added)]. Plaintiff is arguing that because her statements to 988 on April 27th and May 1st of 2024 are protected under the First Amendment, this Court should order the Defendants not to seek any kind of alternative grounds of discipline against Plaintiff based on "*these statements to 988*." That is part of the remedy Plaintiff seeks—not the basis of any claim Plaintiff has made. Additionally, Plaintiff stated that part of the harm she has suffered on account of Defendants' unconstitutional actions is that her speech in seeking mental health counseling and treatment is chilled, which relates to her injury and claim for damages. [Doc. 35, ¶¶ 39, 81]. Therefore, Defendants' argument here is inapplicable, and Plaintiff has clearly shown injury from Defendants' actions in each of her claims to establish standing, which the Defendants do not otherwise contest.

II. ABSLOUTE IMMUNITY DOES NOT SHIELD DEFENDANTS

a. Defendants Cavazos And Surratt Are Not Entitled To Absolute Immunity

Defendants Cavazos and Surratt argue that they are entitled to absolute or quasi-judicial immunity from damages in their individual capacities for their adjudicative and prosecutorial functions in Plaintiff's disciplinary proceeding. [Doc. 36 at 10]. Defendants put forth a general argument that such immunity "has been extended to *agency officials* in initiating and prosecuting *an administrative action*." [Id. (emphasis added)]. Yet, despite there being several lawsuits against university and school officials for disciplinary actions against students, Defendants do not point to any authority holding that quasi-judicial immunity applies to school or university officials for their role in a student disciplinary proceeding, nor that a student disciplinary proceeding constitutes such "administrative action" by "agency officials." Defendants thus present a novel argument asking this Court to extend absolute immunity to Cavazos and Surratt by relying on *Butz v. Economou*, where the U.S. Supreme Court emphasized that absolute immunity is strictly limited to "*those exceptional situations* where it is demonstrated [by the government officials] that absolute immunity is *essential* for the conduct of *the public business*." 438 U.S. 478, 506-07 (1978) (emphasis added).

In *Butz*, the Court held that absolute immunity extends to federal administrative law judges as well as agency officials and attorneys who conduct agency adjudications subject to statutory requirements under the Administrative Procedure Act. *Id*. at 513-17. That is nothing like school or university officials involved in a student disciplinary proceeding.

Contrary to the Defendants' assertion that absolute immunity should extend to school officials, the U.S. Supreme Court has already held that it does not.

In *Wood v. Strickland*, the Court held that,

> [I]n the specific context of school discipline, we hold that a school board member is not immune from liability for damages under [42 U.S.C.] § 1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student.

420 U.S. 308, 322 (1975). In that case, school board members suspended some students for the rest of the semester after a school board hearing. *Id*. at 312-13. The students sued the school board members for compensatory and punitive damages as well as injunctive relief to prevent the board members from imposing any sanctions as a result of the suspension and to expunge any record of their suspension—a remedy which the Court of Appeals found (and was not changed by the Supreme Court) the students were entitled to, even though the suspension had already ended, because the record of their suspension was a "continuing punishment." *Id*. at 309-10 & n.2 (citing *Strickland v. Inlow*, 485 F.2d 186, 190 (8th Cir. 1973)). In response, "members of the school board assert[ed] . . . an absolute immunity from liability under § 1983." *Id*. at 314. Just as the Supreme Court rejected the school board members' claim of absolute immunity, this Court must reject Defendants' claim here. *Id*. at 322; see also *Purisch v. Tenn. Tech. Univ.*, 76 F.3d 1414, 1419, 1421-22 (6th Cir. 1996) (holding that a university dean, who was the hearing officer of a tenure

grievance committee, and the president, who reviewed and agreed with the committee's report, were not entitled to quasi-judicial absolute immunity).

Additionally, a decade later in *Cleavinger v. Saxner*, the U.S. Supreme Court even rejected a claim that absolute immunity should extend to members of a federal prison's Institution Discipline Committee, who hear cases in which inmates are charged with rule infractions, when they are sued for constitutional violations. 474 U.S. 193, 194, 206 (1985). The Court explained,

> Surely, the members of the committee, unlike a federal or state judge, are not "independent"; to say that they are is to ignore reality. They are not professional hearing officers, as are administrative law judges. They are, instead, prison officials, albeit no longer of the rank and file, temporarily diverted from their usual duties. They are employees of the Bureau of Prisons and they are the direct subordinates of the warden who reviews their decision. They work with the fellow employee who lodges the charge against the inmate upon whom they sit in judgment. The credibility determination they make often is one between a co-worker and an inmate. They thus are under obvious pressure to resolve a disciplinary dispute in favor of the institution and their fellow employee.

