

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 YADIRA CONTRERAS, ERICA
8 KRONECK, KYLE OLSON, and
9 HENDRY (“CODY”) RODMAN III,

10 Plaintiffs,

11 v.

12 HERITAGE UNIVERSITY,

13 Defendant.

NO. 2:22-CV-3034-TOR

ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT

14 BEFORE THE COURT is Defendant’s Motion for Summary Judgment
15 (ECF No. 19). This matter was submitted for consideration without oral argument.
16 The Court has reviewed the record and files herein and is fully informed. For the
17 reasons discussed below, Defendant’s Motion for Summary Judgment (ECF No.
18 19) is GRANTED.
19
20

ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT ~ 1

1 **BACKGROUND**

2 This matter arises from the revocation of accreditation from Defendant
3 Heritage University’s Physician Assistant program. The following facts are not in
4 dispute except where noted.

5 Plaintiffs Yadira Contreras, Erica Kroneck, Kyle Olson, and Hendry (Cody)
6 Rodman III were enrolled in Defendant’s Physician Assistant (“PA”) program and
7 began the program in the summer of 2020 as part of Cohort 6. ECF No. 19 at 9–
8 10. Graduation from an accredited PA program is a prerequisite to taking the
9 Physician Assistant National Certifying Examination (“PANCE”), which is
10 required for licensure as a Physician Assistant. ECF No. 22 at 1–2, ¶¶ 3–5. The
11 Accreditation Review Commission on Education for the Physician Assistant
12 (“ARC-PA”) oversees a program’s accreditation. *Id.* at 2, ¶ 5.

13 In 2012, Defendant was initially granted provisional accreditation by ARC-
14 PA, but the status was later changed to probationary. *Id.*, ¶¶ 6–7. Probationary
15 accreditation is conferred when a program does not meet the ARC-PA Standards,
16 as described in the ARC-PA Accreditations Standards for Physician Assistant
17 Education (“Standards”). *See* ECF No. 20-1. The ARC-PA Standards indicate the
18 “sponsoring institution” is responsible for “teaching out currently matriculated
19 students in accordance with the institution’s regional accreditor or federal law in
20 the event of program closure and/or loss of accreditation.” ECF No. 22 at 4, ¶ 13.

1 The Standards define “teaching out” as “[a]llowing students already in the program
2 to complete their education or assisting them in enrolling in an ARC-PA accredited
3 program in which they can continue their education.” *Id.*

4 Defendant’s program was under the probationary accreditation status at the
5 time of Plaintiffs’ enrollment. *Id.* at 5, ¶ 23. Plaintiffs were aware of the
6 probationary status. *Id.* Defendant’s website and Student Handbook contained
7 statements regarding the accreditation status and specifically noted that ARC-PA
8 conferred probationary status on programs that fail to meet accreditation
9 requirements as specified by ARC-PA. *Id.* at 3, ¶ 11, at 6, ¶ 24. It further stated
10 that if a program continued to fail to comply with the Standards, the program was
11 at risk of having accreditation withdrawn. *See* ECF No. 20-6 at 7. The website
12 and Handbook directed questions about the accreditation status to Defendant’s
13 administrators. *Id.*

14 Prior to beginning coursework, Plaintiffs signed the Student Handbook,
15 acknowledging they read and understood the terms and conditions contained
16 therein, including the accreditation status, and that they had the opportunity to ask
17 questions and receive answers about the accreditation status. ECF No. 22 at 6, ¶¶
18 26–27. Prior to signing the Student Handbook, Plaintiffs assert they were
19 repeatedly reassured the probationary status would not affect their ability to
20 graduate from an accredited program. ECF No. 42 at 6, ¶ 23. Thereafter, Plaintiffs

1 each began coursework, completing and receiving credit for the Summer 2020
2 semester. ECF No. 22 at 7, ¶ 29. Plaintiffs Olson, Kroneck, and Rodman also
3 completed and received credits for the Fall 2020 and Spring 2021 semesters. *Id.*, ¶
4 30.

5 During the Summer 2020 semester, Plaintiff Contreras began experiencing
6 mental health difficulties that impacted her education. *Id.* at 8, ¶ 36. Contreras
7 received testing accommodations in August 2020. *Id.* at 9, ¶ 37. In September
8 2020, Contreras voluntarily withdrew from Cohort 6. *Id.*, ¶ 43. Contreras disputes
9 the characterization as a “voluntary withdrawal” and asserts she “decelerated from
10 the program with the understanding that she would return to Cohort 7 the following
11 year.” ECF No. 42 at 10, ¶ 43. Contreras does not explain how her
12 characterization is materially different from Defendant’s. Consequently, Contreras
13 did not complete the Fall 2020 semester as part of Cohort 6. ECF No. 22 at 10, ¶
14 45. Although the deadline for tuition reimbursement had passed, Defendant
15 returned \$11,469 of Contreras’s Fall 2020 tuition. *Id.*, ¶ 46.

