

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

RAJIN PATEL,

Plaintiff,

v.

TEXAS TECH UNIVERSITY; DUANE JONES, individually and in his official capacity as adjunct professor; WILLIAM PASEWARK, individually and in his official capacity as TTU Rawls College of Business Associate Dean of Graduate Programs and Research; ROBERT RICKETTS, individually and in his official capacity as Area Coordinator in Accounting; and BRITTANY TODD, individually and in her individual capacity as Associate Director of the Office of Student Conduct;

Defendants.

Civil Action No.: 5:17-cv-174-C

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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Plaintiff, RAJIN PATEL (“Plaintiff” or “Mr. Patel”), by and through his counsel, hereby files this Motion for Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, and requests this Court to issue an immediate preliminary injunction compelling Defendant Texas Tech University (“TTU”) to immediately cease and cause to be ceased all collection actions against Mr. Patel, move Mr. Patel to active student status, and permit Mr. Patel to enroll in the next academic semester at TTU and complete his remaining baccalaureate and Masters courses without further extraneous obligations, harassment or retaliation. In support of his Motion, Plaintiff respectfully shows the Court as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Patel filed a Complaint initiating the above-captioned case against TTU and others based on Defendants’ violation of his substantive due process rights and right to equal protection of the Fourteenth Amendment of the United States Constitution during the 2016-2017 academic term. Mr. Patel alleges that TTU failed to exercise professional judgment in concluding that he plagiarized and, moreover, that expulsion was a highly inappropriate sanction based upon the circumstances of his situation. Rather, Mr. Patel claims that Defendants’ actions and effect are patently arbitrary and in violation of his rights. He further alleges that Defendant TTU discriminated against him without any rational reason compared to his similarly situated peers. Mr. Patel also filed a asserted a state law breach of contract claim, which is relevant to this motion.

Mr. Patel will suffer immediate and irreparable harm to his education and career without injunctive relief. Until TTU took wrongful actions to punish him for purported plagiarism, Mr. Patel was registered for a dual baccalaureate and graduate program, and even today his enrollment in his baccalaureate program remains active. However, TTU refuses to consider him a student in

good standing and has barred him from further participation at TTU, unless Mr. Patel signs documentation falsely admitting wrongdoing, pays a fee, and takes a punitive-based class on plagiarism.

As a model student with no history of wrongdoing whatsoever, Mr. Patel understandably refuses to do so, and, thus, his overall academic and career prospects diminish daily during his wrongful expulsion and precarious baccalaureate status. In fact, Mr. Patel earned a prestigious internship that was to start immediately this summer, from which TTU has barred him, and he will be unable to register for fall 2017 classes for either program, simply because he will not *admit* wrongdoing. He has already missed one opportunity, and his curriculum vitae will soon show a gap. Moreover, his status as a Masters student is expelled. Injunctive relief at this point will minimize or wholly eliminate long-term damage to his resume and *may* permit him to salvage part of his summer internship. Finally, further injunctive relief forcing TTU to withdraw its collection action against Mr. Patel is appropriate because a wrongful negative report on his credit record will damage his credit rating pending the resolution of this lawsuit. He can easily pay the nominal penalty later, if necessary. The requested injunctive relief requested here is narrowly tailored to preclude TTU from inflicting further damages upon Mr. Patel pending this Court's resolution of his well-grounded claims, which he is likely to succeed on.

II. FACTS

Mr. Patel matriculated to TTU as an undergraduate in 2012, and was accepted to the Rawls College of Business Graduate School to complete his Master of Science degree in Accounting in August 2016. Incidentally, TTU overall has a relatively interesting history with academic plagiarism cases. Researchers from TTU have nationally decried the use of digital “plagiarism detection” software. *Complaint*, ¶ 38. And, during Mr. Patel's time at TTU, the Director of the

Office of Student Conduct, Sofia Chapman, has gone on record saying, “First time offenders receive a deferred suspension,” and that first time offenders are generally punished the same unless there are exceptions. *Id.*, ¶ 16.

Theoretically, these stances on plagiarism should have resulted in no impact on Mr. Patel’s honorable academic career. In his long tenure at TTU, Mr. Patel proved to be an exceptional student who excelled in his courses and never faced any academic misconduct charges. *Id.*, ¶ 14. He even earned a prestigious internship for the summer of 2017. *Id.*

During the fall 2016-2017 term, Mr. Patel, along with 100 other students, was enrolled in the graduate school course BLAW 5392 Advanced Business Law (“BLAW”) taught by Defendant Duane Jones. *Id.*, ¶ 18. Mr. Patel did well in the class and had earned a 97.7% test average and a 95% quiz average going into the final exam. *Id.* The test-bank final exam followed the structure of past exams and quizzes, but was proctored differently; the final exam was administered electronically to small groups of about ten students at a time, given over the course of ten days, and was proctored by Defendant Jones himself. Oddly, Jones permitted the first set of examinees to use their e-text, notes, and the internet during the final; later final exam sessions, including Mr. Patel’s, were ordered to be closed-book. *Complaint*, ¶¶ 19-20. Mr. Patel did not bring his notes or book to the exam or reference any other prohibited materials to complete the examination during his session on December 12, 2016. In fact, Mr. Patel sat four feet from Jones with his computer screen visible to Jones the whole time, and Jones noted there were no discrepancies in the exam process that day. *Id.*, ¶¶ 21-22. Mr. Patel finished the exam in a timeframe that was average to the class and earned a high grade consistent with his other quizzes and exams. *Id.*, at ¶ 22.