Id. at 203-04 (internal citation omitted). That is precisely the situation here [Doc. 35 at 2-4 and ¶¶ 27, 30, 36, 66-67], and is why the Court "relate[d] this committee membership . . . to the school board service the Court had under consideration in *Wood*" (discussed *supra*), 474 U.S. at 204; *see also Purisch*, 76 F.3d at 1422. Even the University's own policy states that in the hearing process for charged students, "the proceedings themselves are not intended to simulate a court of law. The Hearing Process is not a forum for challenging the

legality or justification of any provision of the Code or these Procedures." [Doc. No. 35-2 at 4].

Nevertheless, Defendants claim they meet all the criteria for absolute immunity under *Horwitz v. State Bd. of Med. Exam'rs,* 822 F.2d 1508, 1513 (10th Cir. 1987). Even assuming that *Horwitz* sets forth the proper criteria for granting absolute immunity, the U.S. Supreme Court's rulings in *Wood* and *Cleavinger* make clear "in the specific context of school discipline," *Wood*, 420 U.S. at 322, that the absolute immunity granted in *Horwitz* does not apply or extend to university or school officials like Defendants Surratt and Cavazos who do not meet any, and certainly not all, of the required criteria. As discussed above, the Court has held that the functions of school officials with student disciplinary proceedings are not similar to those involved in the judicial process, nor are there sufficient safeguards in the regulatory framework to control unconstitutional conduct. *Id.; Cleavinger*, 474 U.S. at 203-04. Additionally, school officials' disciplinary actions are not likely to result in frequent harassing or frivolous damages lawsuits by disappointed parties, because students are discouraged from bringing frivolous lawsuits in light of the significant State-resources they would face in opposition, and thus the risk of protracted litigation and substantial financial loss in paying an attorney to represent them, especially with having to overcome qualified immunity defenses, in addition to facing further personal discomfort, stress, intimidation, and embarrassment involved with litigation, such as by school officials unnecessarily demanding that their students put their actual names on a lawsuit of public record even if it contains personal medical info, as Defendants did here [Doc. 27, 33]). *See*

Cleavinger, 474 U.S. at 206-08 (stating that qualified immunity "is not of small consequence;" and "[w]e . . . are not impressed with the argument that anything less than absolute immunity will result in a flood of litigation," noting that "any expense of litigation largely is alleviated by the fact that a Government official who finds himself as a defendant in litigation of this kind is often represented, as in this case, by Government counsel"). Therefore, Defendants Surratt and Cavazos have failed to satisfy any and all criteria set forth in *Horwitz*, and have failed to meet the burden set forth in *Butz* to show that this is one of "*those exceptional situations* where . . . absolute immunity is *essential*." *Butz*, 438 U.S. at 507 (emphasis added).

Additionally, liability for Defendants Cavazos and Surratt is also based on their actions outside the University's panel hearing. Cavazos initially suspended and then completely expelled Plaintiff prior to any panel hearing [Doc. 35 ¶¶ 22-24]—that in itself is a violation of Plaintiff's constitutional rights. And Surratt did not participate in the panel hearing, but afterwards reviewed the findings where the Hearing Panel stated that it "did not find compelling evidence to believe that [Plaintiff] used the word 'kill' or implied the word 'kill' at any time" and "the testimony and documentary evidence showed that [Plaintiff] was in an emotional crisis," and yet Surratt still held Plaintiff in violation and upheld the sanction anyway. [Id. ¶¶ 35-37]. So, neither Cavazos or Surratt should receive absolute immunity.

b. <u>Defendant Schofield Is Not Entitled To Absolute Immunity</u>

Defendant Schofield argues that he should receive "absolute witness immunity"—but only "*[t]o the extent* Plaintiff claims damages based on Deputy Chief Schofield's testimony before the Hearing Panel." [Doc. 36 at 12]. However, Plaintiff does not claim any damages based on Schofield's testimony to the Hearing Panel, and Schofield does not claim that he is otherwise entitled to absolute immunity. The basis of Schofield's liability is discussed below. Therefore, Schofield should not receive absolute immunity either.

III. NO DEFENDANTS HAVE QUALIFIED IMMUNITY FROM LIABILITY

Defendants argue that they are entitled to qualified immunity because "Plaintiff has not plausibly alleged a constitutional violation, and even if she had, no clearly established law prohibited the University's disciplinary response to reports of threatening statements made during a crisis-line call." [Doc. 36 at 13].