16 On October 23, 2020, ARC-PA notified Defendant it was withdrawing
17 accreditation. *Id.* at 7, ¶ 28. Defendant responded that it would “teach out” all
18 remaining students, including those in Cohort 6, as required by the ARC-PA
19 Standards, but ARC-PA denied the attempt, stating Defendant would only be
20 permitted to “teach out” those students scheduled to graduate in May 2021, and

1 only if ARC-PA approved a teach out plan submitted by Defendant. ECF Nos. 20-
2 9; 20-10; 20-11. As to any student expected to graduate beyond May 2021,
3 including Plaintiffs, ARC-PA indicated it expected Defendant to “use its best
4 efforts” to assist those students in transferring to other ARC-PA accredited
5 programs. ECF Nos. 20-11; 20-12 at 3. ARC-PA further stated Defendant was
6 required to “continue those efforts until all such students have transferred into
7 another program.” ECF No. 20-12 at 3.

8 Plaintiffs dispute that Defendant’s accreditation was withdrawn by ARC-PA
9 and contend that Defendant withdrew its accreditation voluntarily. ECF No. 42 at
10 8, ¶ 28. Plaintiffs cite to a letter dated October 31, 2020 from Defendant to ARC-
11 PA stating Defendant was “voluntarily withdrawing from the [ARC-PA]
12 accreditation process.” ECF No. 20-9. However, the letter was sent in response to
13 the Notice of Adverse Action that Defendant received on October 23, 2020,
14 notifying Defendant that its accreditation had been withdrawn by ARC-PA. ECF
15 No. 20-8 at 2. The Notice outlines Defendant’s possible next steps, including
16 appeal or voluntary withdraw from the process. *Id.* at 10. Plaintiffs do not cite any
17 evidence indicating Defendant had control over its accreditation status.

18 The parties do not dispute that Defendant did not appeal its accreditation
19 revocation and did not further seek to enforce the teach out provision after its
20 initial attempt was denied by ARC-PA. ECF No. 45 at 4–5, ¶ 22. However,

1 Defendant asserts there is no evidence of a factual basis upon which Defendant
2 could have challenged the accreditation revocation. *Id.* Defendant claims it
3 elected not to challenge the revocation in order to protect the accredited graduation
4 of Cohort 5. *Id.* Plaintiffs do not cite any evidence suggesting Defendant would
5 have succeeded on an appeal. Although not explicitly stated by either party, it
6 appears a voluntary withdrawal would permit Defendant to reapply for
7 accreditation at a later date. ECF Nos. 20-12 at 3; 29-6 at 5. Failure to appeal or
8 voluntarily withdrawal would have resulted in a final revocation of accreditation.
9 ECF No. 20-8 at 10.

10 Following the loss of accreditation, Defendant claims it “took steps to
11 mitigate harm” to Plaintiffs Olson, Kroneck, and Rodman by paying them various
12 sums of money. ECF No. 22 at 12, ¶¶ 57–59. Plaintiffs assert they were not
13 “paid” by Defendant but were reimbursed or refunded for portions of the costs they
14 incurred after the loss of accreditation. ECF No. 42 at 13–14, ¶¶ 57–59. Plaintiffs
15 do not explain how their characterization is materially different from Defendant’s.
16 Additionally, Defendant attempted to place Plaintiffs Olson, Kroneck, and Rodman
17 in other ARC-PA accredited PA programs. ECF No. 22 at 11, ¶ 55. Defendant
18 also attempted to place Contreras in another accredited PA program, despite her
19 withdraw from Cohort 6. *Id.*, ¶ 54. Plaintiffs dispute this fact only to the extent
20 that Kroneck and Contreras were not ultimately placed in another PA program by

1 Defendant, and Olson and Rodman “did significant legwork on their own to secure
2 placements.” ECF No. 42 at 12, ¶ 55.

3 Plaintiffs filed a Complaint on March 14, 2022 that raises the following
4 causes of action: violation of Washington’s Consumer Protection Act (“CPA”),
5 RCW 19.86 *et seq.*, breach of contract, breach of a covenant of good faith and fair
6 dealing, fraudulent and negligent misrepresentation, unjust enrichment, promissory
7 estoppel, negligence, and negligent hiring/supervision. ECF No. 1 at 15–28, ¶¶
8 55–121. Plaintiff Contreras also alleges causes of action for violations of the
9 Washington Law Against Discrimination (“WLAD”), RCW 49.60 *et seq.*, Section
10 504 of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, and Title III of the
11 Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12181 *et seq.* Defendant
12 moves for summary judgment on all claims asserted against it. ECF No. 19.

13 DISCUSSION

14 I. Legal Standard

15 The Court may grant summary judgment in favor of a moving party who
16 demonstrates “that there is no genuine dispute as to any material fact and that the
17 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In ruling
18 on a motion for summary judgment, the court must only consider admissible
19 evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002). The
20 party moving for summary judgment bears the initial burden of showing the

1 absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
2 317, 323 (1986). The burden then shifts to the non-moving party to identify
3 specific facts showing there is a genuine issue of material fact. *See Anderson v.*
4 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “The mere existence of a scintilla
5 of evidence in support of the plaintiff’s position will be insufficient; there must be
6 evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

7 For purposes of summary judgment, a fact is “material” if it might affect the
8 outcome of the suit under the governing law. *Id.* at 248. Further, a dispute is
9 “genuine” only where the evidence is such that a reasonable jury could find in
10 favor of the non-moving party. *Id.* The Court views the facts, and all rational
11 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*
12 *Harris*, 550 U.S. 372, 378 (2007). Summary judgment will thus be granted
13 “against a party who fails to make a showing sufficient to establish the existence of
14 an element essential to that party’s case, and on which that party will bear the
15 burden of proof at trial.” *Celotex*, 477 U.S. at 322.

