

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 17, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JANE DOE,

No. 2:20-cv-00145-SMJ

Plaintiff,

**ORDER GRANTING
PRELIMINARY INJUNCTION**

v.

ELSON S FLOYD COLLEGE OF
MEDICINE AT WASHINGTON
STATE UNIVERSITY,

Defendant.

On July 14, 2020, the Court heard oral argument on Plaintiff Jane Doe’s Motion for Preliminary Injunction, ECF No. 6, and Amended Motion for Preliminary Injunction,¹ ECF No. 7. Also before the Court, without oral argument, is Defendant’s Motion to Extend Deadline to File Response, ECF No. 17. Plaintiff seeks to enjoin Defendant Elson S. Floyd College of Medicine at Washington State University from academically withdrawing her from her studies as a medical

¹ Plaintiff’s Amended Motion for Preliminary Injunction does not amend the original motion itself, but rather adds two additional declarations. *Compare* ECF No. 6 *with* ECF No. 7. However, the Amended Motion for Preliminary Injunction omits the exhibits that were attached to the original motion. *Compare* ECF No. 6 *with* ECF No. 7. The Court has therefore read the original motion and the amended motion together as one motion with all attachments.

1 student. Defendant opposes the requested preliminary injunction. ECF No. 10.
2 Having reviewed the motions and the file in this matter, the Court is fully informed
3 and enjoins Defendant from academically withdrawing Plaintiff pending the
4 resolution of this action.

5 **BACKGROUND**

6 Plaintiff brought suit in the Spokane County Superior Court against
7 Defendant on January 31, 2020. ECF No. 2-2. She asserted twenty causes of action,
8 including six alleged due process violations, two violations of her right to privacy,
9 harassment, seven gender discrimination claims, three disability-rights violations,
10 and the tort of outrage. *Id.* Defendant removed the action to this Court on April 8,
11 2020. ECF No. 2.

12 Plaintiff asserts she enrolled in Defendant's medical school in August 2017
13 as part of the inaugural class. ECF No. 2-2 at 3–4. Plaintiff avers that during her
14 studies, she began dating a fellow student, AF, and that the relationship ended when
15 it became abusive. *Id.* at 4. After the relationship ended, AF became romantically
16 involved with another student, CE, one of Plaintiff's close friends. *Id.* Plaintiff
17 alleges that after AF began dating her friend, she "confronted him about his
18 indiscretions" and AF "screamed, swore, and flipped a coffee table at her." *Id.*
19 Plaintiff asserts she informed university staff of the abuse, but her concerns were
20 not taken seriously. *Id.*

1 Separately, Plaintiff asserts she suffers from depression and PTSD, which are
2 related to “an incredibly traumatic event” she witnessed while in Kenya on an
3 academic research trip. *Id.* She allegedly informed Assistant Director Lisa Burch-
4 Windrem, Defendant’s employee, of her disabilities at the beginning of her 2018
5 academic year. *Id.* Plaintiff asserts she later informed Burch-Windrem of AF’s
6 abusive behavior, and that Burch-Windrem failed to provide her with resource for
7 abuse victims or any safety plan. *Id.* at 5. Burch-Windrem has submitted a
8 declaration contradicting these assertions. ECF No. 11.

9 Defendant asserts that beginning in Plaintiff’s first year, Defendant received
10 multiple complaints against Plaintiff for unprofessionalism and bullying, including
11 multiple complaints prior to the events involving AF and CE. ECF No. 10 at 2.
12 However, Plaintiff first came to the attention of the Student Evaluation, Promotion,
13 and Awards Committee (SEPAC), the entity that brought sanctions against Plaintiff,
14 in the fall of 2018 regarding her allegedly unprofessional conduct. *Id.*

15 Plaintiff alleges that during this time, AF and CE began fabricating
16 allegations against Plaintiff, and that these allegations were taken seriously despite
17 Plaintiff having previously reported the AF’s abuse. ECF No. 2-2 at 5. AF reported
18 Plaintiff for harassing him over Defendant’s messaging platform, Slack, conduct
19 which Plaintiff represents was her attempt to ask him to leave her alone. *Id.* She
20 asserts that after AF reported this communication, the university sanctioned her for

1 a lack of professionalism, but that she had received no explanation, guidelines, or
2 definition of professionalism. *Id.* at 7. Defendant asserts Plaintiff was placed on
3 academic probation after a review of Plaintiff’s Slack communications with AF,
4 which the university found to be harassing, and as a result of a separate incident in
5 which Plaintiff reportedly mouthed “fuck you” repeatedly to CE prior to an exam.
6 ECF No. 10 at 3.