Nonetheless, Defendant Jones emailed Mr. Patel on December 19, 2016, and stated that there was a “quandary regarding your grade” and asked if Mr. Patel had anything to tell him about

the exam. *Id.*, ¶ 23. Mr. Patel immediately tried to call but was sent to voicemail; he then received a chilling email from Defendant Jones refusing to talk and accusing Mr. Patel of “apparently highly plagiarized” test answers. *Id.*, ¶ 24. Shortly thereafter, Mr. Patel and two other students met with Defendant Pasewark and learned that Defendant Jones had accused all three of plagiarism and using prohibited material in their closed-book session; the other students allegedly used Google, but there was no mention of what resources Mr. Patel was accused of using. *Id.*, ¶ 25. Mr. Patel immediately told Dr. Pasewark that he did not cheat and instead arrived at his answers through copious studying and preparation. *Id.* He and the other two students also told Mr. Pasewark about the irregularities between exam sessions, including the fact that some students in earlier sessions were allowed to use open books and e-notes and that the structure of the exam was strange and in fact mimicked the textbook review questions. *Id.*

In response, Dr. Pasewark expressed concern that the differential treatment could lead to grade challenges, and then as to the plagiarism charges, stated that “all students (with allegations) should go through the student conduct process.” *Complaint*, ¶ 26. The students and Dr. Pasewark discussed the unfairness between exam sessions at length, and Dr. Pasewark indicated he would consider the differential testing conditions as part of TTU’s decision to press charges. *Id.* Hours later, however, Defendant Jones filed a complaint against Mr. Patel alone in the middle of the night, although Mr. Patel did not see the incident report until much later. *Id.*, ¶ 29. The allegations included Mr. Patel’s supposed use of outside materials on the exam and the allegation that Mr. Patel’s answer to a question was similar to the test bank answer provided by the course textbook. *Id.*

Soon thereafter, Mr. Patel learned that that misconduct allegations were dropped against the other two students, but that Defendant Jones decided to maintain misconduct allegations

against Mr. Patel alone. *Id.*, ¶¶ 28-29. In fact, Mr. Patel was the *only* student who met with Dr. Pasewark who did not “admit” to some sort of unauthorized use of material, yet the other two accused students never faced charges. *Id.*, at ¶ 28. Mr. Patel also learned that at least one student from the “open book” group, C.C. , used exam reviews to help her complete her exam, and she further alleged that other students in her session openly used open book, open notes, and internet during the exam, all without penalty or complaint from Defendant Jones. *Id.*

On January 2, 2017, Defendant Todd sent Mr. Patel an email stating that the Office of Student Conduct was beginning an inquiry to determine if formal misconduct charges were warranted against him. *Id.*, ¶ 31. According to TTU rules, the tenor of the inquiry phase was supposed to be thorough, neutral and impartial. *Id.*, ¶ 15(a). However, the same day, the “complaint” filed by Defendant Jones and shared with Mr. Patel shows the document was altered by Ms. Todd. *Complaint*, ¶ 31. And when Defendant Todd followed her January 2 email with a call to Mr. Patel on January 4, 2017, pursuant to the newly minted investigation, she refused to let Mr. Patel speak, failed to memorialize any of his statements, and instead spoke accusingly about Mr. Patel’s “cheating”, as if the TTU had already rendered a decision. *Id.*, ¶ 32. This was the extent of the contacts with Mr. Patel contacted during the investigation phase, and Mr. Patel felt railroaded. *Id.* The subsequent hearing on charges of plagiarism and use of prohibited materials were similarly one-sided, and Mr. Patel was never given any real opportunity to present any of the facts and information that supported his defense.

On January 10, 2017, Ms. Todd sent Mr. Patel an email stating that there was enough evidence to warrant formal charges and that he would be subject to a hearing. *Id.*, ¶ 33. On January 19, 2017, Defendant Todd called Mr. Patel in for a pre-hearing conference, which Mr. Patel attended with his mother. *Id.*, ¶ 34. Instead of taking the role of an unbiased, neutral

investigator pursuant to her duties and obligations set forth in the Handbook, Ms. Todd began screaming, “You already know why you are here!”, “You are a liar!”, and “that this will be like you winning the lottery. This will go to hearing and you will be expelled!” *Id.* Ms. Todd did not give Mr. Patel the opportunity to present any material in his defense. *Id.* The Patels were concerned that the investigator did not convey a neutral or impartial tone and, in fact, was already biased and inflammatory. *Id.* Mr. Patel did not know Ms. Todd was simultaneously preparing a Final Investigation Report to be used against him or that he could provide evidence to her directly, because she did not permit him any opportunity to do so in between calling him a liar and threatening expulsion. *Id.* Mr. Patel is still unsure how anyone could have construed the investigatory phase as unbiased, neutral or impartial.

On January 24, 2017, Ms. Todd sent Mr. Patel her 104-page “Final Investigation Report” which purportedly included everything she gathered during her “impartial” investigation. *Complaint*, ¶ 36. The 104-page document based her “findings” on a misuse of plagiarism detection software, Turnitin, and a few emails from Defendant Jones. *Id.* She further informed Mr. Patel that he had little more than forty-eight hours to provide additional, contradictory information and to choose between an administrative hearing or panel hearing, and that if he picked a panel, she would provide “scripts” to the panelists that she would select. *Id.*, ¶ 39.

Mr. Patel asked for more time, but was denied, yet was able to assemble some facts and logical inferences thereof in his defense. *Id.*, ¶¶ 40-42. One of the things he highlighted was the fact that TTU instructors themselves have been wary to rely on Turnitin because the program is inherently flawed, and that the way Ms. Todd inputted his data gave a skewed result. *Id.*, ¶¶ 37-38, 40.