16 **A. Washington Consumer Protection Act**

17 Defendant moves for summary judgment, arguing there is no evidence that it
18 engaged in an unfair or deceptive act or practice. ECF No. 19 at 17. Plaintiffs
19 allege Defendant affirmatively misrepresented the effects of the accreditation
20 probationary period and then misled Plaintiffs to believe Defendant would assist

1 with their transfers to different programs. ECF No. 1 at 15–18, ¶¶ 59–68.

2 Washington’s CPA prohibits “[u]nfair methods of competition and unfair or
3 deceptive acts or practices in the conduct of any trade or commerce.” RCW
4 19.86.020. “Any person who is injured in his or her business or property by a
5 violation of RCW 19.86.020 . . . may bring a civil action” to recover actual
6 damages. RCW 19.86.090. “[A] claim under the Washington CPA may be
7 predicated upon a *per se* violation of statute, an act or practice that has the capacity
8 to deceive substantial portions of the public, or an unfair or deceptive act or
9 practice not regulated by statute but in violation of public interest.” *Klem v. Wash.*
10 *Mut. Bank*, 176 Wn.2d 771, 787 (2013). To prevail on a non-*per se* CPA claim,
11 “the plaintiff must prove an (1) unfair or deceptive act or practice; (2) occurring in
12 trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her
13 business or property; [and] (5) causation.” *Id.* at 782 (quoting *Hangman Ridge*
14 *Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash. 2d 778, 780 (1986)).

15 As to the third prong, Washington courts distinguish between consumer
16 transactions and private disputes to determine whether the public has an interest in
17 a given action. *Hangman Ridge*, 105 Wash. 2d at 790. Generally, a breach of a
18 private contract that affects only the parties is not an act or practice affecting the
19 public interest. *Id.* (citation omitted). However, where there is a likelihood that
20 additional plaintiffs have been or will be injured in exactly the same fashion, a

1 private dispute may be one that affects the public interest. *Id.* (citation omitted).
2 To determine whether a private dispute affects public interest, courts consider (1)
3 whether the alleged facts occurred in the course of the defendant’s business, (2)
4 whether the defendant advertised to the public in general, (3) whether the
5 defendant solicited this particular plaintiff, indicating potential solicitation of
6 others, and (4) the relative bargaining position of the parties. *Id.* at 791.

7 Here, the parties’ dispute arguably involves a private agreement, as
8 evidenced by Plaintiffs’ claims for breach of contract and breach of covenant of
9 good faith and fair dealing. Accordingly, the Court will evaluate the
10 aforementioned factors to determine if their dispute has the potential to affect
11 public interest. The allegedly deceptive acts were statements made by faculty and
12 administrators directly to Plaintiffs during their admissions interviews and after
13 Defendant lost its accreditation. ECF Nos. 1 at 15, ¶ 60; 42 at 6, ¶ 23. These
14 activities undisputedly occurred during the course of Defendant’s business.
15 However, there is no evidence indicating these conversations occurred outside a
16 private setting or that they were publicly disclosed for advertising or solicitation
17 purposes. “Isolated communications are not likely to deceive a substantial portion
18 of the public unless they are part of a standard form contract or a standard sales
19 representation.” *Cassan Enterprises, Inc. v. Dollar Sys., Inc.*, 131 F.3d 145 (9th
20 Cir. 1997). Moreover, Defendant’s probationary accreditation status was clearly

1 disclosed on Defendant's publicly available website and explicitly stated in the
2 Student Handbook. Plaintiffs acknowledge reading the probationary information.
3 ECF No. 22 at 6, ¶ 24. There is also no evidence that any Plaintiff was solicited in
4 particular; rather, the Plaintiffs discovered Defendant's program through internet
5 searches and PA program resources. *See, e.g.*, ECF Nos. 21-1 at 5; 21-2 at 9.

6 As to the relative bargaining power between the parties, neither party argues
7 Plaintiffs could have negotiated around any term in the Student Handbook.

8 However, by signing the Handbook prior to beginning the program, Plaintiffs
9 acknowledge they read and understood the terms. ECF No. 22 at 6–7, ¶¶ 26–27.

10 Plaintiffs dispute Defendant's characterization of what they understood the
11 probationary status to mean. ECF No. 42 at 7, ¶ 26. Nonetheless, it is undisputed
12 that their signatures constituted acknowledgment that any questions they had
13 relating to the probationary accreditation status had been answered. ECF No. 22 at
14 7, ¶ 27. Moreover, Plaintiffs stated they researched what probationary
15 accreditation meant for universities and indicated they searched for and were aware
16 of other PA programs around the country. *See, e.g.*, ECF Nos. 21-1 at 5; 21-2 at 3;
17 21-5 at 10. There is no evidence Plaintiffs were coerced or pressured into
18 accepting the terms. Plaintiffs could have chosen to attend other PA programs, but
19 they chose Defendant's. It is undisputed that Plaintiffs accepted the terms of their
20 education, including the risks associated with the probationary status, such as a

1 loss of accreditation.