7 Plaintiff asserts she raised concerns with Burch-Windrem and Dr. Dawn
8 DeWitt that AF had recruited students to follow her and report back to him, but that
9 they dismissed her allegations without investigation. ECF No. 2-2 at 8. She also
10 alleges she was sanctioned for violating a no-contact order, but that she had never
11 signed a no-contact order, and that the university refused to assign her to a new
12 “small group” when she had been placed in a small group that included CE. *Id.* at 9.
13 At one point, Plaintiff allegedly contacted AF to ask him not to attend a student-
14 planned ski trip and she asserts he recorded the conversation without her consent.
15 *Id.* at 11. Plaintiff reported the allegedly unlawful recording to Student Affairs, but
16 no action was taken. *Id.* Defendant indicates that after the events surrounding the
17 ski trip, DeWitt called Plaintiff and told her to have no further contact with AF and
18 CE, and that Plaintiff acknowledged this prohibition on several occasions. ECF
19 No. 10 at 4. Defendant also attached a screenshot of a conversation between
20 Plaintiff and AF in which Plaintiff says she agreed to be recorded during the meeting

1 with AF, but that she intended for her statement to be sarcastic. ECF No. 11-5.

2 Plaintiff also alleges she was not provided with sufficient evidence to defend
3 herself against allegations brought against her by CE. ECF No. 2-2 at 13. She asserts
4 three of the five voting members of SEPAC were required to recuse themselves
5 because they, respectively, (1) supervised CE's cohort, (2) served as a leader for the
6 Art and Practice of Medicine small group in which AF was a member, and (3)
7 served as the faculty leader for a student organization for which AF and CE were
8 founding members and accompanied the two on a university-endorsed conference
9 trip. *Id.* at 14. She also asserts a fourth, non-voting SEPAC member served
10 improperly as a both an advocate for Plaintiff and a non-voting SEPA member. *Id.*
11 at 16.

12 Plaintiff asserts the appeals process from the SEPAC sanctions took four
13 months and was highly stressful, resulting in her failing two exams. *Id.* at 17. She
14 asserts she was not given the opportunity to remediate² the exam twice, despite this
15 being university policy. *Id.* She also asserts Defendant's Office of Student Affairs,
16 one hour before her exam, sent her an email about a required meeting later that day

17
18 ² The parties frequently use the term "remediate," but neither explicitly defines the
19 term. *See* ECF Nos. 6, 10. However, the "Medical Student Promotion, Dismissal,
20 and Graduation" policy attached to Defendant's response defines the term as "An
academic activity to remove a deficiency as determined by the SEPAC after
consideration of a clerkship or course director recommendation, an assessment of a
student's overall academic performance, a student's written request or other factors
deemed relevant." ECF No. 13-1 at 2.

1 intentionally, so that she would become too anxious to pass the examination. *Id.*
2 at 18.

3 Defendant indicates SEPAC convened again after AF and CE reported
4 Plaintiff continued to harass them, including by contacting and harassing AF when
5 he asked Plaintiff not to contact him and by spreading malicious rumors about CE's
6 sex life, relationships, and drinking. ECF No. 10 at 4. Defendant has attached
7 screenshots of Plaintiff's communications with AF and of CE's complaint against
8 Plaintiff. ECF Nos. 13-8, 13-9. As a result of these new allegations, Plaintiff was
9 found to be in violation of her academic probation and was then placed on
10 administrative leave but was allowed to remain in classes pending her appeal. *Id.*
11 at 4-5.

12 Plaintiff then failed three exams and was required to repeat one course. *Id.*
13 Plaintiff was required to file materials prior to the start of the upcoming term to
14 re-enroll, but that she failed to submit the documents in a timely manner and was
15 failed to file all required documents. *Id.* at 5. Because her academic leave had ended,
16 Plaintiff elected to take personal leave, but was instructed she would be required to
17 re-enroll in August 2020 and would need to repeat three courses because of
18 substantial curriculum changes. *Id.*

19 Plaintiff also alleges that she and her counsel asked the University to stop
20 sending her emails, but that Defendant continued to send her emails about courses

1 and other matters. *Id.* at 19. Finally, Plaintiff alleges that after she filed a tort claim
2 with Defendant’s office of risk management, Burch-Windrem removed her from a
3 group within Slack (a “Slack channel”) in such a manner that other students were
4 notified that she had been removed. *Id.* at 20.

5 **LEGAL STANDARD**

6 To obtain a preliminary injunction, a plaintiff must generally establish four
7 things: (1) likelihood of success on the merits, (2) that irreparable harm is likely if
8 preliminary relief is denied, (3) that the balance of equities tips in its favor, and (4)
9 that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*,
10 555 U.S. 7, 20 (2008). In the Ninth Circuit, when the balance of equities tips
11 “sharply” in the plaintiff’s favor, preliminary injunctive relief is appropriate if there
12 are “serious questions going to the merits,” even if the plaintiff cannot necessarily
13 establish a likelihood of success. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
14 1135 (9th Cir. 2011).