Defendants are incorrect on both points for reasons explained below, but it should be noted at the outset that Defendants are also incorrect on the overly extreme degree of factual similarity they insinuate without any authority is the standard required for a law to be "clearly established." [See *Id*. at 13, 19-21]. Contrary to what Defendants assert, the U.S. Supreme Court has explained that "clearly established law" does "not require a case directly on point." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). Thus, the outward attributes of a case before a court do not have to be "fundamentally similar" or "materially similar" to those in previous precedents. *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). This is because government officials "can still be on notice that their conduct violates established

law even in *novel factual circumstances*" when "general statements of the law" provide fair warning and "may apply with obvious clarity to the specific conduct in question." *Id*. (emphasis added). For this reason, a court's "rigid, overreliance on factual similarity" to deny qualified immunity is improper. *Id*. at 742. Thus, although a right has to be "clearly established," "[t]his is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

For example, in *Taylor v. Rojas*, the Supreme Court summarily reversed the Fifth Circuit for its unduly narrow view of the clearly established inquiry in a case involving unconstitutional prison conditions. 141 S. Ct. 52, 53-54 (2020). The Court was untroubled by the absence of a prior case establishing that the specific conditions at issue in *Taylor* were unconstitutional. *Id*. Instead, the "obviousness of Taylor's right" was apparent from the "general constitutional rule" barring deliberate indifference under the Eighth Amendment. *Id*. at 53-54 & n.2 (quoting *Hope*, 536 U.S. at 741).

Similarly, the Tenth Circuit held that a First Amendment right to film police in public was clearly established "beyond debate," even though neither the U.S. Supreme Court nor the Tenth Circuit itself had formally recognized such a constitutional right, and the Tenth Circuit therefore denied qualified immunity to a police officer who had obstructed a civilian's recording. *Irizarry v. Yehia*, 38 F.4th 1282, 1288, 1293-95 (10th Cir. 2022).

So, even if there is not "a case directly on point" or factually identical and indistinguishable as Defendants demand, Plaintiff can still easily overcome Defendants' claims of qualified immunity based on the law that was clearly established at the time. And even if qualified immunity applies, Plaintiff is still entitled to injunctive relief from the Defendants sued in their official capacities (all Defendants except Schofield), such as having the suspension removed from her record and no further action taken against her based on the statements she made to 988 in these phone calls.

a. <u>The Amended Complaint does not fail to plead a Constitutional Violation</u>

1. Count I: It Was Clearly Established That Plaintiff's Statements Were Not Punishable As True Threats Under The First Amendment

Defendants claim that no authoritative decision established a medical student's First Amendment rights in statements made to a crisis hotline. [Doc. 36 at 19-20]. As explained above, such an extreme degree of factual similarity is not required to overcome qualified immunity. All that is required is a general constitutional rule showing the obviousness of Plaintiff's rights. *Taylor*, 141 S. Ct. at 53-54 & n.2. That general constitutional rule was clearly established by at least 2023 in the U.S. Supreme Court's decision of *Counterman v. Colorado*, 600 U.S. 66 (2023), which was issued before the Defendants' actions beginning in April 2024.

i. Plaintiff's Statements Did Not Constitute True Threats

Defendants assert that Plaintiff's statements to a 988 counselor who called her under the direction of Schofield on May 1, 2024—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 that "she wanted to yeet off the planet and yeet them all too"—were true threats and thus not protected under the First Amendment. [Doc. 36 at 14; Doc. 35 ¶ 27]. But "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.

Defendants give an example of a true threat: "I am going to kill X." [Doc. 36 at 15]. Plaintiff's statements are nothing like that statement, and the stark contrast highlights why Plaintiff's statements are not true threats.

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 Plaintiff clearly did not convey that she "means to" commit any act, because the 988 counselor specifically told Schofield in the recording presented by Cavazos at the University's panel hearing that Plaintiff "said she has nothing to do it with." [*Id.*]. Plaintiff's testimony at the panel hearing further confirmed this when Plaintiff explained that her statements were referring to what she said and felt four days earlier on Saturday, April 27th, 2024, and that "during the mental health emergency…[the Plaintiff] never had…intentions to hurt anyone." [*Id.* ¶¶ 33-34]. Therefore, Plaintiff did not make a "serious expression" conveying that she "means to" do anything.

Additionally, what Plaintiff indicated she felt like she wanted to do was not "an act of unlawful violence." As the University's Hearing Panel itself concluded in its written

decision, 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]. This is consistent with Plaintiff's testimony about what she said and meant. [*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, they 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 findings of fact [*id.* ¶ 35], except due to inappropriate pressure by Cavazos [*id.* ¶ 30]; *see also Cleavinger*, 474 U.S. at 203-04 ("[members of the discipline committee] work with the fellow employee who lodges the charge against the [person] upon whom they sit in judgment. The credibility determination they make often is one between a co-worker and [the charged person]. They thus are under obvious pressure to resolve a disciplinary dispute in favor of the institution and their fellow employee."); *Purisch*, 76 F.3d at 1422 (involving university officials).

Even if it could be implied that those phrases referred to some kind of unlawful violence, they still would not be considered "serious expressions" because venting and expressing one's feelings of frustration does not constitute a true threat. For example, someone who is frustrated with another might vent to a friend that "I'm so angry, I *want to*

punch him," but even that phrase about explicitly punching someone is not a serious expression meaning that the speaker is actually going to commit a crime of assault.

