UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CYNTHIA M. THOMPSON Plaintiff	CIVIL ACTION
— versus —	NUMBER 05-1938
UNIVERSITY OF LOUISIANA SYSTEM BOARD OF SUPERVISORS, TANGIPAHOA PARISH SCHOOL BOARD, MICHAEL R. MOFFETT, DIANE ALLEN, CYNTHIA ELLIOTT, REBECCA DAY and PAMELA SULLIVAN	SECTION: "I" MAG. DIV. 5
Defendants	JURY TRIAL

MOTION FOR TEMPORARY RESTRAINING ORDER

NOW INTO COURT comes plaintiff, CYNTHIA M. THOMPSON, and for the reasons set forth fully in the **Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order**, moves this court, pursuant to Rule 65(b), Federal Rules of Civil Procedure, for a temporary restraining order, restraining, enjoining and/or prohibiting defendants, MICHAEL R. MOFFETT, DIANE ALLEN and/or any of their agents, representatives, or anyone acting on their behalf, from taking any action adverse to plaintiff's status as a student at Southeastern Louisiana University resulting from her refusal to deliver and/or surrender unto defendants the original journal maintained by her in EDUC 427 pending disposition of plaintiffs' claim that defendants, and others, violated her rights guaranteed by the Constitution and laws of the United States of American and the state of Louisiana.

RESPECTFULLY SUBMITTED:

_____
RONALD L. WILSON (#13575)
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing pleading has been served on counsel for all parties, on this _____ day of _____, 2005, by service method indicated below:

[x] U. S. MAIL [ ] FAX [ ] HAND DELIVERY [ ] OTHER

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PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING

MAY IT PLEASE THE COURT:

I. FACTUAL STATEMENT

Plaintiff herein is Cynthia Thompson, an individual presently enrolled as a student at Southeastern Louisiana University ("SLU"), which is located in Hammond Louisiana. She is an elementary education major, enrolled in the College of Education and Human Development.[1] Named defendants herein are the University of Louisiana System Board of Supervisors,[2] the Tangipahoa Parish School Board ("Board"),[3]Michael R. Moffett, the president of Southeastern Louisiana University,[4] Diane Allen, Cynthia Elliott and Rebecca Day, who are employed with Southeastern Louisiana University, in the capacities of dean, College of Education, supervisor of

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1 *See* P-1, p. 1, ¶ 2 [Affidavit of Cynthia Thompson]

2 *See* Rec. Doc. 3, p. 2, ¶ 2(a) [Amended Complaint]

3 *See* Rec. Doc. 1, p. 2 ¶ 4(b)

4 *Id.* at ¶ 4(c)

student teachers, and director of performance and assessment,[5] respectively, and, Pamela Sullivan, who is employed with the Tangipahoa Parish school system.[6]

Plaintiff commenced her undergraduate education at SLU during the Fall, 1984 term.[7] She remained at the university for the following spring and summer terms, after which she left.[8] She returned several years later, for the Summer, 1999 term, as a part-time student.[9] She has remained continuously enrolled since that time.[10]

Plaintiff, during the Spring, 2000 semester, officially enrolled in the College of Education and Human Development, selecting a major in Elementary Education.[11] In addition to the general university requirements, a student enrolled in the College of Education and Human

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5 *Id.* at ¶ 4(d)

6 *Id.* at ¶ 4(e)

7 *See* P-2 [Plaintiff's unofficial transcript]

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

Development teacher certification program must meet the following requirements:

> "1. Earn a cumulative or degree grade point average of 2.5 and a cumulative or degree grade point average in work completed at Southeastern.
>
> "2. Have no grade lower than a B in Education 201 and have no grade lower than a C other [sic] in other professional courses (Education and Education Psychology) and in each teaching field.
>
> "3. Complete 270 hours in all-day, all-semester teaching with a minimum of 180 clock hours in actual teaching.
>
> "4. Successfully complete either three semester hours in Reading (secondary curricula) or nine semester hours in Reading (elementary).
>
> "5. The College of Education and Human Development defines computer literacy in the following ways:
>
> a. The ability to use and instruct computers to aid in learning, solving problems, and managing information;
>
> b. Knowledge of function, applications, capabilities, limitations and related technology.
>
> "6. Have completed an approved Competency Level Portfolio."[12]

Entering the Spring, 2005 term, plaintiff had successfully completed all of the aforementioned requirements except requirement no. 3 – student teaching.[13] She was assigned to undergo her student teaching at D. C. Reeves Elementary School, a predominantly Caucasian elementary school which is a part of the Tangipahoa Parish school system.[14] Each student

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[12] *See* P-3, p. 208 [Southeastern Louisiana University General Catalogue 2004-2005, Additional College of Education and Human Development Requirements.]