15 There are two kinds of preliminary injunction: mandatory and prohibitory.
16 *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060 (9th Cir. 2014). A
17 mandatory injunction, which “orders a responsible party to take action,” is generally
18 disfavored and requires a heightened showing of need by the plaintiff. *Id.* (quoting
19 *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–79
20 (9th Cir. 2009)). By contrast, a prohibitory injunction “prohibits a party from taking

1 action and preserves the status quo pending a determination of the action on the
2 merits.” *Id.* “‘Status quo’ refers to the legally relevant relationship *between the*
3 *parties* before the controversy arose.” *Id.* (quoting *McCormack v. Hiedeman*, 694
4 F.3d 1004, 1019 (9th Cir. 2012)).

5 DISCUSSION

6 A. Defendant’s Motion to Extend Deadline to File Response is Granted

7 In her reply, Plaintiff argues Defendant’s response was untimely and should
8 therefore be “considered waived.” ECF No. 16 at 3. Defendant’s response was filed
9 one day after the deadline to file a response. *See* ECF No. 10. After the reply was
10 filed, Defendant filed a Motion to Extend Deadline to File Response, ECF No. 17.

11 Where a party seeks to extend a deadline that has passed, it must show
12 “excusable neglect.” Fed R. Civ. P. 6(b)(1)(B). The Court’s inquiry in such cases
13 considers “(1) the danger of prejudice to the opposing party; (2) the length of the
14 delay and its potential impact on the proceedings; (3) the reason for the delay; and
15 (4) whether the movant acted in good faith.” *Ahanchian v. Xenon Pictures, Inc.*, 624
16 F.3d 1253, 1261 (9th Cir. 2010) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs.*
17 *Ltd. P’ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d
18 379, 381 (9th Cir. 1997)).

19 Defendant indicates its one-day delay was due to confusion over the filing of
20 Plaintiff’s amended motion and due to a miscalculation for which Defendant’s

1 counsel takes responsibility. ECF No. 17 at 2. Defendant also attached an email
2 from Plaintiff's counsel on June 17, 2020 indicating counsel's consent to a response
3 filed two weeks from that date. ECF No. 18-1. Plaintiff successfully submitted a
4 reply one week after the response, well in advance of the hearing on Plaintiff's
5 Motion for Preliminary Injunction. *See* ECF No. 16. As such, Plaintiff has not been
6 prejudiced by the delay, which was short in duration. Although Plaintiff argues she
7 would be prejudiced if the hearing on her Motion for Preliminary Injunction were
8 delayed, no such delay occurred—the motion was heard on the day and time
9 originally noted in her motion. *See* ECF No. 6.

10 As such, the Court finds Defendant has shown excusable neglect for its
11 untimely filing and the Motion to Extend Deadline to File Response is granted. The
12 Court has considered Defendant's late-filed response in evaluating Plaintiff's
13 motions for preliminary injunction. However, the parties are reminded to exercise
14 care in complying with deadlines set by the Local Civil Rules and this Court's
15 Orders. The parties are also reminded that deadlines can only be changed by order
16 of the Court.

17 **B. Plaintiff Seeks Prohibitory Relief**

18 As an initial matter, it was unclear from the briefing what form of relief
19 Plaintiff was seeking. Plaintiff variously indicates she is seeking an injunction “to
20 estop Defendant from administratively withdrawing her from her educational

1 environment,” or an order that Defendant “not be permitted to expel Doe” while
2 discovery is conducted as to the changes in course curriculum that form the basis
3 for requiring her to repeat her second year. ECF No. 6 at 3, 14. Defendant argued
4 that Plaintiff also sought to be excepted from Defendant’s requirement that medical
5 students complete their coursework within six years. ECF No. 10 at 6. Plaintiff
6 clarified at the hearing that she is not seeking an exception to this or any other
7 requirements of her program. Rather, she is seeking only to enjoin Defendant from
8 academically withdrawing her until the case is resolved on the merits. Plaintiff is—
9 and was at the time at which this dispute arose—on leave, whether academic or
10 personal, and had not been withdrawn. As such, Plaintiff is seeking to maintain the
11 status quo between the parties.

12 Defendant argued that Plaintiff is seeking to be excepted from Defendant’s
13 academic requirements. ECF No. 10 at 6–8. However, Plaintiff acknowledged at
14 the hearing that if she is ultimately unsuccessful on the merits of her claims and
15 would be required to repeat her second year, then she would address the matter of
16 the six-year completion requirement at that time. As such, the injunction Plaintiff
17 seeks merely prohibits Defendant university from academically withdrawing her at
18 this time and does not seek an exception to Defendant’s academic requirements.
19 Because the injunction would prohibit Defendant from taking action, it preserves
20 the existing legal relationship between the parties and is a prohibitory injunction not

1 subject to a heightened standard. *See Brewer*, 757 F.3d at 1061 (finding prohibitory
2 injunction not subject to heightened burden of proof).

3 **C. Plaintiff is Entitled to a Preliminary Injunction**

4 To prevail on her Motion for Preliminary Injunction, Plaintiff must show
5 either a likelihood of success on the merits or a “serious question” going to the
6 merits, that irreparable harm is likely if the relief is denied, that the balance of
7 equities tips in her favor, and that an injunction is in the public interest. *See*
8 *Winter*, 555 U.S. at 20.