Additionally, Defendant Schofield (the Deputy Chief of OUHSC Police), in referring to Plaintiff's earlier statements reported by 988 on April 27th, 2024, that "she wished Stanton was dead" and "wanted all of the medical staff members to die" (even though Plaintiff did not actually say or mean that [Doc. 35 ¶ 27 & n.5]), admitted and 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], and Schofield also knew and expressed to 988 that Plaintiff's statements were "***not…a threat***…not hate speech, ***it's free speech***" [*id.* ¶¶ 10, 45 (emphasis added)]. Despite correctly understanding the nature of Plaintiff's speech, Schofield directed the 988 counselor to call Plaintiff back four days later on May 1st to elicit additional statements. [*Id.* ¶¶ 10-13]. And even though on May 1st Plaintiff was "expressing past emotional distress from April 27th" [Doc. 36 at 2; Doc. 35 ¶¶ 14, 33]—i.e., still "***not…a threat***…not hate speech, ***it's free speech***" [Doc 35 ¶¶ 10, 45 (emphasis added)]—Schofield nonetheless sought to punish Plaintiff for her speech, disappointed that otherwise "nothing is going to happen to [Plaintiff]. I mean…I've already confirmed that. They're just going to let her go on" despite her having been one of the suspects for allegedly sending anonymous emails to other students [*id.* at 4, ¶¶ 11, 15-18, 20, 23, 26-27].

Because it was clearly established at the time that Plaintiff's statements did not constitute true threats, Defendants Schofield, Cavazos, and Surratt violated the First

Amendment and are not entitled to qualified immunity for penalizing Plaintiff on account of her speech.

ii. Even If Plaintiff's Statements Are Considered To Be True Threats, She Did Not Have A Subjective Mens Rea Of Recklessness, As Required To Penalize Her.

In *Counterman*, the U.S. Supreme Court also clearly established in 2023, and thus prior to all of these events, 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 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 of her statements to 988. [*Id.* ¶¶ 31-34]. And so, 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.

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, and Plaintiff also explained what she intended and understood her statements to mean. [*Id.* ¶ 33, *see also* ¶ 14]. Thus, again, 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.

Defendants also argue that:

> A reasonable person in Plaintiff's position (a medical student trained in psychiatric/crisis assessment) would understand that statements about taking administrators with her and 'yeeting' them conveyed threats of violence. The very fact that Plaintiff felt compelled to call a crisis line demonstrates her awareness of the severity of her emotional state and corresponding statements.

[Doc. 36 at 15]. But Defendants' argument runs completely contrary to the U.S. Supreme Court's holding in *Counterman*, because it uses an objective negligence *mens rea* standard, which the Court rejected as being in violation of the First Amendment. *Counterman*, 600 U.S. at 69, 79 & n.5. The argument is also backwards in baselessly claiming that Plaintiff would have had an awareness of her statements being threatening *because* she "felt compelled to call a crisis line" due to "severity of her emotional state," when the reverse is true—that because of the severity of Plaintiff's emotional state and her need to call a confidential crisis line for help, Plaintiff was obviously not thinking clearly with any subjective awareness that her statements might be considered to be threats.

Defendants further mistakenly claim that Plaintiff's "argument conflates two distinct concepts: awareness that statements will be transmitted to a target, and awareness that statements are threatening in nature;" and asserts that making statements to a confidential crisis line does not establish First Amendment protection. [Doc. 36 at 15]. But Plaintiff has not claimed her statements are not threatening or are protected simply because they were made to a confidential crisis line (if that were so, it would have been argued above and in the Complaint that Plaintiff's statements do not constitute true threats because they were made to a confidential crisis line)—rather, Plaintiff describes the context of a confidential conversation when seeking help from a mental health counselor to further show that Plaintiff never had any subjective awareness that her statements would be considered threats. [Doc. 35 ¶ 48]. Context and purpose matter when assessing a person's subjective state of mind. For example, had Plaintiff stated some of these phrases in isolation

directly to Kate Stanton or the medical school administrators, then that could possibly affect the analysis of whether Plaintiff consciously disregarded a substantial risk that her communications would be viewed as threatening violence, assuming the statements would be considered true threats. But when those phrases are said within the context of her other statements to a confidential mental health crisis line as she is seeking help by expressing her feelings of frustration, it is clear that Plaintiff did not have any awareness that her statements might be considered to be threats.