2 Finally, Plaintiffs’ allegations and supporting evidence relate to only some
3 of the students in Cohort 6. ECF No. 28 at 12. Plaintiffs do not supply evidence
4 that all of Cohort 6 experienced the same alleged harm or that prior cohorts
5 experienced the same alleged harm or that future cohorts are substantially likely to
6 face the same alleged harm. Isolated incidents are insufficient to establish a real or
7 substantial likelihood that others will experience the same harm. *Michael v.*
8 *Mosquera-Lacy*, 165 Wash. 2d 595, 604–05 (2009) (“[T]here must be shown a real
9 and substantial potential for repetition, as opposed to a hypothetical possibility of
10 an isolated unfair or deceptive act’s being repeated.”) (citation omitted). Plaintiffs’
11 claim that “other students will be injured unless [Defendant] is held accountable”
12 is not supported by any evidence. ECF No. 28 at 13.

13 Based on these factors, there is no evidence to suggest Plaintiffs’ private
14 dispute will affect public interest. Plaintiffs’ failure to establish the public interest
15 element for their CPA claim is dispositive and the Court need not reach the
16 remaining elements. *Hangman Ridge*, 105 Wash. 2d at 793. Defendants are
17 entitled to summary judgment on this claim.¹

18
19 ¹ Plaintiff Contreras advances a WLAD discrimination claim, which can
20 provide the basis for a *per se* CPA violation, if successful. ECF No. 1 at 28–29, ¶¶

B. Breach of Contract

Defendant moves for summary judgment on Plaintiffs’ breach of contract claim on the grounds that the Student Handbook did not provide a guarantee that Defendant would remain accredited. ECF No. 19 at 19. Plaintiffs argue there are specific terms and statements in the Student Handbook and program brochure that contractually obligated Defendant to provide the requisite education for Plaintiffs to become certified physician assistants. ECF No. 28 at 15.

Generally, the relationship between students and universities is contractual in nature. *Marquez v. Univ. of Wash.*, 32 Wn. App. 302, 305 (1982). To succeed on a claim for breach of contract, a plaintiff must demonstrate the defendant owed a contractual duty, the defendant breached that duty, and that the breach proximately caused the plaintiff damage. *Nw. Indep. Forest Mfrs. v. Dep’t of Labor & Indus.*, 78 Wn. App. 707, 712 (1995). Since formal contracts rarely exist between students and universities, “the general nature and terms of the agreement are usually implied, with specific terms to be found in the university bulletin and other publications.” *Marquez*, 32 Wash. App. at 305 (citation omitted). The student-university relationship is unique and “cannot be stuffed into one doctrinal

122–27; RCW 49.60.030(3). However, because the Court resolves the WLAD claim in Defendant’s favor, Plaintiff Contreras’s *per se* CPA claim also fails.

1 category.” *Ju v. The University of Washington*, 156 Wash. App. 1017 (2010)
2 (citing *Marquez*, 32 Wash. App. at 306). Accordingly, contract law provides a
3 framework, but the applicable standard is that of reasonable expectations. *Id.*

4 Here, both parties reference the 2020–2021 Student Handbook as the
5 document providing essential terms to the parties’ agreement. ECF Nos. 19 at 19;
6 28 at 15. The Student handbook explicitly stated that Defendant’s program was
7 initially afforded Provisional Accreditation status, which was a status granted to
8 programs as they prepare for graduation of their first cohort but noted that
9 Provisional Accreditation did not guarantee subsequent accreditation. ECF No.
10 20-6 at 7. The Handbook also indicated that as of September 2018, ARC-PA
11 extended an Accreditation-Probation status for Defendant’s program until the next
12 review period in September 2020. ECF No. 20-6 at 7. The Handbook described
13 Probation Accreditation status as:

14 a temporary status of accreditation conferred when a program does not
15 meet the Standards and when the capability of the program to provide
16 an acceptable educational experience for its students is threatened.
17 Once placed on probation, programs that still fail to comply with
18 accreditation requirements in a timely manner . . . may be scheduled
19 for a focused site visit and/or risk having their accreditation
20 withdrawn.

18 *Id.*

19 Plaintiffs also cite to the program brochure, which contained the same
20 language and an additional statement from the program director, which indicated

1 the probationary status was imposed due to Defendant’s “lack of a robust self-
2 study and analysis,” not for its “education delivery.” ECF No. 29-5 at 36.
3 Plaintiffs also refer to assurances that were provided by Defendant’s administrators
4 regarding the effects of an accreditation revocation. ECF No. 28 at 16. Plaintiffs
5 maintain they relied on these verbal and written statements when they signed the
6 Student Handbook. *Id.*

7 A review of the plain language in the Student Handbook makes it clear that
8 accreditation was not guaranteed to Defendant. Each Plaintiff acknowledged they
9 read and understood the provision regarding the accreditation status by signing the
10 Handbook. ECF No. 22 at 6, ¶ 26. Plaintiffs dispute Defendant’s characterization
11 of what they understood the probationary status to mean. ECF No. 42 at 7, ¶ 26.
12 However, Plaintiffs do not provide evidence to overcome the undisputed fact that
13 they accepted the terms and conditions in the Handbook. There is also no evidence
14 that any administrator indicated that Defendant would not be subject to review by
15 ARC-PA. At best, the administrators conveyed their own subjective beliefs that
16 they had complied with the ARC-PA requirements. Nonetheless, the fact remains
17 that Defendant was on probationary accreditation status, subject to review, and
18 Defendant’s program failed the review, which resulted in a loss of accreditation.
19 Plaintiffs knew there was a risk that Defendant could lose accreditation and they
20 accepted that risk. It was unreasonable under the circumstances for Plaintiffs to

1 expect Defendant’s accreditation was guaranteed.