In the meantime, TTU began a cursory follow-up investigation into the differential testing allegations, and Defendant Jones was presented with Mr. Patel's refutation to the "Final Investigation Report" and his statements about unfairness and differential testing thereto. *Id.*, ¶ 43. Defendant Jones finally admitted to telling some students they could use open notes, but the bulk of his email response included a scathing attack on Mr. Patel, as well as a rude directive, from which Mr. Patel gleaned that Defendant Jones was angry and vindictive about Mr. Patel outing Jones' defective test proctoring. *Id.*, ¶ 44. In the end, Ms. Todd failed to include any of Mr. Patel's refuting documentation into her "Final Investigation Report," including his allegations of differential testing conditions and animosity from Mr. Jones, his allegations that TTU cautions against the use of plagiarism detection software, that Ms. Todd misused the defective plagiarism software, or any other exculpatory evidence Mr. Patel provided. *Id.*, ¶¶ 40-42, 45. In fact, her supposed "unbiased" report contained nothing from Mr. Patel whatsoever. *Id.*, ¶ 45.

Ms. Todd orchestrated her scripted panel hearing on February 10, 2017. There, the panelists reviewed the slanted, incomplete "Final Investigation Report" under the guise that it was unbiased and neutral; then they further listened as Mr. Patel tried to orally present material that Ms. Todd refused to include in the official report, for whatever weight it was left to hold. *Id.*, ¶ 45-46. When a faculty panelist interjected and stated he did not agree that the allegations with which TTU was charging Mr. Patel were appropriate, Ms. Todd told panelists they must choose *between* the charges, refusing to appropriately advise the panel that they could find Mr. Patel innocent. *Id.*, ¶ 47. After her statement, it is unsurprising that the panel ultimately found Mr. Patel guilty even though their report noted there was no "direct evidence." *Id.*, ¶ 48. Ms. Todd really gave them no other choice, and Mr. Patel's fears of being railroaded were realized.

After the hearing, Mr. Patel learned he was dismissed from the Graduate program entirely, put on deferred suspension for his baccalaureate degree, and given an F in the BLAW class. *Id.*, ¶ 49. As part of the deferred suspension, TTU further mandated that he pay a penalty related to the plagiarism, demanded Mr. Patel to admit he plagiarized, and required that Mr. Patel enroll in an Academic Integrity BlackBoard course about plagiarism. *Id.* Mr. Patel has refused to do because he did not plagiarize. *Id.*, ¶ 51. No one from TTU has ever explained why Mr. Patel's case was an extreme exception warranting a dismissal for a first time offense. *Id.*, ¶ 49.

Mr. Patel immediately appealed the decision, which was denied on March 7, 2017, finding that there were no procedural or substantive errors and that there was no "new" information to consider. *Id.*, ¶ 50. As a result, Mr. Patel has been effectively expelled from TTU entirely and cannot perform his internship, register for classes, or even get a copy of his transcript. He is also facing collection actions for the imposed penalty. *Id.*, ¶¶ 52-53. Mr. Patel unsuccessfully appealed both the hearing and the punishment and has worked with attorneys to remedy this situation, all to no avail. *Id.*, ¶¶ 50-53. He is now facing continuing, additional and lasting damages to his academic and professional record absent immediate action by this honorable Court. *Id.*, ¶¶ 52-53.

III. LEGAL ARGUMENT

LEGAL STANDARD FOR PRELIMINARY INJUNCTION

The purpose of a preliminary injunction is limited to preserving the relative positions of the parties until a trial on the merits can be held. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); *see also Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974); *Allied Home Mortg. Corp. v. Donovan*, 830 F. Supp. 2d 223, 227 (S.D. Tex. 2011); *DSC Communications Corp. v. DGI Technologies, Inc.*, 898 F.Supp. 1183, 1187 (N.D. Tex. 1995). The decision to grant or deny a preliminary injunction is discretionary with the district court. *Miss. Power & Light Co.*

v. United Gas Pipe Line Co., 760 F.2d 618, 621 (5th Cir. 1985). A preliminary injunction may be issued when a plaintiff demonstrates a substantial likelihood of success on the merits, a substantial threat of irreparable injury if the injunction is not issued, that the threatened injury outweighs any harm that will result if the injunction is granted, and that the injunction will not disserve the public interest. *La Union Del Pueblo Entero v. Fed. Emergency Mgmt. Agency*, 608 F.3d 217, 219 (5th Cir. 2010). Mr. Patel satisfies these requisite elements and prays this Court will issue an injunction here so that his long-term career and economic prospects will not be needlessly damaged as the parties navigate the instant litigation.

A. IRREPARABLE INJURY IS IMMINENT ABSENT INJUNCTION.

Perhaps the single most important factor supporting the issuance of preliminary injunctive relief is a finding of irreparable harm that Mr. Patel will suffer during the pendency of these proceedings, if such relief were not granted at this time. *Blanco v. Burton*, No. CIV.A. 06-3813, 2006 WL 2366046, at *15 (E.D. La. Aug. 14, 2006), *Mississippi Power* at 632 (5th Cir. 1985) (“the prevention of irreparable harm element is the ultimate touchstone for preliminary injunctive relief”). Plaintiffs must show that, without an injunction, “irreparable injury is likely” during the pendency of litigation. *Monumental Task Comm., Inc v. Foxx*, 157 F. Supp. 3d 573, 583 (E.D. La. 2016) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)), *Justin Inds., Inc. v. Choctaw Secs., L.P.*, 920 F.2d 262, 268 n. 7 (5th Cir.1990). Moreover, in order for a harm to be considered irreparable for purposes of issuing a preliminary injunction, monetary damages must be inadequate to redress it. *Id.*

Courts in the Second, Seventh, and Tenth circuits, as well as Texas state courts, have recognized that a student’s removal from a university that causes a “gap” and forces an explanation of wrongdoing constitutes the kind of harm that meets precisely the definition of irreparable injury.