9 **1. The equities tip sharply in Plaintiff’s favor**

10 The Court begins with the balance of equities because the outcome of this
11 factor affects the standard that will apply when evaluating the merits of Plaintiff’s
12 claims at this stage. *See All. for the Wild Rockies*, 632 F.3d at 1135. Plaintiff has
13 shown that the balance of the equities tips sharply in her favor. Plaintiff argues that
14 an academic withdrawal would effectively end her medical career before it begins.
15 ECF No. 6 at 12. Plaintiff elaborated at the hearing that even if she were ultimately
16 successful on the merits and obtained an injunction requiring Defendant university
17 to re-enroll her as a medical student, the academic withdrawal would remain on her
18 record and negatively impact her candidacy for residencies.

19 Defendant’s sole argument on this issue is that it would not be equitable to
20 grant Plaintiff an exception to Defendant’s policies. ECF No. 10 at 9. However, as

1 discussed above, Plaintiff is not seeking an exception to Defendant’s policies at this
2 time. Defendant’s policies will be applied to Plaintiff when the merits of her case
3 have been resolved. As such, any injury to Defendant from the delay in applying
4 these policies is minor when weighed against the negative ramifications on
5 Plaintiff’s career if the injunction is not granted and Plaintiff is ultimately successful
6 on her claims. Thus, the balance of the equities tips sharply in Plaintiff’s favor.

7 **2. Plaintiff has shown serious questions going to the merits**

8 Plaintiff has shown serious questions going to the merits of her due process
9 and disability rights claims. Because the balance of the equities tips sharply in
10 Plaintiff’s favor, Plaintiff must merely meet this lower standard of “serious
11 questions going to the merits” on any of its twenty claims. *See All. for the Wild*
12 *Rockies*, 632 F.3d at 1135. By and large, Plaintiff’s briefing fails to meet her burden
13 because she does not cite to specific case law or evidence in support of her
14 arguments. *See Short v. Brown*, Case No. 2:18-cv-00421-TLN-KJN, 2018
15 WL 1941762, at *10 (E.D. Cal. Apr. 25, 2018) (“It is not this Court’s role to spin
16 out arguments . . . that Plaintiffs have not made.”), *aff’d*, 893 F.3d 671, 2018 WL
17 3077070 (9th Cir. June 22, 2018); *Dunn v. Codikow*, 2013 WL 12089494, at *2
18 (C.D. Cal. Oct. 21, 2013) (finding allegation that contract was fraudulent and void,
19 “without any citation to relevant case law or evidence, falls well short of meeting
20 [the] burden to establish a substantial likelihood of success on the merits”).

1 However, Plaintiff has presented sufficient evidence to show serious questions
2 going to the merits of her due process and disability rights claims.

3 **i. Due Process**

4 Plaintiff asserts her due process rights were violated in three ways: (1) that
5 she was not provided with details of what she was accused of at an April 23, 2019
6 meeting with Dean Tomkowiak, (2) that she was not given an opportunity to raise
7 concerns about allegedly biased members of SEPAC, and (3) that the allegedly
8 biased members of SEPAC were required to remove themselves from considering
9 the claims related to Plaintiff, AF, and CE. ECF No. 6 at 6–8.

10 “A procedural due process claim has two elements: deprivation of a
11 constitutionally protected liberty or property interest and denial of adequate
12 procedural protection.” *Krainski v. Nevada ex rel. Bd. of Regents of the Nev. Sys. of*
13 *Higher Educ.*, 616 F.3d 963, 970 (9th Cir. 2010) (citing *Brewster v. Bd. of Educ. of*
14 *the Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998)). University
15 students facing dismissal or disciplinary sanctions are entitled to some degree of
16 process. *See Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 89–90 (1978)
17 (“[D]ue process requires, in connection with the suspension of a student from public
18 school for disciplinary reasons, ‘that the student be given oral or written notice of
19 the charges against him and, if he denies them, an explanation of the evidence the
20 authorities have and an opportunity to present his side of the story.’” (quoting *Goss*

1 *v. Lopez*, 419 U.S. 565, 581 (1975))).

2 As to the first alleged violation of Plaintiff’s due process rights—that she was
3 not provided with details of what she was accused of at an April 23, 2019 meeting
4 with Dean Tomkowiak—Plaintiff has not indicated what information she was
5 provided or why that information was inadequate. *See* ECF No. 6 at 6. It appears
6 this is in part due to her belief that she is still missing information about the specific
7 accusations against her. *See id.* (“[I]nformation has still not been provided to
8 [Plaintiff,] leaving her unclear about what specifically she is being punished for
9 having allegedly done.”). However, this brief and conclusory assertion is simply
10 insufficient to show a serious question going to the merits of her claim.

