COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2680CV00012

KIVLIGHAN DE MONTEBELLO

vs.

UNIVERSITY OF MASSACHUSETTS and others[1]

# MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiff Kivlighan de Montebello filed this action after defendant University of Massachusetts Amherst ("University") suspended him for one year beginning in December 2025. Plaintiff claims that the University violated his contractual rights as a student (Count I), his right to free speech under the First Amendment to the United States Constitution and Article 16 of the Declaration of Rights (Count II) and his right to due process under the Fourteenth Amendment to the U.S. Constitution and Article 10 of the Declaration of Rights (Count III).[2] Plaintiff now seeks an emergency temporary restraining order and preliminary injunction which would allow him to return to the University while this litigation is pending. After oral argument on February 11, 2026, and review of the parties' submissions,[3] the court concludes, based on the record presently before the court, that Plaintiff has met the standard for a preliminary injunction with regard to his claim that the suspension violates his right to free speech under the First Amendment and Article 16. His motion is, therefore, **ALLOWED**.[4]

## BACKGROUND

The facts relevant to the Plaintiff's free speech claim are largely undisputed. Plaintiff is a third-year student at the University. Compl., ¶ 3. In September 2025, he helped organize a protest by Students for Justice in Palestine ("SJP") against Raytheon's participation in a career fair ("Career Days") held by the Isenberg School of Management ("Isenberg") in the Campus Center on September 29 and 30, 2025.[5] Complaint, ¶¶ 27-28; Lawrence Aff., ¶¶ 2, 7. Career Days are an opportunity for students interested in co-ops, internships, or full-time employment to meet

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[1] Jeff Hescock and Farshid Hajir

[2] In addition, Plaintiff brings a 42 U.S.C. § 1983 claim (Count IV) and a G.L. c. 12, § 11H claim (Count V) against Defendants Jeff Hescock and Farshid Hajir.

[3] Plaintiff submitted an affidavit and 18 exhibits (Ex. A-R). The University submitted four affidavits and 16 exhibits (Ex. 1-16).

[4] Given the basis for allowing the motion, the court does not separately analyze the likelihood of success for each of Plaintiff's other claims.

[5] One employer registered to participate in the career fair was Pratt & Whitney, a subsidiary of RTX Corporation (formerly Raytheon). Affidavit of Pamela "Holly" Lawrence ("Lawrence Aff."), ¶ 9.

prospective employers. See Lawrence Aff., ¶ 2. On September 29, 48 employers and organizations were registered to attend career day and over 900 students attended. Lawrence Aff., ¶¶ 8, 10.

At around 12:30 pm on September 29, 2025, 20-30 students from SJP gathered outside the Student Union and marched to the Campus Center. Complaint, ¶ 29; Ex. 11 at 11:47. As they walked, Plaintiff used a bullhorn to engage in a call-and-response with other protesters. Complaint, ¶ 30; Ex. 11 at 11:47. Before Plaintiff and the rest of the group entered the Campus Center, members of the University's Demonstration Response and Safety Team ("DRST") – including Defendants Hajir, the University's Senior Vice Provost and Dean of Undergraduate Education, and Hescock, the University's Associate Vice Chancellor of Environmental Health and Safety and Emergency Management – greeted them outside and asked them to stop before entering the building. Compl., ¶ 31; Ex. 11 at 11:59. Hescock told Plaintiff not to use amplified sound in the building. Compl., ¶¶ 33-34. Plaintiff and other protesters continued into the Campus Center and down the escalator to the registration area in front of the auditorium in which Career Day was taking place. Compl. ¶¶ 32, 36; Affidavit of Farshid Hajir ("Hajir Aff."), ¶ 7. There, Hescock issued Notice #1, directing protesters to stop using the bullhorn and to limit their physical presence to a marked area adjacent to, but separated from the registration area.[6] Compl., ¶ 38; Hajir Aff., ¶¶ 10-11; Hescock Aff., ¶ 5.

Although protesters moved to the designated area, they continued to chant, and the University staff closed the doors to the auditorium. Compl., ¶ 43. Hescock then issued Notice #2, at which point Plaintiff and the group stopped chanting. Ex. 11 at 13:11. Plaintiff then walked around and spoke with students who were checking into the career fair. Ex. 11 at 13:32. He also met with Associate Dean in Isenberg, William Brown, Jr. for 10 to 15 minutes. Ex. 11 at 13:32, Compl., ¶¶ 48-49. At approximately 1:30 pm, Plaintiff again began leading protesters in a call and response chant. Compl, ¶ 49. At approximately 2:20 pm, Hescock issued Notice #3, directing Plaintiff and the rest of the group to leave. Compl., ¶ 53. In all, students from SJP spent about two hours at the Campus Center.