2 To the extent Plaintiffs premise their breach of contract claim on
3 Defendant’s alleged failure to place Plaintiffs in other accredited PA programs,
4 there is no evidence of a binding obligation between Defendant and Plaintiffs to
5 ensure Plaintiffs were placed in other programs. As evidence, Plaintiffs cite to an
6 agreement between ARC-PA and Defendant (ECF No. 20-12 at 3) but
7 acknowledge they “had no privity with the ARC-PA.” ECF No. 28 at 17. In any
8 event, the undisputed evidence demonstrates Defendant did attempt to place
9 Plaintiffs elsewhere. *See* ECF Nos. 21-1 at 30–32; 21-2 at 17–18; 21-4 at 21–22;
10 21-5 at 17. Any failure to ultimately place Plaintiffs Kroneck and Contreras in an
11 alternative program appears to relate to curriculum misalignments with other PA
12 programs. *See* ECF No. 21-1 at 269; 21-4 at 22.

13 Viewing the evidence in a light most favorable to Plaintiffs, there is no
14 genuine dispute that Plaintiffs agreed to the terms of the Student Handbook, and
15 those terms included the risk of attending a program that could lose accreditation.
16 It is also undisputed that Defendant was not under a legal obligation to ensure
17 Plaintiffs’ placements at alternative PA programs. Therefore, Defendant is entitled
18 to summary judgment on Plaintiffs’ breach of contract claim.

19 **C. Breach of Covenant of Good Faith and Fair Dealing**

20 Defendant argues Plaintiffs’ claim for breach of covenant of good faith and

1 fair dealing fails for the same reason their breach of contract claim fails, namely
2 that Plaintiffs knew of Defendant’s probationary status and the associated risks,
3 and they accepted those risks when they enrolled in Defendant’s program. ECF
4 No. 19 at 21. Plaintiffs generically allege a breach of “express and implied
5 promises and representations” but do not point to a specific contract provision.
6 ECF No. 1 at 19–20, ¶¶ 73–79.

7 In Washington, a “covenant of good faith and fair dealing exists only in
8 relation to performance of a specific contract obligation.” *Gossen v. JPMorgan*
9 *Chase Bank*, 819 F. Supp. 2d 1162, 1170 (W.D. Wash. 2011). Therefore, Plaintiffs
10 must identify the express contract term Defendant allegedly breached. Plaintiffs’
11 allegations of generic promises are insufficient. To the extent Plaintiffs attempt to
12 rely on the provision in the Student Handbook directing questions about
13 accreditation to administrators, it is undisputed that Plaintiffs asked questions and
14 received answers. ECF No. 45 at 6, ¶ 27. While Defendant’s administrators may
15 have provided representations regarding the effects of Defendant’s accreditation
16 loss, such representations were not part of the agreement Plaintiffs entered.

17 The Student Handbook contained an express term that Defendant’s
18 accreditation was under probation and at risk of being revoked if the program
19 failed to comply with ARC-PA accreditation requirements. ECF No. 20-6 at 7.
20 Plaintiffs do not deny they accepted this term when they signed the Student

1 Handbook. ECF No. 42 at 7, ¶ 26. Plaintiffs do not identify a specific contract
2 obligation that Defendant allegedly breached, as required by Washington law.
3 Therefore, Plaintiffs have failed to create a genuine issue of material fact and
4 Defendant is entitled to summary judgment.

5 **D. Fraudulent and Negligent Misrepresentation**

6 Defendant moves for summary judgment on the grounds that claims for
7 fraudulent and negligent misrepresentation cannot be predicated on promises of
8 future performance. ECF No. 19 at 21–22. Plaintiffs’ claims allege Defendant
9 failed to provide complete information regarding the effects of the probationary
10 status of its PA program; failed to disclose its intent not to appeal the accreditation
11 revocation; and failed to relocate Plaintiffs Kroneck and Contreras. ECF No. 1 at
12 20–22, ¶¶ 80–95.

13 Claims for fraudulent and negligent misrepresentation can be addressed
14 together when the basis for dismissal is premised on a shared requirement. *Glacier*
15 *Nw., Inc. v. Int’l Bhd. of Teamsters Loc. Union No. 174*, 198 Wash. 2d 768, 800
16 (2021), *cert. granted sub nom. Glacier Nw., Inc. v. Int’l Bhd. of Teamsters Loc.*
17 *Union No. 174.*, 143 S. Ct. 82 (2022). “A fraudulent misrepresentation claim and a
18 negligent misrepresentation claim both require the misrepresentation to be one of
19 existing fact; a promise of future performance is . . . not an actionable statement.”
20 *Id.* Here, Plaintiffs allege misrepresentations of promises of future performance,

1 specifically that they would graduate from an accredited program or that Defendant
2 would be able to “teach out” their Cohort in the event that Defendant lost
3 accreditation.

