IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

EMILY DEHN, **Plaintiff,** **v.** **BOARD OF REGENTS FOR KANSAS COLLEGES AND UNIVERSITIES, STATE OF KANSAS *ex rel.* UNIVERSITY OF KANSAS,** **Defendant.**	**Case No. 24-2079-DDC**

MEMORANDUM AND ORDER

Plaintiff Emily Dehn asserts that defendant Board of Regents for Kansas Colleges and Universities *ex rel.* University of Kansas violated § 504 of the Rehabilitation Act of 1973. Specifically, she claims defendant unlawfully discriminated against her based on disability and unlawfully retaliated against her. Defendant now has moved for summary judgment. Doc. 117. The court grants it. Plaintiff signed a settlement agreement that contains sweeping release and covenant-not-to-sue provisions. Those provisions bar most of the claims she now asserts. For the claims that survive the settlement agreement, plaintiff hasn't marshalled sufficient evidence to withstand summary judgment. The court explains this result, below, starting with a synopsis of the parties' dispute.

I. Background

The following facts either are uncontroverted or, if controverted, are stated in the light most favorable to plaintiff—the non-movant. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

Plaintiff is disabled; she suffers from ulcerative colitis, spondylarthritis, and generalized anxiety. Doc. 97 at 3 (PTO ¶ 2.a.). Plaintiff enrolled in one of defendant's graduate programs—the Doctor of Nurse Practice – Nurse Midwife program—in the summer of 2019. *Id.*

2022 Clinical Placement

In the summer of 2022, plaintiff requested an accommodation for clinical placement "within 45 miles of her 'home in KC.'" *Id.* Defendant offered plaintiff a placement in Warrensburg, Missouri, for the course NSRG 927. Doc. 118-2 at 112 (Pl. Dep. Ex. 12). Plaintiff refused this placement, explaining that the hospital in Warrensburg is "1 hour and 13 minutes away" and warning defendant that failing to abide her doctor's recommendation "is discrimination." Doc. 124-3 at 18 (Ukoko Dep. Ex. 7). Plaintiff followed up, filing an internal discrimination complaint. *See* Doc. 118-2 at 49–50 (Pl. Dep. 61:14–62:2). Defendant then offered—and plaintiff accepted—a clinical placement in St. Joseph, Missouri. Doc. 97 at 3 (PTO ¶ 2.a.).

Shortly after accepting this placement, plaintiff filed an internal complaint alleging two members of defendant's faculty had retaliated against her for filing the discrimination complaint. Doc. 124-9 at 1 (Pl. Ex. 8). Plaintiff asserted that these faculty members wrongfully delayed plaintiff's graduation by a semester. *Id.*

Plaintiff received a failing grade in NSRG 927—the course that was the subject of the clinical-placement controversy. Doc. 118-2 at 117 (Pl. Dep. Ex. 14).

The Settlement

Plaintiff then hired an attorney. Doc. 97 at 3 (PTO ¶ 2.a.). The attorney alleged that defendant had discriminated against plaintiff based on her disability; retaliated against plaintiff for requesting accommodations; and misled plaintiff about the program's duration. *Id.* With each side represented by counsel, the parties negotiated and signed a settlement agreement in

October 2022. *Id.* The settlement agreement enshrined promises from both sides. As relevant here, plaintiff agreed to (1) dismiss her existing internal complaints; (2) release defendant from liability "arising out of events, acts, statements, conditions, or incidents occurring" through the time the parties' signed the agreement; and (3) refrain from suing defendant for any issues "related to the matters released[.]" Doc. 118-2 at 89–90 (Pl. Dep. Ex. 3). Defendant promised, among other items, to (1) provide clinical placements for plaintiff "in accordance with" her "approved disability accommodations"; and (2) furnish a neutral grader to regrade her coursework from the failed class. *Id.* at 90–93 (Pl. Dep. Ex. 3). More on this settlement agreement, later.

After re-grading plaintiff's work, the neutral grader assigned plaintiff a failing grade. *Id.* at 62 (Pl. Dep. 84:22–24). The grader submitted her grading about five days after receiving the materials from defendant. *Compare* Doc. 124-21 at 29 (Giles Dep. Ex. 7), *with id.* at 49 (Giles Dep. Ex. 19). Plaintiff asserts that the grader didn't review all parts of the assignments. Doc. 124 at 10. But none of the exhibits she cites support her contention. For instance, plaintiff cites a specific assignment where the grader gave her a zero for her plan of care, asserting that the grader failed to review a page of her work and so, she didn't deserve a zero. *Id.* (first citing Doc. 124-12 (Pl. Ex. 12); and then citing Doc. 124-21 at 46–48 (Giles Dep. Ex. 12)). Yet even viewed in the light most favorable to plaintiff, neither the graded assignment nor the submitted assignment supports an inference that the grader failed to review the whole assignment. To the contrary, the graded assignment contains comments continuing through the end of the submitted assignment. *See* Doc. 124-21 at 47 (Giles Dep. Ex. 12). And the grader explained her issues with plaintiff's plan of care: "This does not show me that you actually have a different plan than when you admitted her." *Id.*

Plaintiff Relocates

Plaintiff moved to Fort Collins, Colorado, in early 2023. Doc. 97 at 4 (PTO ¶ 2.a.). She relocated because she and her family preferred Colorado's "culture." Doc. 118-2 at 13 (Pl. Dep. 15:2–6). Before moving, plaintiff didn't investigate whether it was possible to complete her clinical coursework in Colorado. *Id.* at 16 (Pl. Dep. 18:18–21). And plaintiff didn't inform defendant about her relocation until February 2023—after she had moved. *See id.* at 20–21 (Pl. Dep. 29:5–30:1); Doc. 124-14 at 2 (Pl. Ex. 14).[1] After learning of plaintiff's move, Dawn Shew—an assistant dean—emailed plaintiff in April 2023 to inform her that she'd need to find a clinical placement and that a placement in Colorado wasn't possible. Doc. 124-13 at 2 (Pl. Ex. 13). Before this meeting, a different member of the faculty had met with Shew and recorded notes for that meeting, memorializing that plaintiff's "45 minutes accommodation" was "null and void" because defendant couldn't place students in Colorado. Doc. 124-6 at 21 (Dawn Dep. Ex. 3).

Defendant's faculty believed that a Colorado law governing worker compensation prevented defendant from placing students in Colorado for clinical coursework.[2] Doc. 118-3 at 12–14, 23 (Busenhart Dep. 37:20–39:1, 79:4–12); Doc. 118-5 at 8–9, 10–11 (Shew Dep. 18:23–19:4, 20:23–21:6). Consistent with this belief, defendant never has provided a clinical placement

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[1] Plaintiff asserts, through her counsel, that she told defendant in October 2022 that she planned to move to Colorado in January 2023. Doc. 124 at 10. The summary-judgment record says otherwise. In an October 2022 email, plaintiff's counsel wrote that plaintiff's "*husband* is moving to Colorado in January and [plaintiff] needs to be able to reunite her family as quickly as possible." Doc. 124-17 (Pl. Ex. 17) (emphasis added). This email never suggests that plaintiff planned to move before graduating. So, even viewed in the light most favorable to plaintiff, the record here supports a finding that it's undisputed: plaintiff never told defendant about her Colorado move until February 2023.

[2] Plaintiff argues that workarounds could have resolved this legal constraint. Doc. 124 at 6–7, 14, 22. Defendant never contests this proposition. *See generally* Doc. 129. So, without deciding the meaning of the Colorado statute in debate, the court assumes that no legal constraint precluded defendant from finding a placement for plaintiff in Colorado. At the same time, plaintiff hasn't offered any evidence that defendant's faculty concocted this constraint in bad faith.

in Colorado for a student in the nurse-midwifery DNP program. Doc. 118-4 at 2 (Busenhart Decl. ¶ 10).

In their meeting, Shew explained to plaintiff that she couldn't complete her clinical coursework in Colorado. Doc. 124-7 at 1:20–31 (Pl. Ex. 6). Shew encouraged plaintiff to look for placements in nearby Wyoming and clarified that the clinical placement needed to satisfy certain requirements. *Id.* at 1:40–2:58. Shew also explained that defendant couldn't honor plaintiff's 45-minute accommodation in Colorado based on her belief that defendant's students couldn't complete clinical work in Colorado. *Id.* Shew clarified that these legal restrictions didn't apply to Wyoming. *Id.* at 5:15–5:34.