The University submitted several videos of the protest, including a video made just inside the auditorium, by an open door. Ex. 7. In that video, loud chanting can be heard. *Id.* An email from Hescock to the DRST at 2:33 pm describes the protest from the entry of the protesters to the Campus Center at approximately 12:40 pm until its end after 2 pm. Ex. O. Although Hescock described the chants as, at one point, "loud yelling and screaming," he noted that "there were no disruptions inside the Campus Center auditorium, and the event proceeded as planned." *Id.*

Hajir submitted a Student Conduct Referral for Plaintiff's role in the September 29 demonstration on October 1, 2025. Ex. F. On October 10, 2025, the Student Conduct and Community Standards Office notified Plaintiff that it was initiating conduct procedures. Ex. E. The result of those procedures was a Summary Administrative Review, issued on November 7, 2025, finding Plaintiff responsible for violating four policies in the Code of Student Conduct and

[6] The parties do not agree as to Plaintiff's use of the bullhorn after this point. Plaintiff contends that he did not use the bullhorn for the remainder of the protest (Compl., ¶ 42), whereas the University contends that Plaintiff later resumed use of the bullhorn after 2 pm. October 1, 2025 Student Conduct Referral Form, Ex. F., p. 2.

imposing several sanctions including a suspension[7] to run from November 7, 2025, to May 31, 2026. Ex. H. Under the Code of Student Conduct, Plaintiff had the option to request either a Sanction Review or a University Hearing Board ("Board"). Ex. A, p. 18. Plaintiff requested that his conduct case be referred to the Board (consisting of a panel of three to five University faculty, staff and/or students). Ex. A, p. 18; Ex. I. The hearing took place on December 5, 2025. Ex. 3 at 17. The Board reviewed a number of videos (apparently the same videos submitted to this court) and the October 1, 2025 Referral by Hajir. Plaintiff addressed the Board, providing his version of events, and read the statements of two witnesses. The Board made findings of fact and found Plaintiff responsible for three violations of the Code of Student Conduct: 4.1.3.a – Creating Disturbance; 4.1.3.c -Disruptive Behavior; and 4.1.3.e – Failure to Comply. Ex. 3, p. 20. The Board stated as its rationale for finding Plaintiff responsible for Creating Disturbance and Disruptive Behavior that "Kiv acknowledged leading the protestors in call and response style chants in the immediate vicinity of the Career Fair, which could be clearly heard inside the space where student attendees were meeting with prospective employers." Ex. 3, p. 21. As part of its rationale for finding Plaintiff responsible for Failure to Comply, the Hearing Board stated "Kivlighan did not immediately comply with the directive given by members of the DRST to cease leading the group in call and response style chants conducted at loud volume within the building." Ex. 3, p. 21. Taking into account Plaintiff's prior Conduct Code violations,[8] the University, through a designee of the Dean of Students, then imposed a suspension to run from December 22, 2025 to December 31, 2026, and other sanctions. Ex. M, pp. 1-2.

## PRELIMINARY INJUNCTION STANDARD

"A party seeking a preliminary injunction must show that success is likely on the merits; irreparable harm will result from denial of the injunction; and the risk of irreparable harm to the moving party outweighs any similar risk of harm to the opposing party." *Doe* v. *Worcester Public Schools*, 484 Mass. 598, 601 (2020), quoting *Doe* v. *Superintendent of Sch. of Weston*, 461 Mass. 159, 164 (2011), citing *Packaging Indus. Group, Inc.* v. *Cheney*, 380 Mass. 609, 616-17 (1980). In cases in which a public entity is a party, a judge may also weigh the risk of harm to the public interest in considering whether to grant a preliminary injunction. *Id.* "What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits." *Cheney*, 380 Mass. at 617.

[7] "During the period of suspension, the student may not register for or attend classes (either in person or online) at the University of Massachusetts Amherst" and "is restricted from University premises . . .." Ex. H., p. 1. "At the conclusion of the suspension and completion of all sanctions, the student may apply for re-enrollment to the University." Ex. H, p. 2.