4 To support their contentions, Plaintiffs cite to an internal email between
5 Defendant’s program faculty. ECF No. 29-5 at 39. The email was sent after
6 Plaintiffs were enrolled in the program and after Defendant had lost accreditation.

7 *Id.* The email indicated Defendant’s administrators were awaiting final
8 determination from ARC-PA regarding their ability to “teach out” Plaintiffs’
9 cohort. *Id.* It is clear from the email that Defendant’s faculty did not know they
10 would be unable to “teach out” Cohort 6 prior to the loss of accreditation.

11 Therefore, any assurance regarding the teach out provision during Plaintiffs’
12 admissions process was a promise of future performance and cannot form the basis
13 for Plaintiffs’ claims.

14 Plaintiffs’ claim regarding graduation is even more attenuated. The
15 presently existing fact at the time of Plaintiffs’ enrollment was that Defendant’s
16 accreditation was under probationary status and subject to revocation if Defendant
17 did not meet the ARC-PA Standards. It is undisputed that Defendant expressly
18 informed prospective students, including Plaintiffs, of this fact in the Student
19 Handbook and on its website. ECF Nos. 20-6 at 7; 20-19 at 3. Any assurance
20 regarding Plaintiffs’ graduation was speculative and premised on a future

1 performance, which also cannot form the basis of Plaintiffs’ claims.

2 Plaintiffs do not present evidence of presently existing facts to support their
3 misrepresentation claims. Even viewing the evidence in the light most favorable to
4 Plaintiffs, there are no genuine issues of material fact and Defendant is entitled to
5 summary judgment.

6 **E. Unjust Enrichment**

7 Defendant moves for summary judgment, arguing there can be no unjust
8 enrichment where Plaintiffs received tuition reimbursements or financial
9 compensation following the loss of Defendant’s accreditation. ECF No. 19 at 24–
10 25. Plaintiffs allege they did not receive the educational benefit they paid for.
11 ECF No. 1 at 23–24, ¶¶ 96–100.

12 “Unjust enrichment is the method of recovery for the value of the benefit
13 retained absent any contractual relationship because notions of fairness and justice
14 require it.” *Young v. Young*, 164 Wash.2d 477, 484 (2008).

15 Three elements must be established in order to sustain a claim based
16 on unjust enrichment: a benefit conferred upon the defendant by the
17 plaintiff; an appreciation or knowledge by the defendant of the benefit; and
18 the acceptance or retention by the defendant of the benefit under such
19 circumstances as to make it inequitable for the defendant to retain the benefit
20 without the payment of its value.

19 *Id.* (internal citations omitted). A claim for unjust enrichment is based on the
20 doctrine of implied contract. *MacDonald v. Hayner*, 43 Wash. App. 81, 85 (1986).

1 Under Washington law, “[a] party to a valid express contract is bound by the
2 provisions of that contract, and may not disregard the same and bring an action on
3 an implied contract relating to the same matter, in contravention of the express
4 contract.” *U.S. for Use and Benefit of Walton Technology, Inc. v. Weststar
5 Engineering, Inc.*, 290 F.3d 1199, 1204 (9th Cir. 2002) (dismissing unjust
6 enrichment claim where plaintiff had affirmed the validity of the contract).

7 Here, Plaintiffs have claimed breach of contract premised on the existence of
8 a valid contract with Defendant. ECF No. 1 at 18, ¶ 71. Plaintiffs seem to
9 acknowledge their unjust enrichment claim cannot stand in the presence of a valid
10 and enforceable contract. *See* ECF No. 28 at 23. Because the Court resolved
11 Plaintiffs’ claim for fraudulent and negligent misrepresentation in Defendant’s
12 favor, the parties’ contract is not voided. Therefore, Plaintiffs’ unjust enrichment
13 claim is precluded. Defendant is entitled to summary judgment on the claim.

14 **F. Promissory Estoppel**

15 Defendant argues it is entitled to summary judgment because promissory
16 estoppel cannot be premised on future promises and does not apply to express
17 contracts. ECF No. 19 at 25–26. Plaintiffs allege they detrimentally relied on
18 promises made by Defendant’s administrators before and during the application
19 process. ECF No. 1 at 24–26, ¶¶ 101–10.

20 This claim fails for the same reason Plaintiffs’ claim for unjust enrichment

1 fails: a valid contract governs. Like unjust enrichment, promissory estoppel is an
2 equitable doctrine that can provide relief in an action involving an implied contract
3 or quasi-contract. *Westcott v. Wells Fargo Bank, N.A.*, 862 F. Supp. 2d 1111, 1116
4 (W.D. Wash. 2012). Because Plaintiffs’ breach of contract claim acknowledges
5 the existence of a valid agreement between the parties, and their negligent and
6 fraudulent misrepresentation claims did not void the parties’ contract, Plaintiffs’
7 claim for promissory estoppel fails. Defendant is entitled to summary judgment.