Irreparable harm is easily demonstrated when a student is confronted with removal from a university. Gathering cases from various district courts, a very recent decision in the Northern District of Indiana against Notre Dame University recognized,

A gap constitutes irreparable harm to [plaintiff's] reputation and résumé for purposes of career prospects and possible further academic advancement. The questions the gap raises, and the explanation it requires, are potentially damaging to [plaintiff] in a manner not compensable by money damages and not repaired by permanent injunctive relief that might be granted after a decision on the merits in [plaintiff's] favor.

Doe v. Univ. of Notre Dame, No. 3:17CV298-PPS/MGG, 2017 WL 1836939, at *12 (N.D. Ind. May 8, 2017); *see also Ritter v. Oklahoma*, No. Civ.-16-043 8-HE, 2016 U.S. Dist. LEXIS 60193 at *8 (W.D. Okla. May 6, 2016) (plaintiff seeking a TRO demonstrated that the “loss of educational and career opportunities he will encounter if he is not reinstated and allowed to graduate is not readily compensable in money damages”). Indeed, other courts across the nation have found:

While Plaintiff may recover money damages to compensate for lost wages, money damages cannot compensate for the loss of his senior year in college with his class, the delay in the completion of his degree, or the opportunity to begin his career.... Further, Plaintiff would have to explain, for the remainder of his professional life, why his education either ceased prior to completion or contains a gap.

Doe v. Middlebury College, No. 1:15-CV-192-JGM, 2015 WL 5488109, at *3 (D. Vt. Sept. 16, 2015) (student-plaintiff obtained an injunction in time to permit him to return to his university in the fall and complete the entire school year, and so to avoid entirely a gap in his education during the pendency of the litigation); *see also King v. DePauw University*, No. 2:14-CV-70-WTL-DKL, 2014 WL 4197507, at *13 (S.D. Ind. Aug. 22, 2014) (same result).

Like other students caught in litigation across the country, Mr. Patel will be irreparably harmed if the injunction requested is not granted. TTU has put Mr. Patel in a no-win situation by mandating that he either: (a) admits in writing that he plagiarized, pays a monetary penalty, and takes a class to remedy his plagiarism, all of which will be noted in his academic record, in order

to complete his undergraduate degree; or (b) refuse to admit guilt to baseless plagiarism allegations and pursue legal recourse, but withstand a damaging “gap” in his résumé and curriculum vitae. Complicating the first option is the additional sanction for alleged plagiarism, TTU has also dismissed Mr. Patel from the Master’s program, effective spring 2017. If he enters a false “guilty plea” in order to finish his bachelor’s degree, he would have to apply elsewhere to earn his Master’s degree. But admitting to plagiarism – even falsely, just so he can complete his Bachelor’s degree – negates the likelihood that he will be able to get into a different graduate school. Thus, both options are more punitive than they appear facially.

Indeed, it is hard to see how *either* option is anything but a calculated attempt by TTU to damage Mr. Patel to the maximum extent possible. Admitting plagiarism just to finish the undergraduate classes will have long-term consequences; courts have recognized that plagiarism constitutes the type of “stigma” that “is likely to follow the student and preclude him from completing his education at other institutions.” *Univ. of Texas Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 930 (Tex. 1995). If Mr. Patel miraculously happens to get into graduate school elsewhere, he would still have to explain the plagiarism blemish on his record to professors and future employers. Admitting plagiarism also would have precluded Mr. Patel’s ability to file the instant suit because such an admission of wrongdoing would eclipse his claims that Defendants were unfair and biased towards him. TTU would have a record of admitted wrongdoing and assert it as an affirmative defense.

On the other hand, refusing to admit to “guilt” has created a host of other problems; including, the effective termination of Mr. Patel’s progression towards a bachelor’s degree and the substantial loss of a prestigious internship. Moreover, if TTU’s actions are not stopped, Mr. Patel will suffer an additional damaging “gap” in his curriculum vitae that will *continue* to haunt him

for the rest of his life. Immediate, and temporary, injunctive relief by the Court will remedy the unfairness of this situation and return Mr. Patel's status to an active student at least until a full review on the merits of the case can be made.

B. THE THREATENED INJURY OUTWEIGHS ANY HARM TEXAS TECH UNIVERSITY MIGHT SUFFER.

At the opposite end of the spectrum from Mr. Patel's irreparable injury is the fact that TTU will suffer no harm at all if the injunction requested is granted. The law requires that courts "balance the competing claims of injury and ... consider the effect on each party of the granting or withholding of the requested relief." *Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 542 (1987). Thus, in addition to demonstrating threatened irreparable harm, a plaintiff must show that he would suffer more harm without the injunction than would the defendant if it were granted. *Texas v. United States*, 86 F.Supp.3d 591, 674–75 (S.D. Tex. 2015), *aff'd*, 809 F.3d 134 (5th Cir. 2015), *as revised* (Nov. 25, 2015), *aff'd*, 579 U.S. ___, 136 S.Ct. 2271 (2016).

If the case is litigated and Mr. Patel loses following an injunction reinstating him to the program, TTU will be no worse off than it would have been had Mr. Patel not been enrolled at that time. TTU enrolls approximately 36,000 students on the Lubbock, Texas campus. Keeping Mr. Patel active on its massive roster will not hurt or aggrieve TTU, especially because Mr. Patel will be paying for the classes he takes and will pay the nominal penalty if the litigation results in Defendants' favor. Moreover, although most universities consider plagiarism a disciplinary wrong within their respective codes of conduct, plagiarism is not the kind of "harm" that exposes a university to liability. It is not as if any other students face serious bodily injury or other dire consequences if Mr. Patel is allowed to continue to take classes during the pendency of this litigation. Indeed, even TTU does not think Mr. Patel is an actual threat; currently imposed sanctions permit Mr. Patel to rejoin campus activities and classes as a baccalaureate student *if only*

he would be willing to falsely admit to plagiarism. TTU has no problem with Mr. Patel being there, if only he will give them the satisfaction of admitting he did something he, in fact, did not do.