11 As to the second claim, that Plaintiff was not provided with an opportunity
12 to raise concerns about SEPAC member’s biases, she has not indicated how her
13 right to object was infringed. Washington Administrative Code § 504-26-125
14 indicates that “[a] party requesting recusal of a conduct officer or conduct/appeals
15 board member must demonstrate good cause. The request must be made in writing
16 no later than five calendar days prior to the date of the conduct hearing or appeals
17 board meeting.” The Complaint alleges Plaintiff was not given notice of the hearing
18 ten calendar days in advance. ECF No. 2-2 at 24–25. However, Plaintiff does not
19 elaborate on when she received the notice, explain why she was unable to make a
20 timely recusal request, or describe how Defendant’s actions otherwise denied her

1 this right. *See* ECF No. 6 at 7. As such, Plaintiff has not shown serious questions
2 going to the merits of this claim.

3 Finally, Plaintiff asserts four SEPAC members were required to recuse
4 themselves. “Conduct officers and board members must recuse themselves if, after
5 consultation, an actual conflict is determined to exist.” Wash. Admin. Code § 504-
6 26-125(4). “[A] conflict of interest is defined as a personal interest, financial,
7 familial, or otherwise, that might impair, or reasonably appear to an objective,
8 outside observer to impair, a person’s independent unbiased judgment in the
9 discharge of their official responsibilities.” *Id.* Here, Plaintiff asserts (1) “Dawn
10 Dewitt has a close teaching and mentoring relationship with [AF],” (2) “Daniel
11 Teraguchi acted as a gatekeeper for the concerns anyone had in relation to Doe, and
12 thus was acting as both witness and judge, which creates a conflict,” (3) “Jennifer
13 Troiano has a close teaching and mentoring relationship with [AF],” and (4)
14 “Carlton Heine is good friends with Doe’s abuser and his new girlfriend and
15 frequently socialized with them outside of the educational environment, including
16 imbibing to the point of excess at conferences. He also spent substantial time
17 mountain biking and skiing with them.” ECF No. 6 at 7–8.

18 The claims against Teraguchi appear to be a challenge to the procedures that
19 allow him to both “act as a gatekeeper” and also serve on SEPAC. *See* ECF No. 6
20 at 7. However, at this stage, it appears to be a question of fact whether Teraguchi,

1 Dewitt, Troiano, and Heine’s relationships with the students involved in the events
2 SEPAC was meeting to review amounted to a personal interest “that might impair,
3 or reasonably appear to an objective, outside observer to impair, a person’s
4 independent unbiased judgment in the discharge of their official responsibilities.”
5 Wash. Admin. Code § 504-26-125(4). Thus, Plaintiff has shown serious questions
6 going to the merits of whether these SEPAC members’ failure to recuse themselves
7 violated her due process rights.

8 **ii. Family Educational and Privacy Rights**

9 Plaintiff asserts her public removal from a Slack channel violated her privacy
10 rights under the Family Educational Rights and Privacy Act (FERPA) and Wash.
11 Rev. Code § 504-21-050(1). ECF No. 6 at 8. FERPA “prohibits federal funding of
12 educational institutions that have a policy or practice of releasing education records
13 to unauthorized persons.” *Gonzaga Univ., v. Doe*, 536 U.S. 273, 276 (2002).
14 However, FERPA does not create a private right of action to enforce violations of
15 its nondisclosure provisions. *Id.* at 290. Thus, Plaintiff cannot show a likelihood of
16 success for Defendant’s alleged violation of FERPA.

17 Under Wash. Rev. Code § 504-21-050(1), Washington State University is
18 prohibited from releasing education records or a student’s personally identifiable
19 information other than directory information without the student’s written consent.
20 Wash. Rev. Code § 504-21-050(1). “Directory information” includes the student’s

1 “major and minor fields of study . . . dates of attendance, enrollment status (e.g.,
2 undergraduate or graduate; full-time or part-time), grade level, [and] degrees . . .”
3 Wash. Rev. Code § 504-21-050(5). Plaintiff fails to explain how removing her from
4 a Slack channel was a “release” of her education records or personal information
5 and does she cite any case law that would support such a conclusion. As such, she
6 has not shown a serious question going to the merits of this claim.

7 **iii. Harassment**

8 Plaintiff argues Defendants have engaged in harassment by continuing to
9 send her “inane and incessant contact via email” indicates Defendant engaged in
10 harassment. ECF No. 6 at 9. Plaintiff asserts the “ongoing barrage of contact by the
11 individuals ultimately named in the suit furthered [Plaintiff]’s anxiety and
12 constitutes harassment under WAC 504-26-222.” *Id.*

13 The Washington Administrative Code defines harassment as follows:

14 Harassment is conduct by any means that is severe, persistent, or
15 pervasive, and is of such a nature that it would cause a reasonable
16 person in the victim’s position substantial emotional distress and
17 undermine his or her ability to work, study, or participate in his or her
18 regular life activities or participate in the activities of the university,
and/or actually does cause the victim substantial emotional distress and
undermines the victim’s ability to work, study, or participate in the
victim’s regular life activities or participate in the activities of the
university.