During this meeting, Shew also broached the subject of who would teach plaintiff for the rest of her coursework. *Id.* at 9:00–11:48. Shew explained to plaintiff that defendant wanted to place plaintiff with "the new professors." *Id.* Shew alluded to earlier complaints that plaintiff had filed against certain members of the faculty, and suggested that it "seemed like it would be in everyone's best interests" for new adjunct faculty to instruct plaintiff. *Id.* Plaintiff accepted this arrangement, explaining that she'd prefer not to "be around" the faculty members named in her complaints. *Id.* at 17:30–18:00. Plaintiff responded to the plan for her to receive adjunct-faculty instruction, apart from the rest of her cohort, saying, "Okay perfect, I appreciate you making that an option for me." *Id.*

The existing faculty had met and devised a plan for adjunct faculty to instruct plaintiff, given that plaintiff had filed discrimination and retaliation complaints against the tenured faculty members. Doc. 124-11 at 8–9 (Ramirez Henry Dep. 51:20–52:7); Doc. 118-5 at 16–17 (Shew Dep. 28:16–29:6). In an email setting this meeting, one of defendant's faculty suggested that the faculty could "debrief the past 9 months, discuss options for moving forward with [plaintiff], and

to share concerns for faculty safety[.]" Doc. 124-4 at 34 (Busenhart Dep. Ex. 16). Plaintiff never enrolled for the subsequent semester—summer 2023—so defendant had no reason to hire adjunct faculty to teach her. Doc. 124-5 at 10 (Pl. Dep. 155:13–23); Doc. 124-11 at 10 (Ramirez Henry Dep. 53:15–17).

Blame Game

The parties dispute who bore responsibility for finding plaintiff an out-of-state placement after she'd moved to Colorado. Predictably, each side blames the other. In an interrogatory response, defendant explained that

> the same procedure is used for selecting clinical locations for all students, including those who reside outside of the Kansas City metropolitan area. Generally, students are assigned clinical placements based on a combination of program requirements, student preferences, geographic considerations, the availability of qualified preceptors and approved clinical sites, and confirmation of legal compliance with applicable state and institutional regulations.

Doc. 124-2 at 10–11 (Pl. Ex. 1). Plaintiff highlights an internal email sent by one of defendant's employees. It explains, for "the midwifery program (unlike our other advanced practice programs for nurse practitioners), faculty secure the clinical sites for students and preceptors are then assigned to students." Doc. 124-3 at 14 (Ukoko Dep. Ex. 5). Plaintiff thus asserts that it was defendant's job to find her a placement.

Defendant, meanwhile, cites evidence that plaintiff, as an out-of-state student, was responsible for finding a clinical placement. For instance, on the call defendant had with plaintiff, one of defendant's employees made clear to plaintiff that although defendant "was usually very involved in identifying potential preceptors for students . . . . With this being out of state and kind of exploring some new options, I would surmise that you as a student would probably have to have a lot more input into it." Doc. 124-7 at 12:42–13:18 (Pl. Ex. 6). Defendant's employees also testified in depositions that out-of-state students are responsible for

finding clinical placements. *E.g.*, Doc. 118-5 at 14–15 (Shew Dep. 26:21–27:17). And emails sent to plaintiff suggest that it was incumbent on her to initiate the process of clinical placement. Doc. 124-4 at 36 (Busenhart Dep. Ex. 17) ("The process begins with you identifying potential CNM or physician preceptors in your preferred clinical location.").

Naturally, defendant—a Kansas entity—has a network of contacts for clinical placements in the Kansas City area. Doc. 118-3 at 32–33 (Busenhart Dep. 99:12–100:11). Defendant nonetheless tried to find a clinical placement for plaintiff in Wyoming. *Id.* at 27–28 (Busenhart Dep. 90:24–91:20).[3] Plaintiff, blaming defendant for not finding her a suitable clinical placement near her home in Colorado, didn't enroll in NSRG 927 for the summer 2023 semester. *See* Doc. 124-5 at 10–11 (Pl. Dep. 155:13–156:12). But plaintiff could have returned to Kansas City, and defendant would have furnished a placement within 45 minutes of her home. *See* Doc. 118-5 at 14, 18–19 (Shew Dep. 26:16–20, 43:8–44:3); Doc. 118-2 at 79–80 (Pl. Dep. 115:21–116:24).[4]

Plaintiff has two surviving claims, both asserted under § 504 of the Rehabilitation Act of 1973. Doc. 97 at 28–30 (PTO ¶ 4.a.). One of plaintiff's claims accuses defendant of unlawfully discriminating based on disability; the other accuses defendant of unlawfully retaliating. *Id.*

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[3] Plaintiff tries to controvert this fact. Doc. 124 at 7. In essence, she implies that defendant's program director didn't make a good-faith effort to try to find plaintiff a clinical placement. *Id.* But no evidence supports this accusation. And the uncontroverted fact is that the program director made an effort to find plaintiff a placement—even if she could have done more. The court thus disregards plaintiff's unsupported allegation that the program director didn't make "a meaningful attempt to assist" plaintiff in finding a placement in Wyoming. *Id.*; *Hasan v. AIG Prop. Cas. Co.*, 935 F.3d 1092, 1098 (10th Cir. 2019) ("Unsubstantiated allegations carry no probative weight in summary judgment proceedings." (quotation cleaned up)).

[4] Plaintiff also tries to controvert this fact, arguing that defendant dismissed her as a student. Doc. 124 at 7. Plaintiff cites a dismissal letter, dated March 2024. *Id.* (citing Doc. 124-15 (Pl. Ex. 15)). But defendant never sent the letter. Doc. 115-1 at 2 (Shew Decl. ¶¶ 9–10). And even if defendant had dismissed plaintiff in 2024, that fact wouldn't controvert that an accommodation in Kansas City remained available.

Defendant, for its part, asserts a breach-of-contract counterclaim based on plaintiff allegedly violating the parties' settlement agreement by filing this action.

II. Legal Standard

Summary judgment is appropriate where the moving party demonstrates there is "no genuine dispute" about "any material fact" and that the movant is "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). This standard dictates that the court "view the evidence and make inferences in the light most favorable to the non-movant." *Nahno-Lopez v. Houser*, 625 F.3d 1279, 1283 (10th Cir. 2010) (citing *Oldenkamp v. United Am. Ins. Co.*, 619 F.3d 1243, 1245–46 (10th Cir. 2010)).

"An issue of fact is 'genuine' 'if the evidence is such that a reasonable jury could return a verdict for the non-moving party' on the issue." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "An issue of fact is 'material' 'if under the substantive law it is essential to the proper disposition of the claim' or defense." *Id.* (quoting *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998)).

The moving party bears "'both the initial burden of production on a motion for summary judgment and the burden of establishing that summary judgment is appropriate as a matter of law.'" *Kannady v. City of Kiowa*, 590 F.3d 1161, 1169 (10th Cir. 2010) (quoting *Trainor v. Apollo Metal Specialties, Inc.*, 318 F.3d 976, 979 (10th Cir. 2002)). To carry this burden, the moving party "'need not negate the non-movant's claim, but need only point to an absence of evidence to support the non-movant's claim.'" *Id.* (quoting *Sigmon v. CommunityCare HMO, Inc.*, 234 F.3d 1121, 1125 (10th Cir. 2000)). Even if the non-moving party fails to respond adequately, "the district court may not grant the motion without first examining the moving party's submission to determine if it has met its initial burden of demonstrating that no material

issues of fact remain for trial and the moving party is entitled to judgment as a matter of law." *Reed v. Bennett*, 312 F.3d 1190, 1194–95 (10th Cir. 2002).

If the moving party satisfies its initial burden, the non-moving party "'may not rest on its pleadings, but must bring forward specific facts showing a genuine issue for trial [on] those dispositive matters for which it carries the burden of proof.'" *Kannady*, 590 F.3d at 1169 (quoting *Jenkins v. Wood*, 81 F.3d 988, 990 (10th Cir. 1996)); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Anderson*, 477 U.S. at 248–49. The specific "facts must be identified by reference to affidavits, deposition transcripts, or specific exhibits incorporated therein." *Libertarian Party of N.M. v. Herrera*, 506 F.3d 1303, 1309 (10th Cir. 2007) (citing *Adler*, 144 F.3d at 671). Affidavits and testimony "must be based upon personal knowledge and set forth facts that would be admissible in evidence; conclusory and self-serving affidavits are not sufficient." *Tucker v. Faith Bible Chapel Int'l*, 36 F.4th 1021, 1030–31 (10th Cir. 2022) (quotation cleaned up).