The only meritorious claim TTU *might* make that it will suffer by Mr. Patel's readmission to the school is that Mr. Patel's admission to his former course of study might undermine the school's disciplinary process and leave the school "without meaningful sanctions." *See Doe v. Univ. of Notre Dame*, at *13. However, Texas district courts and the Fifth Circuit Court of Appeals have not found that such vague and speculative harm outweighs a plaintiff's well-pleaded potential for real damage. *Texas v. United States*, 809 F.3d at 186 (a harm that "obstructs a core Executive prerogative" and offends separation-of-powers and federalism principles are vague). Moreover, the injunction Mr. Patel is seeking is limited to permit his admission during the duration of the suit. If TTU wins, TTU's discipline will be upheld, any progress Mr. Patel has made towards completing his degrees, and even the degrees themselves, can be summarily erased from his record with the click of a button. *See, e.g., Texas v. United States*, 86 F. Supp. 3d 591, 675 (S.D. Tex.), *aff'd*, 809 F.3d 134 (5th Cir. 2015), *as revised* (Nov. 25, 2015), *cert. granted*, 579 U.S. ___, 136 S.Ct. 2271 (2016) (explaining that if "a preliminary injunction would give plaintiff all or most of the relief to which the plaintiff would be entitled if successful at trial," courts are less likely to grant the injunction). Mr. Patel can also be required to pay a penalty later. To the extent TTU is concerned about an "accused cheater" being allowed back into class, and the effect of that on TTU's *reputation* for discipline, TTU's Director of Student Conduct has already stated that first time plagiarism offenders are not expelled. TTU would simply be giving Mr. Patel the same treatment it promised to *all* students. Moreover, TTU has welcomed Mr. Patel back to some of his classes, but only if he admits wrongdoing. Again, TTU has no problem with Mr. Patel's presence

on campus and is only keeping him out until he bends to their will and admits to something he did not do. However, to the extent TTU might agree to the Mr. Patel's limited readmission pending the resolution of the instant litigation, Mr. Patel is willing to agree to remain silent about the ongoing litigation and his limited readmission.

C. PLAINTIFF IS SUBSTANTIALLY LIKELY TO PREVAIL ON THE MERITS OF HIS CLAIMS.

Of course, any injury Mr. Patel might suffer during the pendency of the litigation is only worth protecting if it is likely that he will prevail on the merits of his claims. Mr. Patel can meet his burden as to this element. In order to show a substantial likelihood of success on the merits in support of a preliminary injunction, a plaintiff need only present a *prima facie* case even if it is not certain that he will win. It will ordinarily be enough that a plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation, and thus open for a more deliberate investigation. *Allied Home Mortg. Corp. v. Donovan*, 830 F.Supp.2d 223, 227 (S.D. Tex. 2011). The "standards provided by the substantive law" provide the requisite benchmark of this assessment. *Janvey v. Alquire*, 647 F.3d 585, 596 (5th Cir. 2011) (quoting *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir.1990)).

1. Mr. Patel Asserts a Viable Substantive Due Process Claim.

Mr. Patel has a strong substantive due process claim that TTU's actions against him were arbitrary and capricious in light of the manner in which the school handled its investigation of the charges levied against him, the panel hearing and the sanctions they imposed upon him given his entire academic tenure and cumulative conduct history. The substantive component of the due process clause bars certain arbitrary government actions, "even if their implementation is fair." *Pham v. Univ. of Louisiana at Monroe*, 194 F.Supp.3d 534, 544 (W.D. La. 2016) (citing *Dismukes v. Hackathorn*, 802 F.Supp. 1442, 1447 (N.D. Miss.1992)). To state a substantive due process

claim, a plaintiff must show that the government's deprivation of a property interest was arbitrary or not reasonably related to a legitimate governmental interest. *Williams v. Texas Tech University Health Sciences Center*, 6 F.3d 290, 294 (5th Cir. 1993) (citing *Brennan v. Steward*, 834 F.2d 1248, 1256 (5th Cir. 1988), *Mawle v. Texas A&M University Kingsville*, No. CIV.CC-08-64, 2010 WL 1782214, at *10 (S.D. Tex. Apr. 30, 2010)). Whether a decision is arbitrary or not reasonable turns on **how the decision was made**, not on whether the decision makers came to the correct decision. *Mawle v. Texas A&M University Kingsville*, No. CIV.CC-08-64, 2010 WL 1782214, at *10 (S.D. Tex. Apr. 30, 2010) (emphasis added). Moreover, it is relevant whether the sanction was appropriate in relation to the alleged wrong. *Id.*, at *9.

In pleading a substantive due process claim in the academic context, a plaintiff must plead that he possesses a valid property interest in his education and must assert enough facts to allege the decision to take away that property interest "is beyond the pale of reasoned academic decision-making when viewed against the background of the student's entire career at the University." *Seals v. Mississippi*, 998 F.Supp.2d 509, 523 (N.D. Miss. 2014) (quoting *Regents of University of Michigan v. Ewing*, 474 U.S. 214, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985)). Thus, in order to allege a substantive due process claim for a plagiarism dismissal, Mr. Patel should be able to plead that Defendants did not exercise professional judgment in concluding that he had plagiarized or that Defendants failed to exercise professional judgment in deciding expulsion was an appropriate sanction when viewed against his entire career at TTU, which was exemplary. *Mawle* at *9; *Seals* at 523.