Defendants also argue that Plaintiff understood that "crisis-line personnel have legal and ethical duties to report threats of harm to self or others." [Doc. 36 at 15-16]. But because Plaintiff did not have any awareness that her statements would be perceived as threats to others, she had no expectation or awareness that her statements would be reported by 988. Plaintiff testified at the panel hearing of an example of what constituted a duty to report "when somebody was grudgingly brought in and said that he was going to shoot his roommate at 5:00 p.m. tomorrow when he came home from work with his gun." [Doc. 35-14 at 145]. Plaintiff's statements to 988 were in stark contrast to that, as she did not say she was "going to" harm anyone at any specific time or location, nor in any specific way or with any specific means, and clarified that she had no intent or means to harm anyone; so, clearly, Plaintiff would not have expected her statements to trigger a duty to report. This is further confirmed by the 988 supervisor's confusion and hesitation about whether he should even report Plaintiff's statements, which he did out of an overabundance of caution, as he explained that Plaintiff did not have "the means" to cause any harm, "it's kind of a

51/50, but we have a duty to warn you guys. So...," he "think[s] she was just trying to express some feelings of frustration," "we [988] get a lot of these calls," "even though we don't think that she was serious about the threats, we just don't want to leave any stone unturned," "in [his] opinion, . . . she's not an immediate threat to herself or anybody else," and Plaintiff was "talking in terms of like *just wanting*"—not that Plaintiff was threatening or planning any actual harm. [Doc. 35 ¶ 8 (emphasis added)]. Regardless, Plaintiff being generally aware of a duty to report in some circumstances and 988 erring on the side of caution by reporting Plaintiff's statements, does not establish that Plaintiff's statements were threats, nor does it establish that Plaintiff herself had a subjective awareness of any threatening nature of her speech which she consciously disregarded.

As Defendants acknowledge, in a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the "court must accept all well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the claimant. *Buckley Constr., Inc. v. Shawnee Civil and Cultural Dev. Auth.*, 933 F.2d 853, 855 (10th Cir. 1991)." [Doc. 36 at 4]. Plaintiff has alleged that she had no subjective awareness, which is abundantly supported by the evidence and the findings of the University's own Hearing Panel. [Doc. 35 ¶¶ 31-34, 48 ("Plaintiff thus had no subjective understanding of any potential threatening nature of her speech and did not consciously disregard a substantial risk that her communication/speech would be viewed as threatening violence or would ever be reported to OUHSC.")]. Thus, Defendants cannot dispute Plaintiff's subjective state of

mind in a motion to dismiss, at which point this Court must accept Plaintiff's allegations as true and construe them in the light most favorable to the Plaintiff.

Because Defendants Surratt, Cavazos, and Schofield each failed to determine and establish that Plaintiff had a subjective *mens rea* of recklessness whereby she consciously disregarded a substantial risk that her communications with 988 would be viewed as threatening violence—as was required and clearly established the previous year by the Supreme Court in *Counterman*, 600 U.S. at 69, 79 & n.5—they violated the First Amendment and are not entitled to qualified immunity for penalizing Plaintiff on account of her speech.

2. Count II: It Was Clearly Established That The Student Code Was Unconstitutionally Vague As Applied

Defendants claim that "Plaintiff points to no controlling authority establishing that a prohibition on 'threats of harm' is unconstitutionally vague as applied to a student describing specific acts of violence against faculty." [Doc. 36 at 20-21]. Again, all that is required is a general constitutional rule showing the obviousness of Plaintiff's rights. *Taylor*, 141 S. Ct. at 53-54 & n.2. Also, as explained above, Plaintiff did not "describe[] specific acts of violence against faculty," which is why the application of the Student Code as encompassing Plaintiff's statements is unconstitutionally vague, as the Code failed to provide Plaintiff with sufficient or fair notice that her statements made in confidence to 988 when seeking mental health counseling would constitute a violation and also failed to

provide sufficient precision and guidance so that those enforcing the policy do not act in an arbitrary or discriminatory way.

As Defendants themselves acknowledge in their Motion to Dismiss,

> The First and Fourteenth Amendments prohibit restrictions on speech that fail to provide fair notice of prohibited conduct. A regulation is void for vagueness if it fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). "When speech is involved, rigorous adherence to these requirements is necessary to ensure that ambiguity does not chill protected speech." *Id.* at 253-54.

[Doc. 36 at 16-17; *see also* Doc. 35 ¶ 56].

FCC v. Fox Television Stations, Inc. thus provides the general constitutional rule showing the obviousness of Plaintiff's rights to have fair notice of what speech is prohibited by the University's Student Code Section II.4(e), which prohibits "threatening behavior." *See also Smith v. Goguen*, 415 U.S. 566, 572-573 (1974) (where a regulation's "scope . . . is capable of reaching expression sheltered by the First Amendment, the [due process] doctrine [of vagueness] demands a greater degree of specificity than in other contexts."); *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 667-68, 671 (1973) (per curiam) (reversing the expulsion of a graduate student for distributing a newspaper "containing forms of indecent speech" because "the state University's action here cannot be justified as a nondiscriminatory application of reasonable rules governing conduct"); *Cox v. Louisiana*, 379 U.S. 536, 551-52 (1965) (holding that "breach of the

peace" term in statute was unconstitutionally vague as it "would allow persons to be punished merely for peacefully expressing unpopular views").