19 Wash. Admin. Code § 504-26-222.

20 As an initial matter, Plaintiff fails to explain why Washington Administrative

1 Code § 504-26-222, which sets standards for prohibited conduct for *students*, is
2 applicable to the University itself. *See* ECF No. 6 at 8–9. Plaintiff also provides no
3 evidence as to the number, duration, or contents of the emails that would allow the
4 Court to evaluate whether the email met this standard. *See id.* Plaintiff’s declaration
5 mentions only one specific email. *See* ECF No. 7-1 at 12 (“As I am writing this
6 declaration with my attorney, I am being contacted by Defendant via email with a
7 requirement to complete a survey about my experience as a student at the school. I
8 am very upset because we began to ask them to stop contacting me in August
9 of 2019, and it’s still happening.”). Plaintiff also provides no explanation for how
10 these emails are “of such a nature that it would cause a reasonable person in the
11 victim’s position substantial emotional distress and undermine his or her ability to
12 work, study, or participate in his or her regular life activities or participate in the
13 activities of the university,” nor that the emails actually caused such distress. *See*
14 ECF No. 6 at 8–9. As such, she has not shown serious questions going to the merits
15 of this claim.

16 **iv. Gender discrimination**

17 Plaintiff raises two main arguments for gender discrimination:
18 (1) Defendant’s decision to reprimand her, but not AF for “identical conduct” in
19 using Slack and (2) Defendant’s failure to act when Plaintiff informed staff
20 members of AF’s allegedly abusive and illegal conduct. ECF No. 6 at 9–10.

1 Damages are available under Title IX, 20 U.S.C. § 1681, only if “an official
2 who at a minimum has authority to address the alleged discrimination and to
3 institute corrective measures on the recipient’s behalf has actual knowledge of
4 discrimination in the recipient’s programs and fails adequately to respond.” *Gebser*
5 *v. Lago Vista Independent School District*, 524 U.S. 274, 290 (1998). Washington
6 statute, recognizing that Article XXXI, § 1, Amendment 61 of the Washington state
7 Constitution requires equal treatment of all citizens regardless of gender,
8 specifically prohibits “discrimination on the basis of gender against any student in
9 the institutions of higher education.” Wash Rev. Code § 28B.110.010.

10 Plaintiff alleges she and AF engaged in “identical” conduct, but that she was
11 sanctioned and AF was not. ECF No. 6 at 9. However, Plaintiff has provided no
12 factual support for her allegations that her conduct and AF’s conduct was identical.
13 *See* ECF Nos. 7-1, 16-1. As such, Plaintiff has not met her burden of showing
14 substantial questions going to the merits of this claim.

15 Finally, Plaintiff argues that when she informed staff that she was being
16 cyberstalked by AF and that she was once recorded without her consent, they
17 initially did nothing and later told her she could report the behavior to a University
18 Conduct Officer. ECF No. 6 at 9. Plaintiff’s arguments do not specify exactly what
19 she communicated to Defendant or when this communication occurred. *See id.*
20 Plaintiff’s supplemental declaration says she spoke with Burch-Windrem by phone

1 on October 13, 2018 and that Plaintiff “informed her at that time that [Plaintiff] was
2 a victim of Domestic Violence at the hands of AF,” specifically that “AF threw a
3 coffee table at [Plaintiff].” ECF No. 16-1 at 5. Burch-Windrem’s declaration
4 characterizes this communication differently. ECF No. 11 at 6 (declaring that
5 Plaintiff first raised AF’s abusive conduct at a November 29, 2018 in-person
6 meeting where she described AF as “aggressive and angry toward her during their
7 breakup” and said he once overturned a coffee table). Because Plaintiff has failed
8 to explain how these allegations would support a violation of Title IX, the
9 Washington state constitution, or Wash. Rev. Code § 28B.110.010, she has not met
10 her burden of showing serious questions going to the merits of these claims.

11 **v. Disability rights violations**

12 Plaintiff next argues Defendants failed to provide Plaintiff with core services
13 she was entitled to as a disabled student. ECF No. 6 at 10. Wash. Rev. Code
14 § 28B.10.912 sets forth certain “core services” that should be provided as
15 appropriate to students with disabilities, including flexibility in testing
16 arrangements, referral to the appropriate entity for diagnostic assessment and
17 documentation of the student’s disability, and flexibility in timelines for completion
18 of courses, certification, and degree requirements. Wash. Rev. Code
19 §§ 28B.10.912(12), (13) & (14).