[8] At the time of the protest, Plaintiff was on suspension deferred status. "Suspension Deferred is a designated period of time during which the student is given an opportunity to demonstrate the ability to abide by the community's expectations of behavior as articulated in the Code." Ex. A, § 5.3.1(d). "If the student is found responsible for any subsequent violation of the Code or fails to complete imposed sanctions by the deadline, the student may be suspended." *Id.*

## ANALYSIS

### Likelihood of Success on the Merits

"The Free Speech Clause of the First Amendment prohibits the government from 'abridging the freedom of speech.'" *Doe* v. *University of Massachusetts*, 145 F.4th 158, 169 (1st Cir. 2025), quoting U.S. Const. amend. I.[9] See also *Cantwell* v. *Connecticut*, 310 U.S. 296, 303 (1940) (applying this prohibition to states and their political subdivisions through the Fourteenth Amendment). "In *Tinker* [v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969)], the Supreme Court established the standard to evaluate whether public school officials' regulation of student speech violates students' First Amendment rights." *Doe*, 145 F. 4th at 169, citing *Tinker*, 393 U.S. at 512-513. Under *Tinker*, a school may restrict student speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." *Tinker*, 393 U.S. at 513. "The standard to satisfy the substantial-disruption prong is 'demanding.'" *Doe*, 145 F.4th at 171. In determining whether a restriction on speech was permissible under the First Amendment, courts must consider "'the special characteristics' of the particular educational environment." *Doe*, 145 F.4th at 169, quoting *Healy* v. *James*, 408 U.S. 169, 180 (1972), quoting *Tinker*, 393 U.S. at 506, here, a college campus. "The college classroom with its surrounding environs is peculiarly the 'marketplace of ideas.'" *Healy* v. *James*, 408 U.S. 169, 180 (1972), quoting *Keyishian* v. *Bd. of Regents*, 385 U.S. 589, 603 (1967). "[A court's] review of [a student]'s "First Amendment claim is objective, meaning [the court] ask[s] whether it was reasonable to conclude – based on its contemporaneous justifications – that a student's conduct did . . . cause a substantial disruption or invade the rights of others." *Doe*, 145 F. 4th at 170. "And because courts lack 'on-the-ground expertise' a court will defer to a school's decision if it is reasonable under the circumstances." *Id.*, citing *Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. Of the Law* v. *Martinez*, 561 U.S. 661, 686 (2010); *Norris ex rel. A.M.* v. *Cape Elizabeth Sch. Dist.*, 969 F.3d 12, 25 (1st Cir. 2020).

Here, the University sanctioned Plaintiff's conduct of "leading the protestors in call and response style chants in the immediate vicinity of the Career Fair, which could be clearly heard inside the space where student attendees were meeting with prospective employers." Ex. 3, p. 21. Such a sanction does not violate Plaintiff's First Amendment right to free speech if it was reasonable to conclude that Plaintiff's conduct caused a substantial disruption. See *Doe*, 145 F.4th at 173 (sanctions against plaintiff student for statements made to other students violated plaintiff student's First Amendment right to free speech where speech did not cause substantial disruption).[10] Considering the evidence submitted by the parties, the court concludes that the Plaintiff will likely succeed on the merits of his First Amendment claim. Although not reviewed by the Hearing Board, Hescock's statement that "there were no disruptions inside the Campus Center auditorium, and the event proceeded as planned" (Ex. O) is particularly helpful to Plaintiff's case as a contemporaneous assessment by the University of the impact of the protest on the career fair. Hajir's October 1, 2025 Referral likewise suggests that the University's punishment of

[9] "Article 16 of our Declaration of Rights provides analogous protections and, in some instances, provides more protection for expressive activity than the First Amendment." *Massachusetts Coal. for the Homeless* v. *City of Fall River*, 486 Mass. 437, 440 (2020).

[10] The University does not claim that Plaintiff's conduct satisfied the interference with rights of others prong of the *Tinker* formulation, which the First Circuit has previously described as satisfied by conduct such as bullying. *Doe*, 145 F.4th at 174. Regardless, there are no facts before the court that would support this prong.

Plaintiff for his role in leading the protesters' chants was not reasonable. Although Hajir opined that "the actions by [Plaintiff], and amplified by the group, were clearly disruptive to the normal operations of this important event[,]" his statement that "[t]he noise easily carried into the auditorium itself, for which reason the staff closed the doors to the auditorium" does not describe a substantial disruption of that event. Ex. F, p. 2. See *Mahanoy Area Sch. Dist.* v. *B.L. ex rel. Levy*, 594 U.S. 180, 192 (2021) ("But we can find no evidence in the record of the sort of 'substantial disruption' of a school activity or a threatened harm to the rights of others that might justify the school's action.").