8 **G. Negligence**

9 Defendant moves for summary judgment because Washington courts do not
10 recognize a claim for negligent delivery of curriculum or failure to maintain a
11 specific academic experience. ECF No. 19 at 26. Plaintiffs allege Defendant
12 breached its duty under the teach-out clause described in the ARC-PA Standards to
13 either allow Plaintiffs to complete their education or to assist them with enrollment
14 in another accredited PA program. ECF No. 1 at 26, ¶ 113.

15 Plaintiffs’ claim amounts to what courts have described as educational
16 malpractice. *See, e.g., Soueidan v. St. Louis Univ.*, 926 F.3d 1029, 1034 (8th Cir.
17 2019); *Ross v. Creighton Univ.*, 957 F.2d 410, 414 (7th Cir. 1992); *Gallagher v.*
18 *Capella Educ. Co.*, No. 21-35188, 2021 WL 6067015, at *1 n.1 (9th Cir. Dec. 20,
19 2021), *cert. denied*, 142 S. Ct. 2689 (2022), *reh’g denied*, 143 S. Ct. 47 (2022).

20 Neither the Ninth Circuit nor the Washington Supreme Court have addressed the

1 issue directly. Other courts describe the doctrine as a “challenge to the sufficiency
2 or quality of education provided by educational institutions.” *Durbeck v. Suffolk*
3 *Univ.*, 547 F. Supp. 3d 133, 139 (D. Mass. 2021) (citation and internal quotations
4 omitted). The overwhelming majority of states to consider this type of claim have
5 rejected it. *See Ross*, 957 F.2d at 414 n.2. There are several overarching policy
6 and practical concerns for rejecting these claims: the lack of standard of care by
7 which to evaluate educational institutions; the inherent uncertainties in the cause
8 and nature of damages in these types of cases; the potential flood of litigation
9 against schools; and the possibility of embroiling courts with the day-to-day
10 operations of schools. *Ross*, 957 F.2d at 414.

11 However, not all claims are foreclosed by the educational malpractice
12 doctrine. Where the “essence” of a claim is premised on a breach of contract, it
13 may be permitted. *Durbeck*, 547 F. Supp. 3d at 139 (citation omitted). A plaintiff
14 must allege the institution failed to perform the educational service entirely; the
15 claim cannot be premised on a failure to adequately perform the promised service.
16 *Id.*

17 As an initial matter, Plaintiffs’ theory of liability seems to differ between the
18 Complaint and their responsive briefing. Plaintiffs’ pleadings sound in breach of
19 contract, alleging Defendants failed to provide a service that was promised, to wit,
20 assistance with enrolling in a different accredited PA program or the completion of

1 Plaintiffs’ education. ECF No. 1 at 26–27, ¶¶ 111–16. However, the responsive
2 briefing challenges the quality of Defendant’s curriculum, specifically its duty “to
3 maintain accreditation,” and its decision not to appeal the accreditation
4 determination. ECF No. 28 at 26–27. Looking to the evidence cited by Plaintiffs
5 to support their claim, and the fact that Plaintiffs allege a separate breach of
6 contract claim, the Court determines the essence of the negligence claim is
7 educational malpractice, not breach of contract.

8 To illustrate, Plaintiffs point to communications from Defendant’s
9 administrators admitting “a lack of understanding with the accreditation process”
10 and indicating Defendant “should have pushed ARC-PA to allow us to teach out.”
11 *Id.* at 27. Plaintiffs are essentially asking the Court to assess the quality of
12 programming provided by Defendant and to determine whether Defendant’s
13 decisions following accreditation loss were proper under the circumstances. These
14 are precisely the types of determinations courts seek to avoid under the doctrine of
15 educational malpractice. This Court will not wade into Defendant’s decision-
16 making with regard to its PA program oversight. As such, Plaintiffs’ negligence
17 claim is precluded by the doctrine of educational malpractice and Defendant is
18 entitled to summary judgment.

19 **H. Negligent Hiring and Supervision**

20 Defendant moves for summary judgment on the grounds that Plaintiffs

1 cannot maintain a claim for negligent hiring or supervision where Defendant is
2 vicariously liable for its employees' actions. ECF No. 19 at 28. Plaintiffs allege
3 Defendant was deliberately indifferent to its duty to implement policies and
4 procedures to properly train its employees. ECF No. 1 at 27–28, ¶¶ 117–21.

5 To establish a claim for negligent hiring, a plaintiff must prove the employer
6 knew of the employee's incompetence or failed to exercise reasonable care to
7 discover the incompetence before hiring the employee. *Anderson v. Soap Lake*
8 *Sch. Dist.*, 191 Wash. 2d 343, 356 (2018). Plaintiffs do not allege Defendant knew
9 or should have known any of its employees were incompetent or unfit, let alone
10 provide any evidence to support such claims.