Federal courts don't view summary judgment as a "disfavored procedural shortcut." *Celotex*, 477 U.S. at 327. Instead, it represents an important procedure "designed 'to secure the just, speedy and inexpensive determination of every action.'" *Id.* (quoting Fed. R. Civ. P. 1).

III. Analysis

Plaintiff alleges that defendant discriminated against her based on her disability in several ways. But before the court can evaluate plaintiff's disability claims, it first must consider whether she can bring those claims at all. So, the court's work unfolds in this fashion: it begins with the parties' settlement agreement to determine which, if any, of plaintiff's claims are barred by the agreement's release and covenant not to sue. And then, the court determines whether plaintiff herself has breached the settlement agreement, resolving defendant's breach-of-contract

counterclaim. Then, the court tackles the merits of plaintiff's claims, analyzing her discrimination claim first and then her retaliation claim.

A. Settlement Agreement

Start with the settlement agreement. Recall that the parties entered a settlement agreement in October 2022. Doc. 97 at 3 (PTO ¶ 2.a.). Two provisions—a release and a covenant not to sue—take center stage. The release, defendant contends, serves as an affirmative defense barring plaintiff's claims. *Id.* at 30 (PTO ¶ 4.b.i.). And, defendant contends, plaintiff filing this suit violates the covenant not to sue, thus supporting defendant's counterclaim for breach of contract. *Id.* at 32–33 (PTO ¶ 4.c.).[5]

The court begins with the scope of the relevant provisions from the settlement agreement and determines whether it bars any of plaintiff's claims. To spoil the ending, the settlement agreement bars plaintiff from asserting her principal grounds for discrimination and retaliation as asserted in this lawsuit. The court then addresses plaintiff's argument that defendant materially breached the settlement agreement. And the court concludes its analysis of the settlement agreement with plaintiff's argument that the settlement agreement violates public policy, so the court shouldn't enforce it.

[5] Under Kansas law, a breach-of-contract claim has five elements: "(1) the existence of a contract between the parties; (2) sufficient consideration to support the contract; (3) the plaintiff's performance or willingness to perform in compliance with the contract; (4) the defendant's breach of the contract; and (5) damages to the plaintiff caused by the breach." *Stechschulte v. Jennings*, 298 P.3d 1083, 1098 (Kan. 2013). Plaintiff here merely challenges the third and fourth elements. *See* Doc. 97 at 33 (PTO ¶ 4.d.). She asserts that defendant breached first and that she hasn't breached the agreement because the release and covenant not to sue don't apply to her claims. *Id.* The court finds there's no genuine dispute that defendant has satisfied the other three elements here—a proposition plaintiff never contests. The parties have stipulated that they signed a contract. *Id.* at 3 (PTO ¶ 2.a.). The contract offers consideration to each side. *See* Doc. 118-2 at 89–95 (Pl. Dep. Ex. 3). And defendant suffered damages by having to defend this action.

1. Scope of Release and Covenant-Not-to-Sue

Plaintiff initially disputes whether the settlement agreement's release and covenant not to sue reach the claims she asserts here. They do.[6]

In Kansas,[7] the legal effect of a settlement agreement "is a question of law for the court to decide." *Dougan v. Rossville Drainage Dist.*, 15 P.3d 338, 351 (Kan. 2000). "The primary rule for interpreting written contracts is to ascertain the parties' intent." *Iron Mound, LLC v. Nueterra Healthcare Mgmt., LLC*, 313 P.3d 808, 812 (Kan. 2013) (quotation cleaned up). To do so, the court considers "the four corners of the written agreement, construing all provisions together and in harmony with each other rather than by critical analysis of a single or isolated provision." *Schmitendorf v. Taylor*, 468 P.3d 796, 803 (Kan. Ct. App. 2020) (quotation cleaned up).

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[6] A release and a covenant not to sue are distinct. *Smith v. Kan. Pub. Emps. Ret. Sys.*, 2020 WL 618608, at *2 (D. Kan. Feb. 10, 2020) (compiling cases). A "release is the act of giving up a right or claim to the person against whom it could have been enforced." *Schuman v. Microchip Tech. Inc.*, 372 F. Supp. 3d 1054, 1060 (N.D. Cal. 2019) (quotation cleaned up) (applying federal law). "By contrast, a covenant not to sue is not a present abandonment or relinquishment of the right of claim, but merely an agreement not to enforce an existing cause of action." *Id.* (quotation cleaned up). This distinction means that only a covenant not to sue can support a breach-of-contract claim; in contrast, a release can support an affirmative defense. *See Smith*, 2020 WL 618608, at *3 (dismissing breach-of-contract counterclaim where relevant agreement contained a release but not a covenant not to sue). "That said, the two purposes often merge and the distinction between releases and covenants not to sue becomes particularly murky when both are included in a single document." *Schuman*, 372 F. Supp. 3d at 1060 (quotation cleaned up). "Where both are present, the covenant not to sue largely swallows the release." *Id.* (quotation cleaned up). Here, the result is the same no matter whether it's the release or the covenant not to sue which captures plaintiff's claims: those claims fail.

[7] The parties agree that Kansas law governs the court's interpretation of the settlement agreement. Doc. 97 at 2 (PTO ¶ 1.d.). The court concurs. When deciding state-law issues and claims, the court "applies the forum state's choice-of-law rules to determine which state's substantive law governs a claim." *Nordwald v. Brightlink Commc'ns, LLC*, 603 F. Supp. 3d 1030, 1040 (D. Kan. 2022) (citing *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)). In Kansas, if the relevant contract contains a choice-of-law provision, "Kansas courts generally effectuate the law chosen by the parties to control the agreement." *Brenner v. Oppenheimer & Co.*, 44 P.3d 364, 375 (Kan. 2002). Here, the settlement agreement selects Kansas to supply the governing law. Doc. 118-2 at 94 (Pl. Dep. Ex. 3). The court thus applies Kansas law to interpret the settlement agreement.

Two provisions of the settlement agreement—one titled "Complete Release" and the other titled "Covenant Not to Sue"—inform the court's analysis. In relevant part, the release absolves defendant

> from any and all liability, claims, actions, causes of action, demands, rights, grievances, damages, costs, attorneys' fees, interest, expenses, entitlements and compensation of any nature whatsoever, whether or not now known or contemplated, which Dehn now has, or which may hereafter accrue, against the Released Parties based on or arising out of events, acts, statements, conditions, or incidents occurring through the time that Dehn signs this Agreement[.]

Doc. 118-2 at 89 (Pl. Dep. Ex. 3). The covenant not to sue, in turn, memorializes plaintiff's agreement "not to initiate any legal proceedings . . . relating to any of the matters release herein." *Id*. It also says that plaintiff "specifically acknowledges she is forever barred from filing suit against the Released Parties based on any claim or cause of action that she has or might have had prior to signing this Agreement." *Id.* at 90. The crux of the parties' dispute is whether these two provisions reach claims based on events transpiring after plaintiff had signed the settlement agreement—*i.e.*, failing to find plaintiff a clinical placement after her move. In defendant's view, plaintiff's claims all "arise out of" issues and events from before the parties signed the settlement agreement and that the settlement agreement tried to resolve. Plaintiff, on the other hand, asserts that the release and covenant not to sue don't contemplate future events. Doc. 124 at 17–18. The court examines the release, and then it examines the covenant not to sue, and it concludes by explaining how those provisions apply to the summary-judgment facts presented here.