Relying on *L.M.* v. *Town of Middleborough, Massachusetts*, 103 F.4th 854, 881-882 (1st Cir. 2024), *cert. denied*, 145 S. Ct. 1489 (2025), the University contends that punishment of Plaintiff's conduct did not violate the First Amendment for the additional reason that the University reasonably forecasted that continuation of the protesters' chants would be substantially disruptive to the career fair. In *L.M.*, the First Circuit, applying *Tinker*, concluded that a middle school's exclusion of a student wearing a shirt stating "There Are Only Two Genders" did not violate that student's First Amendment right to free speech because school administrators reasonably forecasted the statement's disruptive impact due to the "demeaning nature of the message," school administrators' knowledge of "the serious nature of the struggles, including suicidal ideation" experienced by some students as a result of other students' reaction to their gender identities," and the potential for "back and forth of negative comments and slogans" that could hinder the school's ability to educate its students. *Id.* at 881-882. The materials submitted by the parties do not support such a forecast as reasonable here, where loud chanting had not, in fact, caused substantial disruption.[11]

**Harm to Plaintiff if Preliminary Injunction Does Not Issue**

Plaintiff contends that he will suffer irreparable harm if a preliminary injunction does not issue. Specifically, he argues that he will suffer irreparable harm from the suspension because it necessarily delays Plaintiff's ultimate fulfillment of the requirements for a degree and leaves a permanent gap in his educational record. See *Doe* v. *Texas Christian Univ.*, 601 F. Supp. 3d 78, 93-95 (N.D. Tex. 2022) (permanent gap on education record and need to explain it constituted irreparable harm); *Doe* v. *Pennsylvania State Univ.*, 276 F. Supp. 3d 300, 315 (M.D. Pa. 2017) (same). While Plaintiff's explanation for the gap in his record (suspension for creating a disturbance, disruptive behavior and failing to comply with staff directions) would likely be less

[11] The University contends that a limited public forum analysis, not the *Tinker* analysis, will apply to the Plaintiff's First Amendment claim, under which the University's punishment of Plaintiff's conduct was permissible if the speech violated rules that were "reasonable and viewpoint neutral." *Martinez*, 561 U.S. at 679. The University has not referred the court to any cases applying such an analysis to punishment of speech by a university, however. The issue presented in *Martinez*, for example, was whether a public law school's policy limiting official school recognition and attendant benefits to student organizations that agree to open eligibility for membership to all students impaired the Christian Legal Society's First Amendment right to free speech, expressive association, and free exercise of religion. *Martinez*, 561 U.S. at 668. The other cases cited by the University similarly involve whether a university's policies excluding some groups from university recognition or use of facilities violated those groups' First Amendment rights. See *Widmar* v. *Vincent*, 454 U.S. 263, 264-265 (1981) (whether a state university which makes its facilities generally available for the activities of registered student groups, may, consistent with the First Amendment, close its facilities to a registered student group desiring to use facilities for religious worship and discussion); *Healy*, 408 U.S. at 181 (whether university's denial of official recognition to student group abridged students' First Amendment associational rights).

harmful to Plaintiff than would the explanations required for the plaintiffs in *Doe* v. *Texas Christian Univ.* (suspension for sexual assault) and *Doe* v. *Pennsylvania State Univ.* (suspension for sexual misconduct), it would still cause irreparable harm. In addition, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373 (1976) (plurality opinion). Plaintiff has demonstrated that he will suffer irreparable harm if a preliminary injunction does not issue.

**Balancing Risk of Harm to the Parties**

The University appears to argue that issuance of a preliminary injunction to allow Plaintiff to attend the University during the pendency of this litigation could "disrupt all of the University's day-to-day business" by causing repeat protests involving loud indoor chanting. Opposition, p. 19. The University's prediction is speculative. The risk of harm to Plaintiff from the gap in his educational record that the suspension would certainly create outweighs any risk of harm to the University should he be permitted to attend the University during the pendency of this litigation.

**ORDER**

For the foregoing reasons, Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction is **ALLOWED**. It is hereby **ORDERED** that the University of Massachusetts Amherst is enjoined until the conclusion of this case or further order of the court, from, based on the Plaintiff's conduct on September 29, 2025: dismissing Plaintiff; preventing Plaintiff from taking classes or otherwise fulfilling academic requirements; and further sanctioning Plaintiff.

Jeffrey J. Trapani
Justice of the Superior Court

February 13, 2026