Factors that a court looks to in deciding whether a university used judgment "beyond the pale of reasoned academic decision-making" include: (a) whether the university handled a claimant's case differently than other students' cases; (b) whether the university's decision was

not careful and deliberate; and/or (3) whether decision makers are “motivated by bad faith or ill will unrelated to academic performance.” *Eiland v. Wolf*, 764 S.W.2d 827, 833 (Tex. App. 1989); *see also Wilkenfield v. Powell*, 577 F.Supp. 579, 583 (W.D. Tex. 1983); *Schuler v. Univ. of Minn.*, 788 F.2d 510, 516 (8th Cir. 1986). A dismissal based on these factors may be found unconstitutional and in violation of a student’s substantive due process rights. *Alcorn v. Vaksman*, 877 S.W.2d 390, 397 (Tex. App. 1994); *Regents of Univ. of Michigan v. Ewing*, 474 U.S. at 225 (stressing the difference between good faith and bad faith dismissals). All three are relevant here. Mr. Patel has met his burden of raising questions that go to the merits of his substantive due process claim that warrant a more deliberate investigation by this Court both as to the guilty decision and the sanctions imposed.

a. Defendants Did Not Exercise Careful or Deliberate Professional Judgment in Rendering a Guilty Verdict Against Mr. Patel.

An inquiry on how Mr. Patel’s guilty decision came to fruition demonstrates several of Defendants’ actions were beyond the pale of reasoned academic decision making, especially in light of Mr. Patel’s career at the University. TTU handled Mr. Patel’s case far differently than other students accused of plagiarism, Defendant Jones was motivated by bad faith, and Ms. Todd’s management of the investigation and panel hearing was anything but careful and deliberate. Conversely, Mr. Patel was an excellent student, and there is no record of any wrongdoing prior to the unsubstantiated charges in December, 2016. *Complaint*, ¶ 14.

Mr. Patel has consistently and unequivocally averred that he did not use any materials during the exam and did not cheat. *Id.*, ¶¶ 21, 25. There is nothing – no computer record, no classmate or proctor testimony, no video from an in-room camera – showing Mr. Patel copy-and-pasting or retyping an answer into the blackboard space while he looked at the opened answer on a computer screen or on a paper. *Id.*, ¶ 45. Indeed, Defendant Jones himself was proctoring the

test site and saw no discrepancies in the exam process that day. *Id.*, ¶ 22. Yet, Defendant Jones decided to advance charges against Mr. Patel while two similarly accused students had academic misconduct allegations against them dropped. *Id.*, ¶ 28. Moreover, at least one witness, C.C. C.C. , has come forward declaring that she and other students in a different exam session were allowed to use open book, open notes, and the internet during the exam, all without penalty. *Id.* Mr. Patel was treated dissimilarly.

Not only was Mr. Patel's prosecution handled differently than other students' cases, but Mr. Patel has raised a plausible inference that Defendant Jones was actually motivated by *ill will* in deciding to press misconduct charges against him. Mr. Patel pleaded that Defendant Jones patently fouled up the administration of his own testing rules early on by letting some students use open book, open notes and internet but denied the same testing conditions to later test takers, including Mr. Patel. *Complaint*, ¶¶ 28, 44. Further, he pleaded that he was one of the first students to make TTU administration aware of the exam session inequities. *Id.*, ¶ 25. Defendant Jones' misstep made the entire BLAW final examination subject to viable grade appeals by any one of the hundred students in the class, potentially causing massive administrative headaches, and Jones was furious that Mr. Patel continued to discuss the issue. *Id.*, ¶¶ 26-28. In fact, Defendant Jones' decision to press charges against Mr. Patel came mere hours *after* Mr. Patel discussed Defendant Jones' inequitable test administration with his department chair. *Id.*, ¶ 26. Defendant Jones still expressed anger about the situation months later and further demonstrated his hostility and clear animus towards Mr. Patel in emails to Ms. Todd once other student witnesses came forward. *Id.*, ¶¶ 43-44.

Once Defendant Jones' complaint was wrongfully initiated against Mr. Patel, the only "careful and deliberate" assessment TTU made into Jones' allegations of cheating was to analyze

Mr. Patel's exam with the Turnitin software, the efficacy of which TTU has called into question in the past, and for which Mr. Patel has identified as suspect because Defendant Todd's input was inaccurate. *Id.*, ¶¶ 36-38. Other than her erroneous analysis via Turnitin, Ms. Todd's supposed "neutral and impartial" investigation was anything but. After altering the complaint submitted by Defendant Jones, she opened her first conversation with Mr. Patel by making accusing and conclusory statements regarding his "cheating." *Id.*, ¶¶ 31-32. She followed up that conversation with a second conversation during which she called Mr. Patel a liar in front of his mother and screamed at him promising he would be expelled. *Id.*, ¶ 34. After giving Mr. Patel scrambled for facts to include in Ms. Todd's "Final Investigation Report" report in the scant two days she proscribed, she refused to consider or include his exculpatory evidence at all for consideration by his hearing panel. *Complaint*, ¶¶ 34-36, 39-41. Ms. Todd then led a panel hearing of members she hand-picked and that she "scripted" herself and told the wary panelists that "must choose" between the charges levied against Mr. Patel when a faculty panelist suggested that the charges were inappropriate. *Id.*, ¶¶ 46-47. After her direction and after refusing to appropriately advise the panel that they could find Mr. Patel innocent, the panelists found Mr. Patel guilty *even though* they confirmed there was *no actual direct evidence of wrongdoing*. *Id.*, ¶¶ 45-48.

The hearing panel could only act on the circumstantial evidence with which they were presented and the script they were given. What Defendant Todd provided for their consideration was anything but neutral and impartial and ensured that the outcome was arbitrary, capricious, and well beyond the pale of reasoned academic decision-making in conducting a biased investigation and directing the panel that they must choose one of the charges she listed. Defendants did not exercise careful and deliberate professional judgment in coming to the decision that Mr. Patel

plagiarized because TTU actors refused to allow them to see the full picture. This is a violation of Mr. Patel's substantive due process rights.

b. Defendants Did Not Exercise Careful and Deliberate Professional Judgment in Sanctioning Mr. Patel.

Not only was Mr. Patel's "guilty" verdict a violation of substantive due process, but so was TTU's decision to expel him and further mandate that he "admit" plagiarism in order to keep taking baccalaureate classes thereby holding hostage his degree, his academic record and his professional career. Mr. Patel was an exceptional student throughout his tenure at TTU and, indeed, even in the BLAW class attaining a 97.7% test average and a 96% quiz average going into the final exam. *Id.*, ¶¶ 14, 18, 21-22. As he pleaded in his Complaint, he did well on the BLAW exam by studying the textbook, notes, and textbook review questions, and was lucky that the test bank-based final exam used several questions that mimicked the textbook and review questions he studied. *See id.*, ¶¶ 19, 21, 25. Mr. Patel had no record with the Office of Student Conduct until the baseless allegations against him by Defendant Jones. *Id.*, ¶ 14. He had never been accused of any wrongdoing, much less found guilty, during his entire tenure at TTU. *Id.* Nonetheless, TTU decided to inflict the ultimate sanction of expulsion from the Master's program, even though the TTU Sanctions for Academic Dishonesty did not justify such a penalty and even though the Director of the Office of Student Conduct has gone on record saying, "First time [academic dishonesty] offenders receive a deferred suspension" and that first-time offenders are generally punished the same unless there are extreme exceptions. *See id.*, ¶ 16 (citing "Academic dishonesty growing problem for colleges" at The Daily Toreador by Hannah Hipp, accessed at http://www.dailytoreador.com/lavida/academic-dishonesty-growing-problem-for-colleges/article_c50d2d8c-a03e-11e3-acbf-0017a43b2370.html).

In fact, TTU's Handbook says, as Mr. Patel has pleaded, that "[A]ny sanctions will be **proportionate** to the severity of the violation and to the cumulative conduct history of the student." *Complaint*, ¶ 15. Since his expulsion from the Master's program, no one from TTU has cited any "extreme exception" or any exception whatsoever to justify why Mr. Patel's first-time offense was punished by expulsion, especially considering his cumulative conduct history, which is exemplary. *Id.*, ¶ 49.

Warranting further consideration by the Court is TTU's sanction that pursuant to a deferred suspension, Mr. Patel must pay a penalty, admit to plagiarism, and take a plagiarism class in order to complete his undergraduate degree. *Id.*, ¶ 49. As discussed herein, there seems to be no legitimate reason to compel Mr. Patel to falsely admit to plagiarism except to whitewash TTU's own actions in violation of Mr. Patel's rights. If, in fact, Mr. Patel had admitted wrongdoing, TTU could have used it against him in this case. If anything, TTU's imposition on Mr. Patel's baccalaureate degree constitutes not only irrational treatment but is motivated by ill will and self-serving. Mr. Patel's expulsion and other sanctions are disproportionate to the severity of the alleged violations and to his cumulative conduct history and are, therefore, in violation of TTU's stated policies and procedures. Ultimately, the Court will likely find TTU's actions were both arbitrary and capricious and that Defendants did not exercise careful and deliberate professional judgment in sanctioning Mr. Patel thereby vindicating him. Because he has also pleaded the existence of a right to his education through his contract with Defendant TTU, at paragraph 57 of the Complaint, Mr. Patel has presented a *prima facie* case, and this Court should grant his request for a temporary injunction.

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2. Mr. Patel Asserts a Viable Equal Protection Claim.

Jurisprudence recognizes a “successful equal protection claims brought by a ‘class of one,’ where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment,” because “[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S.Ct. 1073, 1075, 145 L.Ed.2d 1060 (2000) (citations omitted). In considering who is similarly situated, comparators must be *prima facie* identical in all factors relevant to the case. *Lindquist v. City of Pasadena Texas*, 669 F.3d 225, 233–34 (5th Cir. 2012). This requires a court to make a case specific analysis, as “what is relevant in one case might not be relevant in another” and depends “substantially on the facts and context of the case.” *Id.*

Here, the context involves disciplinary action taken against a student for one count of plagiarism and one count of use unauthorized material. As to the count of unauthorized material, Mr. Patel is similarly situated to at least two other students at TTU. He, along with two other students, Preston and Travis, faced academic misconduct charges stemming from their completion of the BLAW final examination on December 12, 2016. *Complaint*, ¶¶ 25, 79. All three were alleged to have used unauthorized materials to aid their exam completion, and all three met with Dr. Pasewark on December 20, 2016, before Defendant Jones filed any official complaints. At the meeting, all three discussed Defendant Jones’ defective examination processes, including the fact that some students were permitted to use resources while others were not, and all three attempted to halt any investigations or charges from materializing. *Id.*, ¶¶ 25, 26. In all three of their cases,

there were no witnesses or other evidence to any wrongdoing; the witness who accused Preston and Travis of wrongdoing supposedly retracted their statement while no one claimed to have witnessed Mr. Patel's wrongdoing. *Id.*, ¶¶ 28, 45, 79. Indeed, even test proctor Defendant Jones report seeing no discrepancies in the testing process that day, while sitting four feet away from Mr. Patel with his computer screen in Defendant Jones' line of sight, and there is no recorded evidence that Mr. Patel used unauthorized materials during the exam session. *Id.*, ¶¶ 22, 40, 45. Despite the lack of witnesses, however, and unlike Preston, Travis, or indeed any other students who were alleged to have or even admitted to having used unauthorized material on their exams, Mr. Patel alone *still* faced allegations, and was eventually convicted, of academic misconduct, and is further facing long-term career-altering sanctions as a result. *Id.*, ¶¶ 52-53, 79-80. He has no idea why and has pleaded that TTU has never offered a reason why the charge for use of unauthorized materials was pursued against him and not against others, seeing as none of the cases had any evidence or witnesses. *Id.*, ¶¶ 30, 40. Mr. Patel has presented a *prima facie* case for violation of his equal protection rights, and, thus, his request for an injunction should be granted.

3. Plaintiff Asserts a Viable State Law Breach of Contract Claim.

Courts in Texas and the Fifth Circuit recognize, as do courts across the country, that a "school's catalog constitutes a written contract between the educational institution and the patron, where entrance is had under its terms." *Univ. of Texas Health Sci. Ctr. at Houston v. Babb*, 646 S.W.2d 502, 506 (Tex. App. 1982); *Beauchene v. Mississippi Coll.*, 986 F.Supp.2d 755, 769 (S.D. Miss. 2013). To prevail on a breach of contract claim, a party must establish: (a) a valid contract existed between the plaintiff and the defendant, (b) the plaintiff tendered performance or was excused from doing so, (c) the defendant breached the terms of the contract, and (d) the plaintiff

sustained damages as a result of the defendant's breach. *Viajes Gerpa, S.A. v. Fazeli, et al.*, No. 14-15-00608-CV, 2016 WL 7478352, at *12 (Tex. App. Dec. 29, 2016).

In his Complaint, Mr. Patel pleaded the requisite elements of a breach of contract claim. Mr. Patel pleaded that the Handbook constituted a valid contract between the parties, and, further, that TTU promises a fair and equitable student conduct process, utilizing a thorough, **neutral**, and **impartial** investigation" and that "[n]o student will be found in violation of University policy without **sufficient information and evidence** showing that it is more likely than not that a policy violation occurred...." *Handbook*, p. 4 (emphasis added); *Complaint*, ¶¶ 15, 91-93. Mr. Patel pleaded that he timely tendered performance under the contract. *Id.*, ¶ 92. Mr. Patel further pleaded that TTU violated its promises to Mr. Patel "by conducting a biased investigation and one-sided hearing that omitted all information supporting Mr. Patel's various defenses and summarily dismissed Mr. Patel without any evidence proving that he did in fact plagiarize," by withholding evidence from the Panel, and by imposing arbitrary sanctions on Mr. Patel. *Id.*, ¶¶ 91-95. Finally, Mr. Patel specifically pleaded damages, including general damages. ¶¶ 51-53, 96-97. Although not necessary for the purposes of the instant motion, Mr. Patel also pleaded that TTU's actions are both arbitrary and capricious, such that TTU did not merely commit a perfunctory breach, but an egregious breach. Mr. Patel has presented a *prima facie* case against TTU for breach of contract, and, thus, his request for an injunction should be granted.

D. THE INJUNCTION WILL NOT DISSERVE THE PUBLIC INTEREST.

"The final factor in the preliminary injunction analysis focuses on policy considerations, and plaintiff has the burden to show that if granted, a preliminary injunction would not be adverse to public interest." *Star Satellite, Inc. v. Biloxi*, 779 F.2d 1074, 1079 (5th Cir. 1986); *Texas v. United States*, 86 F. Supp. 3d 591, 675 (S.D. Tex.), *aff'd*, 809 F.3d 134 (5th Cir. 2015), *as revised*

(Nov. 25, 2015), *cert. granted*, 579 U.S. ___, 136 S.Ct. 906 (2016). Here, issuance of a preliminary injunction in this case, requiring Defendants to conform to their own policies and procedures and to assure that Mr. Patel is not arbitrarily and capriciously removed from school, will impose absolutely no burden upon Defendants that is not already required by law.

On the other hand, should the injunction requested not issue preliminarily, he will be unable to return to school, will be delayed in his graduation or denied his degree completely, will suffer lost income, lost reputation in the professional community, and will have negative notations on his transcript thereby eclipsing his ability to gain acceptance into any other undergraduate or graduate school. Mr. Patel will also face derogatory marks on his credit score.

Indeed, it would be greatly to the benefit of the public interest to require Defendants to adhere to TTU's policies and procedures to afford its students due process and equal protection prior to removing them from the institution so that the suffering which Mr. Patel has endured will not continue and future students will not suffer treatment at TTU similar to what he has experienced. Because the public interest will not be harmed, but instead served, Mr. Patel prays this Court will immediately issue a temporary injunction in this case.

IV. CONCLUSION

WHEREFORE, Mr. Patel respectfully requests that this Honorable Court enter an order requiring Defendants to reinstate Mr. Patel to TTU as a student in good standing, cease and cause to cease any collection actions against him, and to remove any notations of accusations, findings or sanctions from his transcript resulting from Defendants' unlawful and arbitrary and capricious actions resulting in Plaintiff's dismissal from TTU, pending the resolution of the instant suit.

Mr. Patel has suffered and will continue to suffer irreparable harm in the absence of the requested preliminary injunction. Mr. Patel has established a *prima facie* case for each of his

asserted claims and has a substantial likelihood of succeeding on the merits of such claims. Moreover, if the requested injunction were to issue, there is no hardship for Defendants. Yet, in the absence of the injunction, Mr. Patel will assuredly suffer extreme undue hardship thereby tipping the balance of hardship firmly in his favor. Accordingly, Mr. Patel requests that the Court immediately issue a preliminary injunction and order that it remain in effect until this matter is brought to trial.

DATED this 25th day of July, 2017.

THE BACH LAW GROUP, LLC

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V. CERTIFICATE OF CONFERENCE

I, Jason J. Bach, hereby certify that I am unable to confer with Defendants' counsel as this motion is getting filed concurrently with the Complaint, however, a copy of this instant motion will be served along with a copy of the Summons and Complaint to all Defendants.

By /s/ Jason J. Bach
JASON J. BACH, ESQ.

VI. CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of July, 2017, I electronically filed the foregoing Plaintiff's Motion for Preliminary Injunction with the Clerk of the Court using the CM/ECF system.

By /s/ Jason J. Bach
JASON J. BACH, ESQ.