To start, courts—including Kansas appellate courts—generally "recognize[] the words 'arising out of' are very broad, general, and comprehensive terms[.]" *Cady v. Schroll*, 317 P.3d 90, 97 (Kan. 2014) (quotation cleaned up); *see also Cevasco v. Nat'l R.R. Passenger Corp.*, 606 F. Supp. 2d 401, 411 (S.D.N.Y. 2009) (applying District of Columbia law and characterizing

"arising out of" as "broad and sweeping" (quotation cleaned up)); *Underwriters v. N.H. Ins. Co.*, 2015 WL 12660397, at (N.D. Cal. Feb. 26, 2015) (applying California law and explaining that "'arising out of' has broad and comprehensive application" (quotation cleaned up)). Kansas courts have explained that "arising out of" is "ordinarily understood to mean 'originating from,' 'having its origin in,' 'growing out of' or 'flowing from.'" *Cady*, 317 P.3d at 98 (quotation cleaned up).[8]

The covenant not to sue is even broader than the release. In it, plaintiff promised "not to initiate any legal proceedings . . . *relating to* any of the matters release herein." Doc. 118-2 at 89 (Pl. Dep. Ex. 3) (emphasis added). "The phrase 'relating to' sweeps broadly." *Plaquemines Par.*, 146 S. Ct. at 1060. "It means 'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.'" *Id.* (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (quoting Black's Law Dictionary 1158 (5th ed. 1979))). "The ordinary understanding of 'relating to' requires a connection that is not 'tenuous, remote, or peripheral.'" *Id.* at 1061 (quoting *Rutledge v. Pharm. Care Mgmt. Ass'n*, 592 U.S. 80, 93 (2020) (Thomas, J., concurring)); *see also Dodson Int'l Parts, Inc. v. Williams Int'l Co.*, 12 F.4th 1212, 1220 (10th Cir. 2021) ("Kansas interprets contracts by 'assigning the words used

[8] The court realizes that, construed literally, any future event "arises out of" a past event. *Cf. Chevron USA Inc. v. Plaquemines Parish*, 146 S. Ct. 1052, 1060–61 (2026) ("To be sure, in a literalist sense, everything is related to everything." (quotation cleaned up)). But an ordinary understanding of "arise out of" can't reach so far. That is to say, the court's holding isn't that the settlement agreement barred plaintiff from ever asserting a distinct discrimination or retaliation claim against defendant. Say, for instance, plaintiff could establish that her disability required special accommodations for taking a test—perhaps extra time or a secluded testing environment—and defendant unreasonably refused to furnish that accommodation. The settlement agreement here wouldn't seem to bar such a claim because no nexus would connect that claim to a pre-settlement-agreement event or incident. But this hypothetical is nothing like the summary-judgment facts governing the current motion.

their plain and ordinary meaning.'" (quoting *Pfeifer v. Fed. Express Corp.*, 304 P.3d 1226, 1229 (Kan. 2013)).[9]

Stacking these provisions together, the issue is whether plaintiff's claims originate from or have some connection to pre-settlement-agreement events. Plainly they do. The thrust of plaintiff's claims originate from and stand in relation to "events, acts, statements, conditions, or incidents occurring through the time" plaintiff signed the settlement agreement in October 2022. Doc. 118-2 at 89 (Pl. Dep. Ex. 3).

The principal wrong—for both of plaintiff's claims—alleges that defendant failed to furnish a satisfactory clinical placement within 45 minutes of her home in Colorado. This failure "arises out of" the parties' existing accommodations dispute that the settlement agreement sought to resolve. Indeed, the settlement agreement expressly acknowledged the 45-minute-placement issue and tried to resolve it by requiring defendant to place plaintiff "at a clinical site or sites within approximately 45 minutes" of her home. *Id.* at 93 (Pl. Dep. Ex. 3). The court thus easily concludes that plaintiff's claims based on defendant's purported failure to find her a satisfactory clinical placement arose out of—and if not, certainly connect to—events and incidents occurring before the parties signed the settlement agreement. After all, the parties already had a dispute about finding an appropriate clinical placement for plaintiff. It's difficult to see how their

[9] True, *Plaquemines Parish* interpreted "relating to" as used by a federal statute, and this is a contract case. 146 S. Ct. at 1060. All the same, the court finds its "ordinary understanding" of "relating to" persuasive. *Id.* at 1061. And other courts agree. The weight of authority interprets "relating to" broadly—whether used in a statute or contract. *E.g.*, *Chelsea Fam. Pharmacy, PLLC v. Medco Health Sols., Inc.*, 567 F.3d 1191, 1199 (10th Cir. 2009) (interpreting "relating to" in arbitration agreement broadly); *Exit Strategy, LLC v. Festival Retail Fund BH, L.P.*, 2023 WL 4571932, at *12 (Del. Ch. July 17, 2023) (characterizing "related to" as "paradigmatically broad" in partnership agreement (quotation cleaned up)), *aff'd*, 326 A.3d 356 (Del. 2024); *Barclay v. Icon Health & Fitness, Inc.*, 2022 WL 486999, at *10 (D. Minn. Feb. 17, 2022) (construing "relating to" broadly in a contract's choice-of-law clause).

subsequent disputes over the precisely same issue don't relate to those pre-settlement-agreement disputes about the exact same issue.[10]

Plaintiff, for her part, asserts that the release doesn't contemplate future events. Doc. 124 at 17–19. But the plain language of the settlement agreement says otherwise. Recall that the release applies to claims "whether or not now known or contemplated, which Dehn now has, *or which may hereafter accrue*[.]" Doc. 118-2 at 89 (Pl. Dep. Ex. 3) (emphasis added). This language plainly indicates that the release reaches future-arising claims. *See, e.g.*, *Zenith Carex Int'l Ltd. v. Chemonics Int'l*, 2026 WL 759479, at *6 (D.D.C. Mar. 18, 2026) (concluding that release provision, which covered claims that plaintiff "hereafter can, shall or may have" unambiguously covered future claims); *N. Sec. Ins. Co. v. Mitec Elecs., Ltd.*, 965 A.2d 447, 455 (Vt. 2008) (explaining that release provision, which covered claims that plaintiff "hereafter can, shall, or may have," "unambiguously includes future claims arising out of events . . . that occurred before the release").

Plaintiff's rejoinder to this proposition is bootless. She asserts that this clause—"which may hereafter accrue"—doesn't expand the scope of the release because "a claim does not always accrue at the time of the relevant action, if the individual does not learn of the action until later." Doc. 124 at 17. Plaintiff's argument, unsupported as it is by any authority, can't account for a neighboring provision which specifies that the release applies to claims "whether or not known or contemplated[.]" Doc. 118-2 at 89 (Pl. Dep. Ex. 3). That is, plaintiff's interpretation of "which may hereafter accrue" renders meaningless the clause providing that the release

[10] Plaintiff also appears to assert—separate from her claim that defendant failed to find her a placement within 45 minutes of her home in Colorado—a claim based on defendant failing to find plaintiff *any* placement near her home in Colorado. *See* Doc. 124 at 29–30. To the extent plaintiff asserts this as a distinct claim, the settlement agreement bars it too. A dispute about adequate clinical placement after plaintiff moved bears a close connection to the parties' preexisting dispute about the adequacy of plaintiff's clinical placement in Kansas City.

applies "whether or not known or contemplated[.]" *Id.* Kansas law counsels against interpreting "a contract in a way that renders other provisions or language within the contract meaningless." *Harding v. Capitol Fed. Sav. Bank*, 556 P.3d 910, 920 (Kan. Ct. App. 2024), *aff'd*, 577 P.3d 553 (Kan. 2025). The court thus rejects plaintiff's attempted end-run around the contract's plain language, which says that the release provision applies to not-yet-accrued—and not-yet-known—claims.

Plaintiff's argument about the covenant not to sue is no more persuasive. She zeroes in on a sentence providing that "specifically acknowledges she is forever barred from filing suit against the Released Parties based on any claim or cause of action that she has or might have had prior to signing this agreement." Doc. 118-2 at 90 (Pl. Dep. Ex. 3). Based on this backward-looking sentence, plaintiff asserts that interpreting the covenant to sue to encompass future claims "is simply unreasonable, and unsupported." Doc. 124 at 19. But the specific-acknowledgment sentence highlights a particular application of the covenant not to sue. It doesn't confine its scope. *See In re Kline*, 311 P.3d 321, 338 (Kan. 2013) (explaining the rule that a more specific statute prevails over a general one doesn't apply where "it appears the legislature intended to make the general statute controlling"). So, this sentence can't undermine the expansive "relating to" phrasing that defines the scope of the covenant not to sue.

Tellingly, plaintiff never engages the covenant's sweeping language—"related to any of the matters release"—used in the covenant not to sue. *See generally* Doc. 124. Instead, she repeatedly insists that the covenant not to sue "applies solely to matters released." *Id.* at 17; *id.* at 19 (asserting that the covenant "is limited to the matters released"). She's just wrong. Her covenant plainly stretched beyond the claims released to all claims "relating to" released ones. *See Zama Cap. Advisors LP v. Universal Ent. Corp.*, 2025 WL 968783, at *10 (S.N.D.Y. Mar.

31, 2025) ("The phrase 'related to' is generally broader than phrases 'arising out of.'"). Plaintiff has offered no reasonable interpretation of the settlement agreement that gives meaning to the phrase "relating to." In short, as a matter of law, the settlement agreement bars plaintiff's claims based on defendant's failure to find a satisfactory clinical placement after she moved to Colorado.