Defendant Cavazos, in her statements to the Hearing Panel, acknowledged an understanding of this constitutional requirement when she stated the "University has a student code of conduct put into place to *ensure that students are given clear notice of what behavior is not tolerated*." [Doc. 35 ¶ 30 (emphasis added)]. However, because Plaintiff's statements to 988 did not constitute a "serious expression of intent to commit an act of unlawful violence against a particular individual, identifiable group, or damage to property," as explained above, Plaintiff was not given clear notice that her statements would fall under that description and thus be in violation of the Student Code.

Defendants further argue that "the Tenth Circuit has long held that school disciplinary rules need not be as detailed as a criminal code. *See West v. Derby Unified Sch. Dist. No. 260*, 206 F.3d 1358, 1368 (10th Cir. 2000)." [Doc. 36 at 20]. Despite that, the Tenth Circuit never held that schools can have unconstitutionally vague policies which fail to give students fair notice of what conduct would be prohibited. Instead, the Tenth Circuit stated in *West* that the school's "policy might be void for vagueness if a reasonable student of ordinary intelligence who read the policy could not understand what conduct it prohibited." *West*, 206 F.3d at 1368. Such is the case here, where no reasonable student of ordinary intelligence would understand that the University's Student Code Section II.4(e) would encompass and prohibit the statements which Plaintiff made to 988. Thus, the Tenth Circuit's 2000 decision in *West* also clearly established that Defendants could not use an

unconstitutionally vague policy which failed to give Plaintiff fair notice that she would be punished for the statements she made to 988.

Therefore, Defendants Surratt, Cavazos, and Schofield violated the First and Fourteenth Amendments and are not entitled to qualified immunity for applying Student Code Section II.4(e) to encompass and penalize Plaintiff for her statements to 988.

3. Count III: It Was Clearly Established That Plaintiff Did Not Receive Constitutionally Adequate Process

The Supreme Court decision in *Goss v. Lopez*, 419 U.S. 565 (1975), sets the standard for procedural due process owed to students facing short-term school suspensions:

Due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. *Id.* at 581. The *Goss* court explained that "longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures." *Id*. at 584; *Watson v. Beckel*, 242 F.3d 1237, 1240 (10th Cir. 2001).

Courts analyze three factors to determine procedural adequacy under the **Due Process** Clause:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976); *see also Watson*, 242 F.3d at 1240; *Lee v. Univ. of N.M.*, 449 F. Supp. 3d 1071, 1124 (D. N.M. 2020).

"The three-factor test is appropriate for determining when additional procedure is due because the test crystallizes the balancing of student interests against school interests." *Watson*, 242 F.3d at 1238.

When properly applied to the facts of this case, the balance weighs strongly in favor of requiring additional safeguards.

i. The Private Interest That Will Be Affected Is Substantial

The private interest affected here is significant. The suspension imposed on the Plaintiff implicates not only the immediate loss of educational access, but also reputational harm and potential long-term academic and professional consequences. Courts have consistently recognized that even short-term suspensions trigger due process protections because, "Among other things…a student's legitimate entitlement to a public education [i]s a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause." *Goss*, 419 U.S. at 574. Importantly, the severity of the deprivation is compounded by the nature of the allegations.

ii. The Probable Value of Additional Procedural Safeguards Is High

The probable value of additional safeguards in this case is substantial. The suspension decision was based primarily, or entirely, on a telephone call, rather than first-hand testimony or documentary evidence. Instead of presenting a verbatim transcript,

recording, or sworn statement, the school relied on a second-hand interpretation of what was allegedly said.

Moreover, although Kate Stanton was permitted to present her version of events through an affidavit, Plaintiff was denied the opportunity to cross-examine her. This denial directly contravened the school's own rules, which expressly state: "Each party shall also be given the opportunity to cross-examine witnesses presented by the other," a fundamental safeguard of fairness [Doc. 35-2 at 6]. Kate Stanton was not a neutral witness. She served as Vice Chair of TARC during the investigation into the defamatory emails, Doc. 35, ¶ 2, and was later present at the meeting with the organization involved in the decision to expel Plaintiff, as admitted by Michael Harrington. [Doc. 35, at 92]. In addition, Kate Stanton was the primary, if not exclusive, source of the evidence relied upon in imposing discipline. These overlapping roles created a clear conflict of interest and significantly heightened the risk of bias. By refusing to permit cross-examination of Kate Stanton or otherwise test the evidence she provided, the school deprived the Plaintiff of a critical procedural safeguard necessary to assess the credibility, reliability, and completeness of the testimony against her.