[13] *See* P-1, p. 2, ¶ 3

[14] *Id.*

teacher is assigned to a supervising teacher, and plaintiff was assigned to defendant Sullivan.[15]

[15] *Id.*

Defendant Sullivan, in her role of supervising teacher, was required to "[c]ritique [plaintiff's] performance on a daily or weekly basis throughout the semester [and] [w]rite [her] comments in an ongoing journal and have [plaintiff] review, initial, and write comments."[16] Upon advice from her friend and fellow student teacher, Carol Foster, plaintiff used her own funds to purchase the required journal.[17]

Immediately upon her arrival at D. C. Reeves Elementary School and her assignment to student teach under defendant Sullivan, plaintiff became alarmed by the manner in which the class was being conducted. Essentially, defendant Sullivan was operating the class as though it was church sponsored, and not state supported. Defendant Sullivan openly participated in a silent prayer with her elementary school students after the reciting of the pledge of allegiance[18] and, right before lunchtime, she selected a student to recite a prayer, praying along with the students.[19] She operated a weekly scheduled Bible study group in the school's cafeteria, which was listed on the school's calendar of listed events and ran from 7:45 A.M. to 8:15 A.M.[20] Upon conclusion of the class, she joined the elementary school participants in a daily ritual of bowing their heads, holding hands and reciting a prayer.[21] Defendant Sullivan even brought her

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16 *See* P-4, p. 25, ¶ 11[College of Education and Human Development, Student Teaching Handbook, Supervisory Personnel – Responsibilities of the Supervising Teacher]

17 P-5, p. 2, ¶ 8 [Affidavit of Carol Foster]

18 *See* P-1, p. 2, ¶ 6

19 *Id.*

20 *Id.* at p. 2, ¶ 7

21 *Id.*

husband, Brian Sullivan, who is not an employee at the school, to lead the Bible study group.[22]

Even though plaintiff advised defendant Sullivan of her objection to these practices, it was to no avail. Defendant Sullivan ordered plaintiff to participate in these unlawful practices. She

[22] *Id.* at p. 3, ¶ 8

compelled plaintiff to select a student to recite a prayer after the pledge of allegiance and to initiate a prayer prior to lunchtime.[23]

On February 23, 2005, when plaintiff could no longer tolerate the unlawful activities of defendant Sullivan, she informed defendant Elliott, supervisor of student teachers, of her problems with defendant Sullivan, including, but not limited to, her total disregard for the principle of separation of church and state.[24] Much to her shock and bewilderment, instead of coming to plaintiff's rescue, defendant Elliott herself engaged in Sullivan-like activities. She grabbed plaintiff's hand and commenced praying for Divine intervention.[25]

Defendant Sullivan's actions became more egregious after plaintiff's conference with defendant Elliott. A self-avowed, God fearing Christian, she found it necessary to tell plaintiff of her disapproval of bi-racial relations and her hope that a fellow Caucasian teacher, who has an African-American mate, would not attend services at Harvest World Outreach Church in Hammond, Louisiana, the church she attends, because, like herself, not too many members approve of bi-racial relationships.[26] Defendant Sullivan, without a request from plaintiff,

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[23] *Id.* at p. 3, ¶¶ 9 and 10

[24] *Id.* at ¶ 23

[25] *Id.*

[26] *Id.* at p. 4, ¶ 12

removed a Bible from her handbag and commenced praying for plaintiff; she did not stop when students entered the classroom.[27]

[27] *Id.* at ¶ 13

On April 13, 2005 defendant Sullivan went to the extreme of ordering plaintiff to cease teaching in the middle of instruction and then ordered the students to stand and recite a prayer for the expired parent of the principal at another elementary school.[28]

On April 15, 2005, upon completion of the school day, plaintiff was confronted by defendants Elliot and Sullivan and informed that she should withdraw from student teaching at D. C. Reeves Elementary School.[29] The ultimatum to withdraw was given less than two (2) weeks prior to the end of the spring semester.[30] At the time of the ultimatum, plaintiff had completed all of the requirements for graduation, including the requirement that she complete 270 hours in all-day, all semester teaching with a minimum of 180 clocks hours in actual teaching.