But the court reaches a different conclusion about plaintiff's other claims grounded in discrimination and retaliation. In scattershot fashion, she argues that defendant discriminated against her by (1) refusing to teach her; (2) accusing her of posing a safety risk to faculty; and (3) failing to advise her that it couldn't provide her a clinical placement in Colorado. Doc. 124 at 29. Unlike the issue of clinical placement, any nexus between these purportedly discriminatory acts and pre-settlement-agreement events isn't so evident. And defendant never bothered to explain how these post-settlement-agreement events flowed from incidents occurring before the settlement agreement. *See generally* Doc. 118; Doc. 129. The court declines to furnish that explanation for defendant. As the Supreme Court recently has reaffirmed, party-presentation principles dictate "that points not argued will not be considered[.]" *Margolin v. Nat'l Ass'n of Immigr. Judges*, 146 S. Ct. 1285, 1288 (2026) (quotation cleaned up). The court pockets these three grounds of discrimination for later, when it addresses them on their merits.

In sum, the settlement agreement's release and covenant not to sue encompass plaintiff's claim for disability discrimination based on plaintiff's lack of clinical placement following her move to Colorado. Fighting this conclusion, plaintiff argues that defendant breached the settlement agreement. The court takes up that proposition, next.

2. Material Breach

Plaintiff asserts that defendant materially breached the settlement agreement, relieving her duties under it. Specifically, plaintiff contends that a reasonable jury could find that

defendant materially breached the settlement agreement by failing to (1) find her a clinical placement within 45 minutes of her home in Colorado; and (2) furnish a neutral grader according to the agreement's terms. Doc. 124 at 20–24. Plaintiff is wrong on both fronts. No rational trier of fact could find for her on either theory of breach. Before explaining why, the court provides a brief refresher on Kansas law governing material breaches.

As the court explained in its motion-to-dismiss order, a material breach of a settlement agreement might excuse another party's obligations. Doc. 23 at 12–14. A material breach is a breach that is "so substantial" that it "defeat[s] the object of the parties in making the agreement." *Fed. Land Bank of Wichita v. Krug*, 856 P.2d 111, 115 (Kan. 1993). "Whether a party has materially breached a contract is a question of fact for the jury." *Alenco, Inc. v. Warrington*, 560 P.3d 586, 598 (Kan. Ct. App. 2024) (citing *Waste Connections of Kan., Inc. v. Ritchie Corp.*, 298 P.3d 250, 265 (Kan. 2013)). But a settlement agreement's meaning—including the duties it creates—is an issue of law. *Dougan*, 15 P.3d at 351.

The court now applies these governing principles to this case's summary-judgment facts, starting with plaintiff's argument that defendant breached by failing to provide her a clinical placement within 45 minutes of her home.

a. Clinical Placement

To determine whether defendant breached the settlement agreement, the court first must determine what the agreement says about defendant's responsibilities to plaintiff vis-à-vis her clinical placement. Here's the relevant provision in whole:

> The University agrees that each clinical placement for Dehn will be in accordance with Dehn's approved disability accommodations, including placement at a clinical site or sites within approximately 45 minutes of Dehn's home, and that all approved disability accommodations for Dehn shall continue to be honored by the University. Nothing within this Agreement shall limit Dehn's ability to seek additional, modified, or different accommodations for her disabilities through the proper processes at the University.

Doc. 118-2 at 93 (Pl. Dep. Ex. 3). The parties dispute whether this provision contained an agreement for defendant to find plaintiff a clinical placement within 45 minutes of her home in Kansas City or, in contrast, whether defendant's obligation changed if plaintiff moved.

Initially, the court finds the contract ambiguous. It doesn't specify clearly whether its reference to plaintiff's "home" means the residence where she then resided or her residence wherever she might live. *See Harding v. Capitol Fed. Sav. Bank*, 577 P.3d 553, 557 (Kan. 2025) ("To be ambiguous, a contract must contain provisions or language of doubtful or conflicting meaning, as gleaned from a natural and reasonable interpretation of its language." (quotation cleaned up)). Because the settlement agreement is ambiguous, the court turns to extrinsic evidence to ascertain the parties' intent at the time they signed it. *Russell v. Treanor Invs. L.L.C.*, 466 P.3d 481, 486 (Kan. 2020); *In re Matthews' Est.*, 493 P.2d 555, 564 (Kan. 1972) (explaining that the relevant inquiry is the parties' intent "at the time" they signed the contract). The extrinsic evidence here reveals that a reasonable jury only could find that the parties understood the contract's reference to plaintiff's "home" to mean a static location—her home in Kansas City.

The settlement agreement expresses defendant's promise to honor "*approved* disability accommodations." Doc. 118-2 at 93 (Pl. Dep. Ex. 3) (emphasis added). And every documented request for accommodation referenced placement within a certain distance of plaintiff's home *in Kansas City*. *E.g.*, *id.* at 108 (Pl. Dep. Ex. 10) ("I recommend [plaintiff] stay closer to KC for her clinicals."); *id.* at 111 (Pl. Dep. Ex. 11) ("I recommend [plaintiff] not be any further than 45 minutes from her home in KC."). Indeed, plaintiff stipulated that her requested accommodation was for "clinical sites within 45 miles of her 'home in KC.'" Doc. 97 at 3 (PTO ¶ 2.a.). Plaintiff never requested—and defendant thus never approved—a free-roaming accommodation that

applied worldwide—or even nationwide—no matter where she lived. To be sure, the settlement agreement describes the accommodation as "placement at a clinical site or sites within approximately 45 minutes of [plaintiff's] home"—no mention of Kansas City. Doc. 118-2 at 93 (Pl. Dep. Ex. 3). But this silence that can't overcome the agreement's use of the word "approved." To allow plaintiff to stretch the accommodation beyond the approved accommodation would render the word "approved" meaningless. *See Dillard Dep't Stores, Inc. v. Hum. Res. Dep't*, 13 P.3d 358, 364 (Kan. Ct. App. 2000) (explaining "that an interpretation giving reasonable, effective meaning to all terms is preferred to one that leaves some terms with no effect"). In sum, all the facts in the summary-judgment record here reveals that the "approved disability accommodation" was placement near plaintiff's home in Kansas City.

Other extrinsic evidence supports this conclusion, too. The parties' negotiations suggest they shared an understanding that plaintiff wouldn't move until *after* graduating. While negotiating the settlement agreement, plaintiff's attorney asked for permission for plaintiff to complete coursework over winter break. Doc. 124-17 (Pl. Ex. 17). He explained that plaintiff's "husband is moving to Colorado and [plaintiff] needs to be able to reunite her family as quickly as possible." *Id.* Based on this request, the parties included a provision in the settlement agreement allowing plaintiff to complete coursework during part of the winter break. *See* Doc. 118-2 at 92 (Pl. Dep. Ex. 3). This negotiation history implies that plaintiff didn't intend to relocate until after completing her coursework. After all, she would have had no need to move "quickly" on her coursework to "reunite her family" unless she intended to complete it before moving. This history thus provides additional support that the parties understood "home" to refer to a fixed location.

Plaintiff disagrees, arguing the parties understood the settlement agreement to mandate a 45-minute placement regardless of where plaintiff lived. Doc. 124 at 20–21. To support her argument, plaintiff primarily relies on post-settlement-agreement communications informing plaintiff that defendant couldn't honor her accommodation in Colorado because of its belief that a Colorado law prevented placement there. *Id.* She argues that defendant wouldn't have needed to say anything if everyone understood the accommodation to apply only to her home in Kansas City. *Id.* The court isn't persuaded by this argument.

That defendant told plaintiff her accommodation wouldn't apply in Colorado hardly suggests the parties understood the settlement agreement to require defendant to find a placement there. In other words, these communications show that defendant gave plaintiff advanced warning that it wouldn't find her a clinical placement in Colorado. They don't show (as plaintiff contends) that defendant understood the settlement agreement to obligate it to provide such a placement. Critically, plaintiff hasn't adduced any evidence suggesting the parties understood plaintiff's "approved disability accommodations" at the time they signed the contract to require a 45-minute placement irrespective of plaintiff's location. Post-contract discussions don't change the agreement's plain reference to "approved" accommodations. Once more, the fundamental issue for plaintiff is that the only accommodation she ever requested expressly asked for placement within 45 minutes of "her home in KC." Doc. 118-2 at 111 (Pl. Dep. Ex. 11).[11]

Other clues in the settlement agreement suggest that the parties understood "Dehn's home" to refer to a static location. For instance, the settlement agreement envisioned potential changes to plaintiff's accommodations. But it doesn't give either party unilateral power to

[11] To be sure, "parties' subsequent conduct" might clarify their intent. *Iron Mound*, 313 P.3d at 812. Regardless, the relevant inquiry remains the parties' intent "at the time" they entered the agreement. *In re Matthews' Est.*, 493 P.2d at 564. The subsequent conduct here shows that defendant didn't believe that the settlement agreement required it to provide a placement for plaintiff in Colorado.

amend the existing accommodations. Instead, it set out that plaintiff could "seek additional, modified, or different accommodations for her disabilities through the proper processes at the University." Doc. 118-2 at 93 (Pl. Dep. Ex. 3).