This approach introduces precisely the type of reliability concerns that due process is meant to guard against. Without an accurate, directly verifiable record of the telephone call and without the ability to challenge Kate Stanton's affidavit through cross-examination, the hearing relied on subjective summaries, paraphrasing, and selective recollections. A transcript, recording, or live testimony with cross-examination would have imposed minimal burden while dramatically reducing the risk of erroneous deprivation.

Such safeguards would have allowed the Plaintiff to meaningfully respond to the allegations, correct misunderstandings, and ensure fundamental fairness.

iii. The Government's Interest Does Not Outweigh the Need for Safeguards

While the school has a legitimate interest in maintaining order and efficiency, that interest does not justify procedures that are fundamentally unreliable. The additional safeguards requested here, a transcript, recording, live testimony, and the ability to cross-examine Kate Stanton, would impose little to no fiscal or administrative burden. Schools routinely document communications, and requiring accurate preservation of critical evidence does not meaningfully interfere with disciplinary authority. Nor would it undermine swift decision-making. Instead, it would enhance the accuracy and legitimacy of the process.

Moreover, when discipline rests on hearsay or biased testimony rather than direct evidence, the government's interest in efficiency cannot outweigh the student's interest in avoiding erroneous punishment. Due process does not permit schools to sacrifice accuracy for convenience when minimal safeguards are readily available.

Although procedural due process is not unlimited, it requires procedures sufficient to ensure fundamental fairness under the circumstances. Here, where the suspension was based on a telephone call conveyed through second-hand interpretation and Kate Stanton's affidavit, and where the Plaintiff was denied the right to cross-examine Kate Stanton despite the school's rules, the failure to provide reliable safeguards deprived the Plaintiff of meaningful notice and opportunity to be heard. Under the requirements and balancing

framework articulated in *Watson, Goss, and Mathews*, it was clearly established that the lack of safeguards against hearsay, bias, and untested evidence made the University's hearing procedures constitutionally inadequate.

b. The Law Was Clearly Established As Discussed Above

As discussed in each of the previous sections above, the law was clearly established at the time of Defendants' relevant actions, and thus neither Defendants Surratt, Cavazos, or Schofield are entitled to qualified immunity.

c. Deputy Chief Schofield's Investigatory Functions Do Not Merit Additional Qualified Immunity Protection

Defendant Schofield claims he should receive "additional qualified immunity protection specific to his investigatory functions" because "[o]fficers investigating potential threats must make *rapid decisions* with limited information," and Schofield was "responding to mandatory mental health reports of potential threats." [Doc. 36 at 21]. First, it is already established above that Schofield is not entitled to qualified immunity at all. Second, there was nothing "rapid" about Schofield's response to 988's "mandatory mental health report" which had occurred and been reported to University police *four days earlier* on April 27, 2024 from when Schofield decided to begin investigating it on May 1, 2024, and Plaintiff had been on campus without any incident for three of those days, and Schofield himself acknowledged that what he was investigating was "***not…a threat***…not hate speech, ***it's free speech.***" [Doc 35 ¶ 10 (emphasis added)].

Schofield claims that "[c]ourts afford heightened protection to investigatory functions. *Anderson*, 483 U.S. at 64." [Doc. 36 at 21]. But *Anderson* holds the complete opposite. The Supreme Court in *Anderson* stated "that the doctrine of qualified immunity reflects a balance that has been struck 'across the board'" because the Court "ha[s] been unwilling to complicate qualified immunity analysis by making the scope or extent of immunity turn on the precise nature of various officials' duties or the precise character of the particular rights alleged to have been violated." 483 U.S. at 642-43. Thus, there is no heightened or lower protections for various officials' duties, like investigatory functions, as Schofield claims; and protections are the same "across the board."

Therefore, Schofield is not entitled to qualified immunity.

IV. PLAINTIFF HAS STATED A CLAIM UNDER SECTION 504 OF THE REHABILITATION ACT

To state a claim under Section 504 of the Rehabilitation Act, a plaintiff must allege that: (1) she is disabled; (2) she is otherwise qualified to participate in the program; and (3) she was excluded from participation in, denied the benefits of, or subjected to discrimination under the program solely by reason of her disability. 29 U.S.C. § 794(a). Defendants concede the first element—that Plaintiff is disabled.

a. Plaintiff Is "Otherwise Qualified" to Remain in the University's Medical Education Program

Defendants argue that Plaintiff has not satisfied the second element because she was allegedly not "otherwise qualified" to remain in the University's medical education

program due to purported threats against others in violation of the Student Code of Conduct. [Doc. 36 at 23]. This argument fails for a straightforward reason.

Plaintiff has alleged that, "[a]s a direct result of the University's actions, Plaintiff was suspended from the medical school and her education has been delayed by at least one year. After the suspension was over, Plaintiff resumed her enrollment as a medical student at OUHSC, starting her fourth year at medical school, and is now at the stage where she must apply for residency." [Doc. 35, ¶ 38]. These allegations establish that Plaintiff remains enrolled in, and capable of completing, the medical education program.

Furthermore in response to defendants' proposition that Plaintiff was not "otherwise qualified" due to purported threats to others Plaintiff incorporates by reference the argument set forth above under section III.a.1.i., that Plaintiff statements did not constitute true threats.

Accordingly, Plaintiff is "otherwise qualified" under Section 504 because she continues to meet the academic and programmatic requirements of the University's medical program and, in fact, remains a participant in that program.

b. <u>The University Punished and Discriminated Against Plaintiff Solely Because of Her Disability</u>

Plaintiff does not dispute Defendants' general assertion that the Rehabilitation Act prohibits discrimination based on disability status. [Doc. 36 at 22]. Plaintiff does, however, contest Defendants' claim that the disciplinary action taken against her was based on a legitimate, non-discriminatory reason—namely, her alleged conduct.

Viewed in the light most favorable to Plaintiff, and taken as true for purposes of a motion to dismiss, the Complaint alleges facts sufficient to establish that Defendants discriminated against Plaintiff solely by reason of her disability.

At all relevant times between 2022 and May 2024, Plaintiff was enrolled as a medical student at OUHSC and was registered with the University's disability accommodations office due to diagnoses of generalized anxiety disorder, major depressive disorder, and attention deficit hyperactivity disorder (ADHD). [Doc. 35, ¶ 1]. Defendants were actually or constructively aware of Plaintiff's disabilities.

On April 27th, 2024, while experiencing a mental health crisis and suffering a panic attack, Plaintiff contacted the 988 Suicide and Crisis Lifeline, reasonably expecting that her communications would remain confidential. [Doc. 35, ¶ 5]. The University's subsequent actions—including Plaintiff's discipline—arose solely from manifestations of Plaintiff's disabilities during that crisis.

The Complaint further alleges that Defendant Schofield orchestrated an attack on Plaintiff's character that culminated in her disciplinary suspension and specifically targeted Plaintiff because of her disabilities. Schofield disclosed Plaintiff's mental health diagnoses, including generalized anxiety disorder, PTSD, ADHD, and major depressive disorder, and disparaged her character by stating that "she hates the police," that she was "paranoid," and that he "wouldn't want her as [his] doctor." [Doc. 35-8 at 16; Doc. 35, ¶ 12].

Despite knowing that prior investigations had concluded Plaintiff did not pose a threat, Schofield requested that a 988 counselor issue a protective custody statement portraying Plaintiff as paranoid, expressly seeking language that would "establish[] the

paranoia" and referencing Plaintiff's statements about the FBI to ensure the statement was not "too vague" and would give him "what [he] needs." [Doc. 35, ¶ 16]. This request led to a welfare check by Oklahoma City Police, who ultimately declined to place Plaintiff in protective custody and determined that she did not pose a danger to herself or others. [Doc. 35, ¶¶ 16-19].

Plaintiff alleges that Schofield knowingly used Plaintiff's disabilities to construct a false narrative portraying her as dangerous, which Defendants then relied upon to justify disciplinary action.

Defendant Cavazos stated to the Hearing Panel, "I have to deal with threats to our campus community more often than I'd like to, and they are typically tied to a person experiencing mental distress," which shows discriminatory treatment toward Plaintiff by reason of her disability. [Doc. 35, ¶ 25]. Defendant Surratt was aware of all of this as he reviewed the appeal from the panel hearing, and yet he still affirmed the finding of a violation and Plaintiff's suspension [Doc. 35, ¶¶ 36-37], which shows discriminatory treatment toward Plaintiff by reason of her disability.

Additionally, Plaintiff alleges that "[r]ather than engaging in an interactive process or providing reasonable accommodations when Plaintiff experienced disability-related distress, the University penalized Plaintiff for behavior that was a manifestation of her disabilities—specifically, her statements during a confidential call to the 988 Suicide and Crisis Lifeline." [Doc. 35, ¶ 74]. Plaintiff further alleges that she was subjected to heightened scrutiny, discriminatory disciplinary procedures, and suspension based on stereotyped notions of dangerousness associated with her disabilities. [Doc. 35, ¶¶ 25, 76].

Taken together, these allegations plausibly establish that Defendants punished Plaintiff and failed to accommodate her solely because of her disabilities, in violation of Section 504 of the Rehabilitation Act. Plaintiff has therefore stated a claim sufficient to survive Defendants' Motion to Dismiss.

CONCLUSION

This Court should deny the Defendants' Motion to Dismiss, and should not dismiss any of Plaintiff's claims brought forward in her Amended Complaint.

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CERTIFICATE OF MAILING

I hereby certify that, on the 30th day of December 2025, 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