11 With regard to negligent training, Plaintiffs' Complaint appears to confuse
12 the liability standard for a federal claim for failure to train. *See Flores v. Cnty. of*
13 *Los Angeles*, 758 F.3d 1154, 1159 (9th Cir. 2014) (to succeed on a claim under 42
14 U.S.C. § 1983, the plaintiff was required to show a deliberate indifference to the
15 need to train employees). Under Washington's negligent training standard,
16 Plaintiffs must demonstrate Defendant's employees acted outside the scope of their
17 employment when the tortious conduct occurred. *Anderson*, 191 Wash. 2d at 361.
18 If the employees were acting within the scope of their employment, Defendant will
19 be vicariously liable instead. *Id.* Here, Plaintiffs do not allege, or provide any
20 evidence indicating, that Defendant's employees were acting outside the scope of

1 their employment.

2 Plaintiffs have failed to present any evidence to create a genuine issue of fact
3 with regard to their negligent hiring and supervision claim. Defendant is entitled
4 to summary judgment.

5 **I. Disability Discrimination**

6 Plaintiff Contreras raises three causes of action alleging disability
7 discrimination under state and federal law. ECF No. 1 at 28–31, ¶¶ 122–38.
8 Defendant moves for summary judgment on the grounds that Contreras was
9 provided a testing accommodation for her disability, voluntarily withdrew from the
10 PA program, and was provided assistance in finding placement at another program
11 despite no longer being part of Cohort 6. ECF No. 22 at 9, ¶¶ 37–38, at 11, ¶ 53.

12 To prevail on a claim for disability discrimination under Title III of the
13 ADA, a plaintiff must show “(1) she is disabled within the meaning of the ADA;
14 (2) the defendant is a private entity that owns, leases, or operates a place of public
15 accommodation; and (3) the plaintiff was denied public accommodations by the
16 defendant because of her disability.” *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730
17 (9th Cir. 2007); 42 U.S.C. § 12182(a)–(b). Similarly, to succeed on a claim under
18 Section 504 of the Rehabilitation Act (“RA”), a plaintiff must demonstrate: (1) she
19 is disabled within the meaning of the RA, (2) she is otherwise qualified for the
20 benefits or services sought, (3) she was denied the benefits or services solely by

1 reason of her disability, and (4) the defendant receives federal financial assistance.

2 *Lovell v. Chandler*, 303 F.3d 1039, 1052–53 (9th Cir. 2002); 29 U.S.C. § 794(a).

3 The prima facie elements under the WLAD are substantially similar because

4 “RCW 49.60.215 is Washington's analogue to Title III.” *Weyer v. Twentieth*

5 *Century Fox Film Corp.*, 198 F.3d 1104, 1118 (9th Cir. 2000); *see also Fell v.*

6 *Spokane Transit Auth.*, 128 Wash. 2d 618, 637 (1996).

7 The parties dispute whether Contreras was discriminated against based on

8 her disability. ECF Nos. 28 at 32; 44 at 9–10. Contreras contends that after her

9 disability-related deceleration, she was not provided assistance to transfer to

10 another program, despite being reassured by Defendant’s administrator that

11 Contreras would remain part of Cohort 6 and would receive the same assistance as

12 her classmates. ECF No. 28 at 32. Contreras further asserts she was promised a

13 letter of recommendation for her new PA program applications but never received

14 the letter. *Id.* at 33.

15 To support her claims, Contreras provides an email correspondence between

16 herself and Defendant’s administrators, as well as a Zoom call recording in which

17 one administrator told Contreras she was committed to ensuring all students were

18 placed in new programs, including Contreras. ECF No. 30 at 4–5, ¶¶ 9–11.

19 Contreras’s evidence does not support her allegations of discrimination. The email

20 correspondence indicated Contreras would return as part of Cohort 7, the next

1 incoming class; there is no indication she would be considered a member of Cohort
2 6 after her deceleration. ECF No. 30-1 at 15. Plaintiffs' Statement of Disputed
3 Facts acknowledges as much. ECF No. 42 at 10, ¶ 44. Contreras does not provide
4 any other evidence from which the Court could infer Defendant excluded her from
5 Cohort 6 because of her disability.

6 As to the administrator's statement that she was committed to placing
7 members of Cohort 6, including Contreras, in a program, the administrator's
8 subjective view of Contreras's placement is not evidence of disability
9 discrimination. The same is true of the letter of recommendation; there is no
10 evidence that the letter was not provided because of Contreras's disability. Finally,
11 Contreras's attempt to characterize her withdraw as anything other than voluntary
12 is also not evidence of disability discrimination. *See id.* at 12, ¶ 54. Contreras
13 unilaterally withdrew from Cohort 6 prior to Defendant's loss of accreditation.
14 The fact that she could not return with Cohort 7 because Defendant would not be
15 admitting Cohort 7 does not establish disability discrimination.

16 Viewing the evidence in the light most favorable to Contreras, there is
17 nothing in the record to suggest Defendant discriminated against her or that her
18 disability was the animus for any alleged discrimination. Defendant is entitled to
19 summary judgment.

20 //

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Defendant’s Motion for Summary Judgment (ECF No. 19) is

3 **GRANTED.**

4 2. The deadlines, hearings and trial date are **VACATED.**

5 3. All pending motions are **DENIED** as moot.

6 The District Court Executive is directed to enter this Order and Judgment
7 accordingly, furnish copies to counsel, and **Close** the file.

8 DATED April 18, 2023.



9 *Thomas O. Rice*
10 THOMAS O. RICE
11 United States District Judge

12
13
14
15
16
17
18
19
20