Finally, interpreting "Dehn's home" as a fixed—rather than moving—location, is most reasonable. The "essence of definitions of 'home' indicate that a home is a 'domicile,' i.e., 'a person's fixed, permanent, and principal home for legal purposes.'" *Wihbey v. Zoning Bd. of Appeals*, 292 A.3d 21, 34 (Conn. App. Ct. 2023) (quoting Merriam-Webster's Collegiate Dictionary 371 (11th ed. 2003)), *aff'd*, 323 A.3d 324 (Conn. 2024). Under plaintiff's dynamic understanding of "home," plaintiff could move anywhere in the world and defendant would bear responsibility for finding plaintiff a clinical placement—even if none existed there. Kansas law disfavors such an unreasonable interpretation. *See Time Warner Ent. Co. v. Everest Midwest Licensee, L.L.C.*, 381 F.3d 1039, 1044 (10th Cir. 2004) (applying Kansas law and explaining that the law favors reasonable interpretations of contracts). Plaintiff's interpretation is an especially unreasonable one given the context surrounding the parties' agreement. A Kansas City institution, with a network of professional contacts in Kansas City, negotiated an agreement with a student living in Kansas City.

In short, the settlement agreement called for defendant to provide a clinical placement within 45 minutes of plaintiff's home *in Kansas City*. This conclusion means defendant didn't breach the contract by failing to find plaintiff a placement after she moved. Simply put, even viewed in the light most favorable to plaintiff, the extrinsic evidence here doesn't support a reasonable inference that the settlement agreement involved a placement for plaintiff outside of her home in Kansas City. So, plaintiff's theory of material breach predicated on this theory fails.

b. Neutral Grader

Plaintiff asserts a second breach, this one based on the neutral grader. Doc. 124 at 22–24. As plaintiff tells it, the neutral grader's effort came up short in two respects: (1) she graded too fast; and (2) she didn't review all of plaintiff's work. *Id.* Once more, no rational factfinder could find facts capable of supporting this theory of breach.

Fatally, plaintiff never identifies a portion of the settlement agreement that defendant violated. She asserts that it was defendant's "obligation to ensure that the neutral grading was carried out according to the Settlement Agreement's terms." *Id.* at 23. The court's review of the settlement agreement suggests otherwise. The contract specifies that the "Parties agree the neutral grader will review Dehn's written assignments in light of the packet of materials identified[.]" Doc. 118-2 at 91 (Pl. Dep. Ex. 3). But this provision is a far cry from requiring defendant to exercise oversight over the grader. Plus, it's not clear how defendant would exercise oversight given the agreement's requirement that defendant refrain from "ex parte communication with the neutral grader[.]" *Id.* at 90. Plaintiff never explains which part of the settlement agreement supports her argument that defendant materially breached their contract with one another based on the neutral grader's purportedly shoddy work. The court declines to come up with that explanation on her behalf. *See Meyer v. Bd. of Cnty. Comm'rs*, 482 F.3d 1232, 1242 (10th Cir. 2007) (explaining that courts "are not charged with making the parties' arguments for them"). If plaintiff thought some part of the settlement agreement required defendant to manage the grader, she should have cited it.

Even if the settlement agreement placed a duty on defendant to regulate the grader, plaintiff's argument still would fail. No part of the settlement agreement requires the grader to devote a certain amount of time grading. *See generally* Doc. 118-2 at 89–95 (Pl. Dep. Ex. 3). Plaintiff relies on an internal email, where defendant contracted with the grader and estimated

the task "may require approximately 80 hours of time." Doc. 124-21 at 19 (Giles Dep. Ex. 2). But the settlement agreement doesn't adopt this estimate as a part of the parties' bargain. And, as the court already explained in this Order's factual background, plaintiff's second allegation—that the grader didn't review all pages of her work—finds no support in the record. *See above* § I.

In short, the settlement agreement didn't require defendant to supervise the neutral grader. And even if it had, the summary-judgment record, even viewed in the light most favorable to plaintiff, can't support an inference that the grader violated any promise or term or condition in the settlement agreement. So, no rational trier of fact could conclude that defendant breached—let alone materially breached—the settlement agreement based on the grader's conduct.

That conclusion means that plaintiff's material-breach defense founders. The court takes up plaintiff's last line of defense against promises in the settlement agreement: public policy.[12]

3. Public Policy

Finally, plaintiff argues that the law doesn't tolerate contracts that subvert public policy. Doc. 124 at 19. Plaintiff has waived this argument with her perfunctory briefing, consisting of a single sentence and a citation to a single Supreme Court case. *E.g.*, *United States v. Moya*, 5 F.4th 1168, 1192 (10th Cir. 2021) (explaining that litigants waive arguments "when they are

[12] Defendant advances a novel alternative argument—that plaintiff can't declare a material breach without following the procedures of the Kansas Judicial Review Act. Doc. 118 at 18–21; Doc. 129 at 12–14. The court is skeptical of defendant's proposition. The procedural provision in the KJRA that plaintiff purportedly violated requires parties filing a "*petition* for judicial review of agency action" to file suit within 30 days of the agency action. Kan. Stat. Ann. § 77-613(d) (emphasis added). As the court reads the KJRA, there's no similar requirement to file timely other pleadings. *See id.* Plaintiff's briefing failed to raise this argument. And the court is equally unpersuaded by the arguments she did raise. *See* Doc. 124 at 25–26. Given that the court needn't decide the issue, it concludes that the safer route is to leave this novel issue of state law for another day, one when the adversarial-briefing process might field a stronger showing.

inadequately presented" (quotation cleaned up)); *Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020) ("This briefing-waiver rule applies equally to arguments that are . . . presented only in a perfunctory manner." (quotation cleaned up)). Even considering its merits, plaintiff's argument isn't compelling.

Kansas law may hold contracts "void as against public policy if they are injurious to the interests of the public or tend to interfere with the public welfare or safety." *Delaware Township v. City of Lansing*, 512 P.3d 1154, 1161 (Kan. 2022) (quotation cleaned up). Plaintiff, as the party challenging the contract, faces a high burden to claim the benefit of this exception. *See First Sec. Bank v. Buehne*, 501 P.3d 362, 365–66 (Kan. 2021). Courts presume that contracts are legal and "the paramount public policy is that freedom to contract is not to be interfered with lightly." *Id.* (quotation cleaned up). Plaintiff here has failed to muster any evidence or argument "to demonstrate a strongly held public policy interest is at stake." *Frost v. ADT, LLC*, 947 F.3d 1261, 1270 (10th Cir. 2020) (quotation cleaned up) (applying Kansas law).

Plaintiff asserts that enforcing the settlement agreement would permit defendant "to illegally discriminate or retaliate in the future" and thereby insulate defendant "from all liability." Doc. 124 at 19. The situation isn't nearly as dire as plaintiff paints it. The settlement agreement merely prevents plaintiff from re-litigating claims related to or arising from her clinical-placement issues. In any event, plaintiff can waive her statutory rights. And these principles, without far more than plaintiff musters here, can't suffice to overcome the public-policy interest in allowing the parties the freedom to contract. *See Frost*, 947 F.3d at 1270 (recognizing that statutory rights reflect a legislative determination of public policy but declining to read that principle so broadly to invalidate all provisions that override statutory rights). So, Kansas law doesn't provide the escape hatch that plaintiff hopes for.

4. Conclusion – Settlement Agreement

Plaintiff decided to trade away her right to sue defendant for a broad swath of claims "arising out of" and "relating to" past incidents—including the parties' preexisting disputes. Plaintiff's discrimination and retaliation claims predicated on defendant's purported failure to find her a clinical placement near her home in Colorado squarely fit within the settlement agreement's release and covenant not to sue. Such claims plainly arose out of—and certainly are related to—the pre-settlement-agreement incident involving plaintiff's demand for a 45-minute accommodation. Defendant thus deserves summary judgment against those claims. Likewise, defendant deserves summary judgment on its counterclaim—at least for the claims covered by the covenant not to sue. Plaintiff, without any lawful defense, breached the contract by suing defendant.[13] The court thus enters summary judgment against plaintiff's claims covered by the release and covenant not to sue—namely, any claim based on defendant's failure to find a clinical placement for plaintiff after she moved to Colorado.