20 Plaintiff asserts she was denied each of these resources. ECF No. 6 at 10.

1 Plaintiff's sworn declaration indicates that she informed Burch-Windrem of her
2 anxiety and depression in a conversation shortly after October 13, 2018. *See* ECF
3 No. 16-1 at 8; ECF No. 11 at 3. Plaintiff also separately indicates that "Daniel
4 Teraguchi either knew or should have known that [she] had the documented
5 disability of anxiety with the school, and that I had documented it." ECF No. 7-1
6 at 6. Plaintiff has also indicated that after she failed an exam on April 22, 2019, she
7 was not given the opportunity to remediate the failure. ECF No. 7-1 at 6. Although
8 these assertions are generally vague as to how Plaintiff raised and documented her
9 disabilities, there is sufficient information to raise serious questions as to whether
10 Plaintiff's conversation with Burch-Windrem was sufficient to trigger Defendant's
11 responsibilities to provide core services under Revised Code of Washington
12 § 28B.10.912. Thus, Plaintiff has shown serious questions going to the merits of her
13 claims for disability rights violations.

14 **vi. Outrage**

15 Finally, Plaintiff argues the "totality of Defendant's conduct over the past
16 year and a half towards Doe has been extreme and outrageous and has caused Doe
17 severe emotional distress." ECF No. 6 at 11. "The tort of outrage requires the proof
18 of three elements: (1) extreme and outrageous conduct, (2) intentional or reckless
19 infliction of emotional distress, and (3) actual result to plaintiff of severe emotional
20 distress." *Kloepfel v. Bokor*, 66 P.3d 630, 632 (Wash. 2003). "[A]ny claim for

1 intentional infliction of emotional distress must be predicated on behavior ‘so
2 outrageous in character, and so extreme in degree, as to go beyond all possible
3 bounds of decency, and to be regarded as atrocious, and utterly intolerable in a
4 civilized community.’” *Kloepfel*, 66 P.3d at 632 (quoting *Grimsby v. Samson*, 530
5 P.2d 291, 295 (Wash. 1975)) (emphasis omitted). “In an outrage claim, ‘the
6 relationship between the parties is a significant factor in determining whether
7 liability should be imposed.’” *Robel*, 59 P.3d at 620 (quoting *Contreras v. Crown*
8 *Zellerbach Corp.*, 565 P.2d 1173, 1176 (Wash. 1977)).

9 Although Plaintiff’s relationship with Defendant increases her likelihood of
10 success on the merits, she has not pointed to any conduct that is “‘so outrageous in
11 character, and so extreme in degree, as to go beyond all possible bounds of decency,
12 and to be regarded as atrocious, and utterly intolerable in a civilized community.’”
13 *Kloepfel*, 66 P.3d at 632. Nor has provided any evidence that she actually suffered
14 severe emotional harm as a result of Defendant’s actions. *See id.* Thus, Plaintiff has
15 not shown serious questions going to the merits of her outrage claim.

16 **3. Plaintiff has shown a likelihood of irreparable injury**

17 Plaintiff has established that irreparable harm is likely if preliminary relief is
18 denied. “Irreparable harm is traditionally defined as harm for which there is no
19 adequate legal remedy, such as an award of damages.” *Ariz. Dream Act Coal.*, 757
20 F.3d at 1068 (citing *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental*,

1 *Inc.*, 944 F.2d 597, 603 (9th Cir. 1991)). Plaintiff argues that if she is
2 administratively withdrawn from the university, she would be effectively barred
3 from pursuing a career as a medical doctor because no other medical school would
4 accept her. ECF No. 6 at 11–12. She also elaborated at the hearing that if she were
5 ultimately successful on the merits of her suit and re-enrolled in Defendant’s
6 medical school, she would suffer when applying to residencies because of the
7 academic withdrawal that would remain noted on her record. Defendant’s response
8 is that if Plaintiff is withdrawn, it will be due to her own failure to abide by the
9 conditions of return. ECF No. 10 at 9.

10 However, Plaintiff submitted two sworn declaration regarding her efforts to
11 comply with the conditions of return. ECF No. 7-1 at 8. She explains that she has
12 “made numerous attempts to contact a psychiatrist for a letter to meet the final
13 qualification set out by SEPAC, and ha[s] regularly been denied, as what SEPAC
14 is requesting is not standard practice for any doctor [Plaintiff] ha[s] been able to
15 locate.”³ *Id.* As such, Plaintiff has presented evidence that despite her diligence in
16 attempting to meet the requirements to re-enroll, she will be unable to meet those

17
18 ³ Plaintiff’s first declaration seems to reflect a misunderstanding of the requirement
19 that she produce a letter from psychiatrist stating that Plaintiff is fit to practice,
20 rather than merely not a danger to herself or others. ECF No. 7-1 at 8. However,
Plaintiff’s supplemental declaration reflects that she has been seeking a “fitness to
practice letter” and the Court therefore understands she has been seeking the
appropriate documentation. ECF No. 16-1 at 13.

1 requirements. The Court therefore cannot find, at this time, that Plaintiff's
2 withdrawal would a self-inflicted injury.

3 Moreover, the potential impact on her career Plaintiff describes is not subject
4 to remedy by an award of damages. Rather, the limitation on her professional
5 opportunities, particularly at such an early stage in her career, constitutes
6 irrevocable harm. *See Enyart v. Nat'l Conference of Bar Exam'rs, Inc.*, 630
7 F.3d 1153, 1165 (9th Cir. 2011) (finding the plaintiff "demonstrated irreparable
8 harm in the form of the loss of opportunity to pursue her chosen profession"); *see*
9 *also Ariz. Dream Act Coal.*, 757 F.3d at 1068 (finding setbacks in pursuing chosen
10 profession early in their careers "likely to haunt Plaintiff for the rest of their lives").
11 Plaintiff has thus clearly shown that it is likely she will suffer irreparable harm if
12 the injunction is not granted.

13 **4. The injunction is in the public interest**

14 Based on the narrow terms of the injunctive relief Plaintiff is requesting, she
15 has shown that the public interest supports injunctive relief. To assess the public
16 interest, the Court looks to the "impact on non-parties rather than parties."
17 *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002).
18 Plaintiff argues that because Defendant's actions are unlawful, there is no public
19 interest in perpetuating their action. ECF No. 6 at 12. Defendant argues that there
20 is a public interest in the medical school following its own policies in a consistent

1 manner for all students and that the professionalism policies Plaintiff allegedly
2 violated are designed to protect the public. ECF No. 10 at 9.

3 As set out above, the Court finds the narrow injunctive relief Plaintiff seeks
4 does not require Defendant university to alter its policies, nor does it require
5 Defendant to waive or alter its professionalism requirements. If Plaintiff is
6 ultimately unsuccessful on the merits of her claims, the six-year completion
7 requirement and professionalism standards will be applied to her. The public has an
8 interest in the preventing violations of constitutional rights, including due process
9 rights, and in individuals being free from discrimination. *See Brewer*, 757 F.3d
10 at 1069 (“[T]he public interest and the balance of the equities favor ‘prevent[ing]
11 the violation of a party’s constitutional rights.” (citing *Melendres v. Arpaio*, 695
12 F.3d 990, 1002 (9th Cir. 2012) (alteration in original)). Thus, the public interest
13 supports this narrow injunction that stays the harmful effects of alleged
14 constitutional violations until the merits of those allegations are resolved.

15 **D. The surety bond should be waived**

16 Plaintiff has shown the surety bond should be waived. Plaintiff seeks waiver
17 of the surety bond, arguing that there is no likelihood that the injunction will harm
18 Defendant. ECF No. 6 at 13. Defendant did not address this argument in the briefing
19 or during oral argument. *See* ECF No. 10.

20 Federal Rule of Civil Procedure 65(c) permits the Court to “issue a

1 preliminary injunction or a temporary restraining order only if the movant gives
2 security in an amount that the court considers proper to pay the costs and damages
3 sustained by any party found to have been wrongfully enjoined or restrained.” Fed.
4 R. Civ. P. 65(c). This Rule “invests the district court with discretion as to the
5 amount of security required, *if any*.” *Johnson v. Couturier*, 572 F.3d 1067, 1086
6 (9th Cir. 2009) (quoting *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003))
7 (emphasis in original). The Court “may dispense with the filing of a bond when it
8 concludes there is no realistic likelihood of harm to the defendant from enjoining
9 his or her conduct.” *Id.*

10 The prohibition on Defendant academically withdrawing Plaintiff does not
11 present any realistic likelihood of harm to Defendant. The Court has determined
12 that Defendant will be able to consistently apply its policies, merely at a later time
13 and subject to the outcome of Plaintiff’s claims on the merits. Thus, there is no harm
14 to Defendant that could result from a temporary prohibition on academically
15 withdrawing Plaintiff pending the resolution of this action.

16 CONCLUSION

17 For the foregoing reasons, the Court finds Plaintiff has shown she is entitled
18 to a preliminary injunction. Until the merits of the litigation are resolved or the
19 injunction is dissolved, Defendant shall not academically withdraw Plaintiff from
20 the medical school or the university. Plaintiff shall remain on personal leave unless

1 the parties agree to a more appropriate status.

2 Accordingly, **IT IS HEREBY ORDERED:**

3 **1.** Defendant's Motion to Extend Deadline to File Response, **ECF**
4 **No. 17**, is **GRANTED**.


5 **A.** The Court has considered Defendant's late-filed Response, ECF
6 No. 10, in determining Plaintiff's Motion for Preliminary
7 Injunction, ECF No. 6, and Amended Motion for Preliminary
8 Injunction, ECF No. 7.

9 **2.** Plaintiff Jane Doe's Motion for Preliminary Injunction, **ECF No. 6**,
10 and Amended Motion for Preliminary Injunction, **ECF No. 7**, are
11 **GRANTED**.

12 **3.** Until the litigation is resolved or the preliminary injunction is
13 dissolved, Defendant Elson S. Floyd College of Medicine at
14 Washington State University is **ENJOINED** from academically
15 withdrawing Plaintiff from the medical school or university.

16 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
17 provide copies to all counsel.

18 **DATED** this 17th day of July 2020.

19 
20 SALVADOR MENDOZA, JR.
United States District Judge