During the meeting plaintiff was told that she was "not demonstrating techniques of an effective educator . . . at the end of student teaching."[31] To the extent that plaintiff was not satisfactorily fulfilling the requirements for student teacher, it was incumbent on defendant Sullivan to notify defendant Elliott "immediately concerning the weaknesses in [plaintiff's] performance and schedule a three-way conference."[32] Then defendants Elliott and Sullivan were to commence "following the procedures for a Marginal Student Teacher (Section V – Policies

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28 *Id.* at ¶ 16

29 *Id.* at p. 5, ¶ 17

30 *See* P-3 at p. 2 [Southeastern Louisiana University General Catalogue 2004-2005, University Calendar, Fall 2004.

31 *See* P-1, p. 5, ¶ 17

32 *See* P-4, p. 26, ¶ 15 [College of Education and Human Development, Student Teaching Handbook, Supervisory Personnel – Responsibilities of the Supervising Teacher]

and Procedures).[33]

[33] *Id.*

The policies and procedures of the Education and Human Development Department require that "[e]fforts should be made to identify a marginal student by **mid-semester** in a full semester assignment[.] (emphasis added)"[34] Since plaintiff was in a full-semester assignment, it was incumbent upon defendants Sullivan and Elliott to notify plaintiff of any deficiencies by March 10, 2005, the last day of mid-term exams,[35] not on April 15, 2005.

Further, to the extent that there was a determination that plaintiff was a marginal student, it was essential that the following procedures be adhered to:

> "1. A three-way conference should be scheduled between the student teacher/intern, supervising teacher, and university supervisor to review the situation. This conference should be conducted with the knowledge of the cooperating principal and the Director of Performance Assessment. At this time a written remedial plan should be developed which identifies the specific areas needing improvement and a plan of action to be taken. A designated conference time (approximately two weeks) should be stated in writing on the plan to evaluate progress. The written remedial plan should be dated and signed by the student teacher/intern, supervising teacher, and university supervisor. The student teacher/intern and all supervisory personnel should receive a copy of the plan. A copy should be filed in the student's file in the Office of Performance Assessment.
>
> "2. The corrective actions on the plan for the student teacher/intern to complete should be supervised by the supervising teacher and university supervisor. Frequent observations and written evaluations of the student teacher's/intern's planning, performance in the classroom, and demonstration of professional attributes should be conducted by the supervising teacher and university supervisor. Other professionals in the

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[34] *See* P-4, p. 37 [College of Education and Human Development, Student Teaching Handbook, Supervisory Personnel – Procedures to Follow for a Marginal Student].

[35] *See* P-3 at p. 3 [Southeastern Louisiana University General Catalogue 2004-2005, University Calendar, Spring 2005.

field may be asked to observe and complete written evaluations of the student teacher's/intern's performance. Observations by other professionals must be approved in advance by the Director of Performance Assessment. Periodic written reports by supervising personnel should be made to the Director of Performance Assessment.

"3. After a reasonable period of time (approximately two weeks), another conference should be scheduled to review the remedial plan and to evaluate the student teacher's/intern's performance. If sufficient progress has occurred, the student teacher/intern may be able to continue with the student teaching/internship assignment without further remediation.

"4. If sufficient improvement has not occurred within the period of remediation, the Director of Performance Assessment will be notified to possibly schedule an observation of the student teacher/intern in the classroom. Conferences may be scheduled by the Director of Performance Assessment with all supervisory personnel and the student teacher/intern to determine one of the following: (1) continued corrective action with specific timeliness; (2) the student teacher/intern may be advised to withdraw from student teaching/internship; or (3) the student teaching/internship assignment may be terminated.

"5. If a student teacher/intern withdraws or is terminated, the supervising teacher's journal, other documentation and videotaped lessons are kept by the Office of Performance Assessment."[36]

[36] *See* P-4 at pp. 37-38 [College of Education and Human Development, Student Teaching Handbook, Supervisory Personnel – Procedures to Follow for a Marginal Student].

None of these procedures were adhered to by defendants Sullivan, Elliott or Day. Instead, plaintiff met with defendants on April 20, 2005, to discuss the events of April 15, 2005.[37] At said meeting, plaintiff was offered three (3) options by defendant Day: (1) to withdraw from the course and receive a "W"; (2) to remain a student teacher at D. C. Reeves on a marginal status, or (3) to be terminated from the course with a letter grade "F".[38] Plaintiff received a letter from defendant Day on April 21, 2005, memorializing the April 20, 2005 conference.[39] Essentially, defendant Day stated that if plaintiff was willing to accept a "W", she would request that it be made retroactive and that a remediation plan would be developed for plaintiff in the Fall of 2005, since it was not possible to complete such a plan during the summer.[40] She informed plaintiff that she would be assigned to another parish to perform her student teaching.[41]

She discussed another option available to plaintiff. For the first time defendant mentioned the development of marginal plan for plaintiff, advising her that one may be developed for her "to follow for the next two weeks."[42]

Plaintiff was informed that unless she selected option 1 or 2, her "placement will be

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37 *See* P-1 at p. 5, ¶ 20.

38 *Id.* at pp. 5-6

39 *See* P-6 [Letter from Defendant Day]

40 *Id.*

41 *Id.*

42 *Id.*

terminated and a grade of "F" will be posted for EDUC 427."[43] The option given to plaintiff to return to D. C. Reeves to complete her student teaching was withdrawn by someone at the elementary school.[44]

In concluding the letter, defendant Day claimed ownership to the journal purchased by plaintiff, demanding the immediate return of the original copy.[45] Plaintiff provided defendant Day with a copy of the journal.[46]

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43 *Id.*

44 *Id.*

45 *Id.*

46 *See* P-7 [Daily Journal]

Plaintiff met with defendant Allen and Shirley Jacob, interim department head, Department of Teaching and Learning, on April 25, 2005, during which time she sought to impart to them what she had informed defendant Elliott regarding defendant Sullivan's inappropriate actions. Dr. Allen exhibited no interest in hearing plaintiff's concerns, stating that praying in the classroom had nothing to do with the request that she withdraw from the class.[47] Plaintiff, upon being advised by defendant Allen that she was not interested in hearing plaintiff's complaints regarding defendant Sullivan, informed defendant Allen that she maintained a diary detailing those complaints. Defendant Allen accused plaintiff of being unethical for maintaining a diary.

Plaintiff was given a letter grade of "F" notwithstanding the fact that she had completed all of the requirements for the course.[48] Her appeal[49] of the grade to defendant Moffett was rejected. Because of the "F" given to her in EDUC 427, plaintiff was not allowed to graduate.

To add insult to injury, plaintiff, on May 10, 2005, was notified of charges filed against her by defendant Allen.[50] Essentially, defendant Allen accused plaintiff of stealing her own journal – one purchased with her own funds. Specifically, she was charged with "[f]orgery, alteration, unauthorized possession or misuse of University documents, records, meal tickets or instruments of identification [which] includes faculty materials related to the educational

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47 *See* P-1 at p. 6, ¶ 22

48 *See* P-2

49 *See* P-8 [Letter to Dr. Randy Moffett, President]

50 *See* P-9 [Notice of charges from Milas Love, II, Chief Judicial Officer]

process[.][51]" She was also charged with "[f]ailure to comply with directions of a University official in the performance of his/her duties."[52]

At the hearing held on June 9, 2005, defendants made several telling admissions: (1) plaintiff was never declared to be a marginal student anytime during the period of January 18 to April 15, 2005, (2) the journal does not play any part in a student's grade, (3) it is eventually thrown away by the university, and (4) it is not always returned to the university; the supervising teacher can agree to allow the student to keep it."

Carol Foster, a student who graduated in the Spring of 2005, appeared as a witness for plaintiff and testified that she was not asked to turn in her journal. She produced her original journal for the committee members to peruse. Further, plaintiff testified that she had provided a copy of her daily journal to Dr. Day.

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[51] *Id.*

[52] *Id.*

All of this evidence notwithstanding, plaintiff was found responsible [guilty] for the violations. She was ordered to "return the original journal, complete and unaltered, to the Office of Judicial Affairs by Wednesday, June 29, 2005,"[53] and placed on "University Disciplinary Probation effective immediately and continuing through December 31, 2005."[54] Plaintiff has timely appealed the decision, however, "[t]he rendered sanction is in effect as of the date identified on the sanction, or until an appeal is granted."[55]

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[53] *Id.* [On Thursday, June 23, 2005, the undersigned advised the university of plaintiff's intention to seek a temporary restraining order on June 24, 2005. At the request of counsel for the university, the undersigned agreed to wait until Monday, June 27, 2005, to appear before the court. However, after becoming aware of plaintiff's intention to seek a Temporary Restraining Order, the university, in an attempt to moot it, notified plaintiff by letter, on June 24, 2005, that the date on which she is required to turn in the journal has been extended to Friday, July 15, 2005. *See* P-10. Of course, the university will contend that there is no longer an emergency and, therefore, no need for the issuance of a temporary restraining order. This extension does not change the university's intentions to remove plaintiff from the campus if she does not deliver her daily journal; it merely extends the date of execution].

[54] *Id.*

[55] *See* P-11 [Student Code of Conduct, Article VII, Section A, Appeals., pp 87-88].

It is plaintiff's contention that all of the actions taken against her, as set forth above, were as a result of her raising questions regarding defendant Sullivan's activities which violated the First Amendment to the United States Constitution. Plaintiff seeks a temporary restraining order from this court restraining, enjoining and prohibiting defendants' from compelling her to produce her journal by July 15, 2005.[56]

II. LEGAL ARGUMENT

1. Plaintiff Is Entitled To A Temporary Restraining Order

The test for whether this Court should issue a temporary restraining order focuses on: (1) whether there is a substantial likelihood of ultimate success on the merits; (2) whether the temporary restraining order is necessary to prevent irreparable injury; (3) whether the threatened injury outweighs the harm the temporary restraining order would inflict on the non-movant; and (4) the temporary restraining order would serve the public interest. *Gresham Park Community Org. v. Howell,* 652 F.2d 1227, 1232 n.7 (5th Cir. 1981).

1. Substantial Likelihood That Plaintiff Will Prevail On The Merits

Plaintiff contends, *inter alia,* that defendants Sullivan, Allen, Elliott and Day retaliated against her for voicing objection to the use of the public school by defendant Sullivan for religious purposes. This retaliation, according to plaintiff, took the form of: (1) ordering her to withdraw from EDUC 427, or receive an "F" in the course, (2) giving her an "F" in the course when she refused to withdraw, (3) accusing her of theft of her own property – a notebook which cost less than $1.00, and (4) imposing sanctions against her after a hearing before a "stacked"

[56] Plaintiff intends to subsequently seek injunctive relief requiring SLU to confer upon her a degree in elementary education.

tribunal.

The Supreme Court has made it abundantly clear that "state colleges and universities are not enclaves immune from the sweep of the First Amendment." *Healy v. James,* 408 U.S. 169, 180 (1972). They may not be "enclaves of totalitarianism." *Tinker v. Des Moines Indep. Community Sch. Dist.,* 393 U.S. 503, 511 (1969). It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. The court applied those well-established legal principles in concluding that the plaintiff in *Qvyjt v. Chhiu-TSU Lin,* 932 F.Supp. 1100 (N.D. Ill. 1996), was engaged in constitutionally protected speech when he reported acts of faculty misappropriation and research misconduct.

Fernando Qvyjt, a graduate student in chemistry at Northern Illinois University, filed a formal complaint alleging that his dissertation director was "misappropriating his research." 953 F. Supp. at 246. Subsequent to making the allegation, he was (1) barred from using the laboratory, (2) informed by his dissertation committee that his dissertation was unsatisfactory, (3) required to select a new dissertation topic and advisor, (4) for a period of four months, denied permission to select an advisor from another university, and (5) terminated from the program. In denying defendants' motion for summary judgment, the court stated that "[d]rawing all reasonable inferences in favor of plaintiff . . . the court finds that plaintiff has presented evidence from which a reasonable trier of fact could find that defendants retaliated against plaintiff for his accusations of misconduct against Dr. Lin." *Id.* at 247.

A review of the facts in the case at bar leads one to the inescapable conclusion that defendants did in fact retaliate against plaintiff. First, in all of her education courses leading up

to student teaching she received passing grades, mostly "A's"; second, she received a satisfactory mid-term evaluation in EDUC 427, which is student teaching; she was never declared to be a marginal student, as required for student teachers who are not progressing satisfactorily; she was never remediated, which is a requirement for student teachers who have been declared marginal.

These facts notwithstanding, plaintiff was summoned two weeks prior to the end of the school year and given an ultimatum – withdraw or receive an "F". Two of the individuals participating in the decision were defendant Sullivan, whom plaintiff had accused of violating the principle of separation of church and state, and defendant Elliott, who proceeded to pray over plaintiff when told by plaintiff of defendant Sullivan's unconstitutional actions.

A retaliation claim can be established through indirect evidence by proving a chronology of events from which retaliation can be inferred. *Qvjyt,* 953 F.Supp. at 246 (citation omitted). The events set forth above allow such an inference. There is a total absence of documented proof supportive of defendants' contention that plaintiff was "not demonstrating techniques of an effective educator . . . at the end of student teaching." If anyone failed to demonstrate techniques of an effective educator, it was Sullivan and Elliott, for they failed to document properly plaintiff's deficiencies – to the extent that there any worth documenting.

Based on plaintiff's proven academic record, and defendants' failure to document any significant deficiencies on plaintiff's part, together with the university's failure to follow its own policy respective to students deemed to be marginal, one can only conclude that the adverse actions taken with respect to plaintiff were taken in retaliation for her complaints regarding Ms. Sullivan, which were constitutionally protected by the First Amendment. Plaintiff has more than

a substantial likelihood of prevailing on this issue.

Regarding the theft allegation and sanctions, there is a substantial likelihood that plaintiff will prevail on those matters. Of course, if she proves ownership of the daily journal, the sanctions would become moot.

As set forth in plaintiff's affidavit, she purchased the notebook which was used as the daily journal. Her version is corroborated by her friend, Carol Foster, who stated that she encouraged plaintiff to purchase it. Pursuant to the policies and procedures, the journal is to be returned to the university only when a student teacher has been (1) declared to be a marginal student, and (b) attempts at remediation have failed. The university does not contend that plaintiff was ever declared to be a marginal student. Absent a finding of marginality, any claim by the university to the document vanishes in thin air.

The university's claim of ownership of the journal is further flawed by the fact that Ms. Foster was allowed to retain hers. The university contends that the supervising teacher can allow a student to retain her journal. If that is the case, then it stands to reason that the supervising teacher, and not the university, owns the journal. The university cannot have it both ways. It cannot state it owns the journal, subject to a higher right of the supervising teacher to give it to the student teacher whenever she/he pleases. If the university actually owned the journal, it, and not the supervising teacher, would determine if, and when, a student could retain it.

Ms. Foster states in her affidavit that not only she, but other student teachers known to her, have been allowed to retain their daily journals. Assuming the correctness of that statement, plaintiff is being singled out for different treatment. Pursuant to the equal protection clause of

the Fourteenth Amendment to the United States Constitution, "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The equal protection clause mandates similar treatment of persons in similar situations. *Arceneaux v. Treen,* 671 F.2d 128, 131 (5th Cir. 1982). [T]he crucial question is whether the [university] treats similarly situated people unequally. *Id.* at 137 (Goldberg, specially concurring).

There can be no dispute as to the fact that plaintiff, although similarly situated to other student teachers, was treated differently. It now becomes a question as to whether the university's "action rationally furthers a legitimate state purpose." *San Antonio Independent School District v. Rodriquez*, 93 S.Ct. 1278, 1308 (1973). Obviously, there can be no legitimate state purpose to deviate from established policy to demand that plaintiff, and only plaintiff, be required to return the original copy of the daily journal which was purchased with her funds.

Since plaintiff was never declared to be a marginal student, the university's policy of requiring the return of the daily journals of marginal students who have failed attempts at remediation does not apply to her. Therefore, there is no basis for the university to impose a sanction that she return it. Further, respective to the return of daily journals, the university clearly treats plaintiff differently from similarly situated student teachers. Based on these two important factors, plaintiff has a strong likelihood of success on the merits.

B. Plaintiff Faces A Substantial Threat of Irreparable Injury

Irreparable harm is established any time a movant's First Amendment rights are violated. *Marcus v. Iowa Pub. Tele.,* 97 F.3d 1137, 1140-41 (8th Cir. 1996). The loss of First Amendment freedoms, for even a minimal period of time, unquestionably constitutes irreparable injury. *Elrod v. Burns,* 427 U.S. 347, 373 (1976) (plurality opinion). Based on the facts of the case, it is

very likely that plaintiff will be able to prove that her First Amendment rights were violated when given an option to withdraw from student teaching or receive an "F".

Further, plaintiff received an "F" and was not allowed to graduate notwithstanding the fact that she met all of the requirements for graduation. This constitutes irreparable injury, for it delayed plaintiff's fulfillment of her requirements for a degree. *See Phillips v. Marsh,* 687 F.2d 620, 622 (2d Cir. 1982); *Doe v. New York University,* 666 F.2d 761, 773 (2nd Cir. 1981); *Yusuf v. Vassar College,* 1992 U.S. Dist. LEXIS 13029, No. 92 Civ. 5462, 1992 WL 230143 at *1 (S.D.N.Y. Sep. 1, 1992)

Succinctly stated, if plaintiff does not render unto the university that which is not the university's, she faces additional sanctions, up to and including suspension from the university. If a temporary restraining order is not issued, the university will in all likelihood suspend plaintiff, resulting in a further disruption in her education.[57] It is without dispute that a suspension constitutes irreparable harm.

C. The Threatened Injury to Plaintiff Outweighs Any Harm To Defendants

Clearly, the balance of the equities tilts in favor of plaintiff. She purchased the journal with her own funds. She has a pending legal action in which the journal itself has a prominent role. She is willing to give the university as many copies of the original journal as it desires but, for evidentiary purposes, she is not prepared to give the original itself to the university. If necessary, plaintiff is willing to surrender the journal to the court for safekeeping, but not to the university.

[57] Plaintiff has already been compelled to undergo one such disruption, since she was not allowed to graduate after having met all of the necessary requirements for graduation

Since plaintiff is willing to allow the university to copy the journal under supervision of the plaintiff or the court,, prohibiting the university from obtaining exclusive possession over the original journal until a judicial determination can be rendered imposes no substantial burden on the university.

D. There Will Be No Disservice To The Public If Temporary Relief Is Granted

Plaintiff is actually advancing the interest of the public, for the public has an interest in its colleges and university adhering to their internal rules and regulations. The public has a paramount interest in making certain that an individual is not deprived of property which is hers.

E. Plaintiff Has No Adequate Remedy At Law

Plaintiff has provided the university with a copy of the daily journal. However, the university proceeded to initiate disciplinary action against her, claiming entitlement to the original. The university has demanded that it be provided with the original by July 15, 2005. Plaintiff does not intend to do so. If not immediately restrained, the university will proceed to take further disciplinary action against plaintiff, which, in all likelihood, will result in her suspension from the university. This would result in a further delay in plaintiff's education.

III. CONCLUSION

There is a strong likelihood of success on the merits by plaintiff; she will sustain irreparable injury if a temporary restraining order is not issued; the balance of the equities is in her favor; no disservice to the public will result in the granting of the temporary restraining

order; and plaintiff has no adequate remedy at law.

_____
RONALD L. WILSON (#13575)
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing pleading has been served on counsel for all parties, on this 26th day of June, 2005, by service method indicated below:

[x] U. S. MAIL [ ] FAX [ ] HAND DELIVERY [x] OTHER: E-MAIL

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