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[13] Defendant asserts that it's entitled to specific performance as its contractual remedy. Doc. 118 at 32–33. Plaintiff never contests this argument. *See generally* Doc. 124. And the court agrees—at least insofar as defendant asks the court to dismiss plaintiff's claims. The covenant not to sue has "the effect of discharging [defendant] from liability" for the covered claims. *York v. InTrust Bank, N.A.*, 962 P.2d 405, 417 (Kan. 1998). So, defendant is entitled to the relief it seeks: dismissal of plaintiff's claims covered by the covenant not to sue.

The Pretrial Order suggests that defendant seeks an injunction "barring [plaintiff] from litigating any claims covered by the release and/or covenant not to sue, including the claims she asserts in this case." Doc. 97 at 33 (PTO ¶ 5.b.). This Order dismisses plaintiff's claims in this case, so defendant's request for an injunction barring plaintiff from litigating the claims she brings in this case is moot. And the court declines to enter an injunction barring plaintiff from suing again because defendant hasn't presented any evidence—or even argued—that plaintiff likely will file suit again. *See Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 8 (1978) ("An injunction can issue only after the plaintiff has established that the conduct sought to be enjoined is illegal and that the defendant, if not enjoined, will engage in such conduct." (quotation cleaned up)); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 401 (2013) (explaining that a party has standing to seek relief only where "threatened injury" is "certainly impending" (quotation cleaned up)).

In contrast, plaintiff's claims based on other post-settlement-agreement events survive this portion of the Order. But as the court explains, next, plaintiff's surviving claims fail on the merits. The court starts with plaintiff's discrimination claim.

B. Discrimination

Plaintiff asserts three flavors of discrimination claims based on issues that survive the court's settlement-agreement ruling. Specifically, she alleges that defendant discriminated against her by (1) refusing to teach her; (2) accusing that she posed a safety risk to faculty; and (3) failing to advise her that it couldn't provide her a clinical placement in Colorado. Doc. 124 at 29. These claims fail.

To prevail on her Rehabilitation Act claim of discrimination, plaintiff must adduce sufficient evidence for a rational factfinder to conclude that (1) she "is handicapped under the Act; (2) [she] is otherwise qualified to participate in the program; (3) the program receives federal financial assistance; and (4) the program discriminates against plaintiff based upon a disability." *Havens v. Colo. Dep't of Corr.*, 897 F.3d 1250, 1262 (10th Cir. 2018) (quotation cleaned up); *see* 29 U.S.C. § 794(a).

Consider, first, plaintiff's assertion that defendant's faculty refused to teach her. No rational trier of fact could find that defendant acted "solely by reason of her . . . disability." 29 U.S.C. § 794(a). Defendant hired an adjunct faculty to teach plaintiff in NSRG 927 because plaintiff previously had experienced issues with the tenured faculty. Doc. 118-5 at 16–17 (Shew Dep. 28:16–29:6). As defendant's employee explained, the purpose of that move was to "make [plaintiff] more comfortable." *Id.* Critically, plaintiff failed to controvert this explanation. *Compare* Doc. 118 at 12 (asserting this explanation), *with* Doc. 124 at 3 (listing this fact as an uncontroverted one). Plaintiff's concession sounds the death knell for her claim. Even if plaintiff could adduce some other evidence of discrimination, her concession that defendant

intended to place her with adjunct to resolve prior issues means that no rational jury could conclude that this was motivated "solely by reason of her . . . disability." 29 U.S.C. § 794(a).

Undeterred, plaintiff asserts that the discrimination from this faculty-placement decision was "obvious." Doc. 124 at 31. She explains that the underlying issues with the tenured faculty arose after plaintiff had complained about discrimination. *Id.* And she explains that one of defendant's faculty believed plaintiff was misusing accommodations. *Id.* These points—which don't suggest discrimination anyway—couldn't persuade a rational trier of fact that defendant discriminated against plaintiff *solely* because of her disability.

Plaintiff also hasn't adduced any evidence that the adjunct-faculty issue amounted to discrimination. Plaintiff never enrolled in a course for the summer 2023 semester, so defendant never furnished an adjunct faculty to instruct her. This point is undisputed. Plaintiff hasn't cited any authority—nor has the court located any—suggesting that a hypothetical future plan, one that never comes to fruition, can constitute discrimination. Stated differently, a merely hypothetical future plan doesn't violate the Rehabilitation Act unless plaintiff can show that it "deterred" her from "utilizing that service, program, or activity[.]" *Hamer v. City of Trinidad*, 924 F.3d 1093, 1107 (10th Cir. 2019). A mere plan to provide alternate instruction isn't discriminatory. That's especially true where plaintiff hasn't argued that the alternate instruction was inferior and where defendant never implemented the plan because plaintiff hasn't continued in defendant's program. *See Hampton v. Utah Dep't of Corr.*, 87 F.4th 1183, 1197 (10th Cir. 2023) (explaining that disparate-treatment claims require adverse action). The court thus grants summary judgment against plaintiff's discrimination claim based on faculty planning not to teach plaintiff.[14]

[14] The parties quibble about some procedural aspects of this claim. Defendant asserts that plaintiff waived the issue by failing to include it in the Pretrial Order. Doc. 118 at 17. And plaintiff asserts that

Plaintiff's next two discrimination theories—that defendant accused her of posing a safety risk to faculty and failed to advise her that it couldn't provide her a clinical placement in Colorado—likewise fail to raise triable issues. Doc. 124 at 29. An initial issue is that plaintiff's briefing on these theories is wholly perfunctory. *See id.* at 29, 31. Plaintiff never explains how these actions amounted to discrimination. Nor does she explain how any rational trier of fact could conclude that defendant acted "solely by reason of her . . . disability." 29 U.S.C. § 794(a). The court thus finds these claims of discrimination waived. *E.g.*, *Moya*, 5 F.4th at 1192; *Sawyers*, 962 F.3d at 1286.[15]

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defendant can't win summary judgment because it didn't address the adjunct-faculty issue in its opening brief. Doc. 124 at 31. The court disagrees with both sides.

Liberally construed, the Pretrial Order preserves this claim. *See Koch v. Koch Indus., Inc.*, 203 F.3d 1202, 1220 (10th Cir. 2000) (explaining that courts liberally construe pretrial orders "to cover any of the legal or factual theories that might be embraced by its language" (quotation cleaned up)). Although the Pretrial Order's description of plaintiff's discrimination claim says nothing about adjunct faculty, it suggests that "hostility" and "negative treatment" were among the ways defendant had discriminated. Doc. 97 at 28–29 (PTO ¶ 4.i.c.). And plaintiff's factual contentions mention that defendant's faculty "decided that they would no longer instruct Ms. Dehn and that all of her future instructors would be adjunct faculty[.]" *Id.* at 22 (PTO ¶ 3.a.). So, liberally construed, the Pretrial Order preserves plaintiff's claim that defendant discriminated against her when it assigned her to an adjunct instructor.

The court likewise declines to adopt plaintiff's position that defendant has waived any request for summary judgment against this claim by failing to discuss it in its opening brief. The Pretrial Order is far from clear that plaintiff intended to assert this as a basis for discrimination. The court declines to reward parties who hide elephants in mouseholes. Defendant did exactly what it should have: Once plaintiff made it clear that she intended to assert the adjunct issue as a reason defendant discriminated against her, defendant substantively responded in its reply brief. Doc. 129 at 18–19. If plaintiff thought she could defeat these responses, she could have moved for leave to file a sur-reply. But it's difficult to imagine how any sur-reply could overcome plaintiff's concession, *i.e.*, that defendant assigned an adjunct faculty to make plaintiff more comfortable after plaintiff had accused the tenured faculty of discriminating against her.

In short, the court declines to decide this claim on procedure. Defendant deserves summary judgment because plaintiff hasn't marshalled evidence that suffices for a rational factfinder to find for her on this form of her discrimination claim.

[15] Plaintiff's briefing hints at a more generic hostile-environment claim. *See* Doc. 124 at 31–32. To the extent she asserts such a claim, it isn't a triable one. Plaintiff hasn't adduced any evidence that she was "subjected to any offensive remarks, intimidations, ridicule, insult, physical threats, or humiliation." *Dye v. Moniz*, 672 F. App'x 836, 840 (10th Cir. 2016).

Regardless of plaintiff's briefing failures, no rational trier of fact could conclude that an internal email where one of defendant's employees alluded to safety concerns about plaintiff amounted to disability discrimination. Plaintiff never has explained what adverse consequence she suffered as a result of this email. What's more, the employee who listed a concern for safety explained that it was a reference to "emotional work" and "hard feelings" after plaintiff had "multiple complaints . . . against a multitude of people." Doc. 124-4 at 12–13 (Busenhart Dep. 82:1–84:4). Whatever it might conclude about that employee's emotional fortitude, no reasonable jury could conclude that the employee raised a safety concern "solely by reason of" plaintiff's disability. 29 U.S.C. § 794(a).

Similarly, plaintiff's conclusory assertion that defendant failed to notify her that it couldn't provide her a clinical placement in Colorado falters. Nothing conferred a right to plaintiff to receive this notice. And defendant didn't know that plaintiff planned to move to Colorado. It's undisputed. Defendant learned of her move only after plaintiff had completed her move. Plaintiff hasn't adduced any evidence—zero—permitting a reasonable jury to find that defendant's purportedly late communication was motivated by plaintiff's disability. Nor has plaintiff explained why failing to supply information to a student—in the absence of any request—amounts to discrimination within the Rehabilitation Act. *See Hampton*, 87 F.4th at 1197 (explaining that a disparate treatment claim under the Rehabilitation Act requires plaintiff to suffer an adverse action); *see also Palmer v. McDonald*, 624 F. App'x 699, 705 (11th Cir. 2015) (explaining that minor inconveniences can't support Rehabilitation Act discrimination claim).

The long and short of it is this: plaintiff has adduced zero evidence that her disability motivated the actions she now faults defendant for taking. And even if she had done so, no

reasonable trier of fact could conclude that defendant acted adversely to plaintiff "solely by reason of her . . . disability." 29 U.S.C. § 794(a). Defendant thus deserves summary judgment against plaintiff's Rehabilitation Act discrimination claim.

The court tackles plaintiff's retaliation claim, next.

C. Retaliation

To survive summary judgment on her Rehabilitation Act retaliation claim, plaintiff must adduce sufficient evidence for a reasonable factfinder to find that: "(1) [s]he engaged in protected opposition to discrimination; (2) a reasonable [person] would find the challenged action materially adverse; and (3) a causal connection exists between the protected activity and the materially adverse action." *Hampton*, 87 F.4th at 1199. "If a plaintiff establishes a prima facie case, the defendant has the burden of coming forth with a legitimate, nondiscriminatory reason for adverse action." *Hennagir v. Utah Dep't of Corr.*, 587 F.3d 1255, 1265 (10th Cir. 2009) (quotation cleaned up). "If the defendant can do so, the burden shifts back to the plaintiff to show that the reason given by the [defendant] is mere pretext for the real, discriminatory reason for the adverse action." *Id.* (quotation cleaned up). Plaintiff's retaliation claim here can't withstand this formulation at summary judgment.

Plaintiff asserts that defendant unlawfully retaliated against her after she filed complaints alleging retaliation and discrimination. Doc. 124 at 32. She identifies these adverse actions: (1) defendant's faculty refused to teach plaintiff; and (2) defendant failed to inform plaintiff that she couldn't complete clinical coursework in Colorado. *Id.* at 33–35.[16] And she asserts that a causal connection links her protected activity to these purportedly adverse actions because defendant's

[16] She also asserts that defendant's failure to find her a clinical placement after she moved was a materially adverse action. Once more, the settlement agreement bars that claim.

faculty internally referenced her discrimination and retaliation complaints when they decided that adjunct faculty should teach her. *Id.* at 33, 36.

Plaintiff's theories fail the third element because they weren't materially adverse. A materially adverse action is one that "well might have dissuaded a reasonable [student] from making or supporting a charge of discrimination." *Proctor v. United Parcel Serv.*, 502 F.3d 1200, 1208 n.4 (10th Cir. 2007) (quotation cleaned up); *see also Brown v. Austin*, 13 F.4th 1079, 1090 (10th Cir. 2021) (explaining that the standard is whether "a reasonable employee would have found the challenged action materially adverse"). As the court already has explained, plaintiff hasn't demonstrated that defendant's decision to hire adjunct faculty to teach plaintiff was materially adverse. For one thing, the plan never came to fruition. What's more, plaintiff agreed to the plan, responding "perfect" when Shew pitched it to her. Doc. 124-7 at 17:30–18:00 (Pl. Ex. 6). Nor has plaintiff asserted, much less explained, the problem with adjunct instruction. Without that explanation, it's difficult to see how assigning adjunct faculty to instruct plaintiff was materially adverse—particularly when plaintiff herself expressed that she preferred not to encounter the existing faculty. *Id.* The same issue plagues plaintiff's failure-to-inform theory. Plaintiff already had moved by the time that she told defendant about her relocation. Plaintiff simply hasn't explained why a delay of about two months in telling her about the restriction on Colorado placements adversely affected her, or how it would dissuade a reasonable student from bringing forward a charge of discrimination or retaliation. So, she hasn't generated a triable issue that defendant retaliated against her.

D. Conclusion – Summary Judgment

The court grants defendant's Motion for Summary Judgment (Doc. 117). Plaintiff released defendant from liability and promised not to sue for the bulk of her claims. Her remaining claims fail on their merits. On this summary judgment record, no rational trier of fact

could conclude that defendant unlawfully discriminated based on disability or retaliated based on her filing complaints.[17]

IV. Docket Clean-Up

Because this Order resolves all claims in this case, defendant's pending *Daubert* motions are moot. The court thus denies defendant's Motion to Exclude Plaintiff from Testifying (Doc. 90) and Motion to Exclude the Testimony of Dr. Nik Volkov (Doc. 92) as moot.

The court grants plaintiff's Motion for Leave to File Under Seal (Doc. 112) and Motion for Leave to File Under Seal (Doc. 121). The court didn't rely on any of the materials plaintiff seeks to seal or redact in reaching the results of this Order. So, the public's interest in accessing these materials is minimal. Plus, plaintiff's privacy interests in her medical and personal-identifying information outweigh whatever interest the public holds in this information. The court thus grants plaintiff's motions and directs the Clerk of Court to seal the following exhibits on the docket permanently: Doc. 119, Doc. 102-1, Doc. 102-3, Doc. 102-5, Doc. 102-8, Doc. 102-9, and Doc. 102-11. The court directs the Clerk of Court to unseal the following exhibits: Doc. 102-2, Doc. 102-4, Doc. 102-6, Doc. 102-7, Doc. 102-10, and Doc. 102-12.[18]

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[17] Because the court grants defendant's motion for summary judgment on the merits of plaintiff's claims, the court has no reason to consider defendant's arguments that plaintiff isn't entitled to the damages she seeks. *See* Doc. 118 at 44–46.

[18] Plaintiff didn't comply with our court's redaction rule, found in D. Kan. Rule 5.4.2. Plaintiff filed both the unredacted versions and redacted versions of her documents under seal on the public docket. *See* Doc. 102. Our local rule directs the parties to file unredacted documents provisionally under seal. D. Kan. Rule 5.4.2(a). The rule then explains that a "court order on a motion to seal or redact will direct the party that provisionally file the document under seal to make the appropriate filing in the public record." D. Kan. Rule 5.4.2(d). In other words, parties should wait to file redacted versions of filings on the docket until the court decides the motion to seal—at which time the court will instruct the party to file the redacted version. *See id.*

V. Conclusion

The parties' settlement agreement bars the large balance of plaintiff's case. The thesis of her case—that defendant discriminated and retaliated by failing to find an accommodation within 45 minutes of her home in Colorado—arises out of and relates to the parties' pre-settlement-agreement tiff. For plaintiff's remaining claims, no rational trier of fact could find that defendant unlawfully discriminated or retaliated against her. The court thus enters summary judgment for defendant on all claims. The court directs the Clerk of Court to enter Judgment consistent with this Order and then close this case.

IT IS THEREFORE ORDERED BY THE COURT THAT defendant's Motion for Summary Judgment (Doc. 117) is granted.

IT IS FURTHER ORDERED THAT defendant's Motion to Exclude Plaintiff from Testifying (Doc. 90) is denied.

IT IS FURTHER ORDERED THAT defendant's Motion to Exclude the Testimony of Dr. Nik Volkov (Doc. 92) is denied.

IT IS FURTHER ORDERED THAT plaintiff's Motion for Leave to File Under Seal (Doc. 112) is granted.

IT IS FURTHER ORDERED THAT plaintiff's Motion for Leave to File Under Seal (Doc. 121) is granted.

IT IS SO ORDERED.

Dated this 20th day of August, 2026, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge