

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION**

**JENNIFER KEETON,**

Plaintiff,

v.

**MARY JANE ANDERSON-WILEY**, Associate Professor, Augusta State University; **PAULETTE SCHENCK**, Assistant Professor; **RICHARD DEANER**, Assistant Professor; **WAYNE LORD**, Chairman of Department of Educational Leadership, Counseling, and Special Education; **GORDON EISENMAN**, Dean of the College of Education; **WILLIAM A. BLOODWORTH, JR.**, President of Augusta State University; **ROBERT F. HATCHER**, Chairman of the Board of Regents of the University System of Georgia; **WILLIS J. POTTS, JR.**, Vice-Chairman of the Board of Regents; and **KENNETH R. BERNARD, JR.**, **JAMES A. BISHOP**, **FREDERICK E. COOPER**, **LARRY R. ELLIS**, **C. THOMAS HOPKINS, JR.**, **FELTON JENKINS**, **W. MANSFIELD JENNINGS, JR.**, **JAMES R. JOLLY**, **DONALD M. LEEBERN, JR.**, **WILLIAM H. NESMITH, JR.**, **DOREEN STILES POITEVINT**, **WANDA YANCEY RODWELL**, **KESSEL STELLING, JR.**, **BENJAMIN J. TARBUTTON, III**, **RICHARD L. TUCKER**, and **LARRY WALKER**, Members of the Board of Regents,

Defendants.

**VERIFIED COMPLAINT**

**JURY DEMAND ENDORSED HEREON**

Comes now Plaintiff, by and through counsel, and states the following:

## **INTRODUCTION**

1. This is a civil rights action brought to vindicate Plaintiff Jennifer Keeton's constitutional rights of speech, belief, and religious exercise as against the ideologically heavy-handed impositions of representatives of Augusta State University (ASU). ASU faculty have promised to expel Miss Keeton from the graduate Counselor Education program, not because of poor academic showing or demonstrated deficiencies in clinical performance, but simply because she has communicated both inside and outside the classroom that she holds to Christian ethical convictions on matters of human sexuality and gender identity. Because Miss Keeton will not agree to undergo an ideological remediation program that requires both (1) that she submit to an extended supplemental curriculum of sources hostile to her belief-system, and (2) that she "alter her beliefs" (as the faculty put it) and agree to affirm the propriety of behaviors she believes immoral, the faculty has stated it will dismiss her from the graduate counseling program at ASU.

2. Moreover, ASU, acting through its authorized administrators and policymakers, maintains and enforces vague and overbroad speech regulations that chill and penalize constitutionally protected student speech. These policies are inherently manipulable and subjective in application, and facilitate penalizing the communication of ideas that are disfavored by the policy enforcers.

## **JURISDICTION & VENUE**

3. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights; under 28 U.S.C. § 2201(a), to secure declaratory relief; and under

28 U.S.C. § 2202, to secure preliminary and injunctive relief and damages.

4. The venue in this action is proper within this judicial district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 2.1(a), in that (i) the Defendants are situated within this judicial district, and (ii) a substantial part of the claims asserted by Plaintiff arose within this judicial district and division.

**PLAINTIFF**

5. Plaintiff Jennifer Keeton is a student at Augusta State University (ASU) who is enrolled in the College of Education's School Counselor masters degree program.

**DEFENDANTS**

6. Defendant Mary Jane Anderson-Wiley is, and was at all times relevant to this Complaint, Associate Professor in the ASU College of Education's Department of Educational Leadership, Counseling, and Special Education. Dr. Anderson-Wiley's duties include teaching and oversight of student education and discipline, participation in making policy that governs students enrolled in the Education Department's Counselor Education Program as well as the wider university, and in enforcing various department and university policies and procedures. She is sued in her individual and official capacities.

7. Defendant Dr. Paulette Schenck is, and was at all times relevant to this Complaint, Assistant Professor in the ASU College of Education's Department of Educational Leadership, Counseling, and Special Education. Dr. Schenck's duties include teaching and oversight of student education and discipline, participation in making policy that governs students enrolled in the Education Department's Counselor Education Program as well as the wider university, and in enforcing various department and university policies and procedures. She is sued in her individual and official capacities.

8. Defendant Dr. Richard Deaner is, and was at all times relevant to this Complaint,

Assistant Professor in the ASU College of Education's Department of Educational Leadership, Counseling, and Special Education. Dr. Deaner's duties include teaching and oversight of student education and discipline, participation in making policy that governs students enrolled in the Education Department's Counselor Education Program as well as the wider university, and in enforcing various department and university policies and procedures. He is sued in his individual and official capacities.

9. Defendant Dr. Wayne Lord is, and was at all times relevant to this Complaint, Chairman of the Department of Educational Leadership, Counseling and Special Education at ASU. Dr. Lord's duties include overseeing academic administration for the department, teaching and oversight of student education and discipline, participation in making and approving policy that governs students enrolled in the Education Department's Counselor Education Program as well as the wider university, and in enforcing various department and university policies and procedures. He is sued in his individual and official capacities.

10. Defendant Dr. Gordon Eisenman is, and was at all times relevant to this Complaint, Dean of the College of Education at ASU. Dr. Eisenman's duties include overseeing academic and faculty administration of the College of Education, review and authorization of policies governing students in the College of Education—including policies discussed and challenged herein, and oversight of education and discipline of students in the College of Education. He is sued in his individual and official capacities.

11. Defendant Dr. William A. Bloodworth, Jr. is, and was at all times relevant to this complaint, the President of Augusta State University (ASU). His duties include, among others, authorizing and/or executing the policies governing faculty and students at ASU, and overseeing the operation and management of that University. As president, he possesses the power to veto

any act of any council, faculty, or committee of the University. Dr. Bloodworth is sued in his individual and official capacities.

12. Defendants Robert F. Hatcher, Willis J. Potts, Jr., Kenneth R. Bernard, Jr., James A. Bishop, Frederick E. Cooper, Larry R. Ellis, C. Thomas Hopkins, Jr., Felton Jenkins, W. Mansfield Jennings, Jr., James R. Jolly, Donald M. Leebern, Jr., William H. NeSmith, Jr., Doreen Stiles Poitevint, Wanda Yancey Rodwell, Kessel Stelling, Jr., Benjamin J. Tarbutton, III, Richard L. Tucker, and Larry Walker are, and were at times relevant to this Complaint, members of the Board of Regents of the University System of Georgia. These defendants' duties include, among others, the adoption and authorization of policies that govern students at ASU—including policies discussed and challenged herein, and the oversight of operation of ASU. The defendants named in this allegation are sued in their official capacities only.

#### **I. DEFENDANTS' VIOLATIONS OF MISS KEETON'S CONSTITUTIONAL RIGHTS**

##### **MISS KEETON'S BELIEFS, CONVICTIONS, AND GOALS**

13. Miss Jennifer Keeton determined to pursue a master's degree in school counseling at Augusta State University in furtherance of her goal to serve and encourage young people, as they contend with the challenges their time in life brings them.

14. Miss Keeton is a Christian, and her convictions concerning human nature, the purpose and meaning of life, and the ethical standards that are to govern human conduct are drawn from the counsel presented in the Holy Bible. So also is her Christian faith the source of motivation for her professional pursuit to encourage and assist young students.

15. Miss Keeton initiated her studies in the ASU program in the fall semester of 2009. Since that time, she has completed both the fall 2009 and spring 2010 semesters, as well as two summer session courses. However, ASU faculty members have informed her that she will be dismissed from the counseling program because she refuses to participate in a remediation plan

that requires that she alter her central religious beliefs on human nature and conduct.

#### **MISS KEETON'S COMMUNICATION OF HER BELIEFS**

16. In certain of her classes in the counseling program, Miss Keeton has communicated in class discussion as well as written assignments her religiously-informed views of gender and sexuality. She has stated that she believes sexual behavior is the result of accountable personal choice rather than an inevitability deriving from deterministic forces. She also has affirmed binary male-female gender, with one or the other being fixed in each person at their creation, and not a social construct or individual choice subject to alteration by the person so created. Further, she has expressed her view that homosexuality is a "lifestyle," not a "state of being."

17. In certain personal conversations away from the classroom with friends and colleagues, Miss Keeton has shared her Christian faith, and commended its virtues and benefits. In the course of such discussions, she has also communicated Christian viewpoints on matters related to sexual ethics.

18. Miss Keeton has never stated in class, or to fellow students outside of class, that her Christian ethical views entail that she does not affirm the inherent dignity of or care for other persons because of their views or behavior related to gender or sexual conduct. Indeed, Miss Keeton's biblical convictions are entirely to the contrary, for these establish the dignity of and respect owing to all persons due to their ontological status as created in the image of God.

#### **COUNSELOR EDUCATION PROGRAM REMEDIATION PLAN PROCESS**

19. The Augusta State University College of Education Department of Educational Leadership, Counseling and Special Education has, pursuant to authority vested in it by the University System of Georgia (USG) Board of Regents and affirmed by the President of Augusta State University, published a Counselor Education Program Student Handbook, the terms of which define and govern the operation of the counseling program, and students' participation in

it. (This Handbook is attached as Exhibit A to this Verified Complaint, and its content incorporated herein by this reference.)

20. The Counselor Education Program Student Handbook sets forth the authority that the University's governing officials have vested in the Counselor Education faculty to evaluate students on interpersonal or professional criteria unrelated to academic performance; to place students receiving unsatisfactory assessments on such considerations on remediation status; to impose conditions on students during their remediation status; and to reinstate or terminate students from the program based on compliance with the remediation plan imposed by the faculty.

21. The Counselor Education Program Student Handbook includes under the section heading "Procedural Guidelines for the Evaluation and Retention of Students Pursuing the Master's Degree in Counselor Education" the following:

When a student's progress is not satisfactory on interpersonal or professional criteria unrelated to academic performance, she or he may be placed on remediation status.

22. The Counselor Education Program Student Handbook goes on to recite that in the event such remediation is imposed,

the following process will occur:

. . . [T]he Remediation Plan will delineate what conditions the student must meet to be removed from remediation status. The student will also be informed of the consequences of the failure to comply with the outlined conditions, including the possibility that the student will be dropped from the Program.

At the end of the remediation period, the faculty will again assess the student's progress on the Remediation Plan and will inform the student (in writing) of their evaluation. It is common for a remediation period to last one semester. Usually, a student is either reinstated fully or is terminated from the Program at this time.

#### **FACULTY IMPOSITION OF REMEDIATION PLAN REQUIREMENTS ON MISS KEETON**

23. On or about the third week in May, 2010, Dr. Mary Jane Anderson-Wiley called Miss Keeton on the telephone and notified her that she would be asked to participate in a re-

mediation plan and that a meeting was scheduled for May 27, 2010 for her to discuss the plan with the faculty.

24. Dr. Anderson-Wiley also presented to Miss Keeton in that telephone call a brief summary of the reasons the faculty were imposing the remediation plan requirement. Dr. Anderson-Wiley first stated that the faculty would like to see Miss Keeton's writing skills improve and that she would need to take an English Composition class.

25. Dr. Anderson-Wiley then reported to Miss Keeton that the faculty is concerned with certain of Miss Keeton's beliefs and views that she has shared in class and with other students pertaining to GLBT (Gay, Lesbian, Bisexual, and Transgender) issues. The faculty identifies Miss Keeton's views as indicative of her improper professional disposition to persons of such populations.

26. On May 27, 2010, Miss Keeton appeared for the remediation meeting held in the conference room in the Counseling Program faculty offices. The Counseling Program faculty members present at the meeting were Dr. Mary Jane Anderson-Wiley and Dr. Paulette Schenck. Dr. Richard Deaner arrived toward the end of the meeting. No other faculty members attended.

27. At the beginning of the meeting, Dr. Anderson-Wiley and Dr. Schenck provided Miss Keeton a copy of a document containing the terms of a Remediation Plan designed for her, dated May 27, 2010. (That document is attached hereto as Exhibit B and incorporated herein by this reference.) These faculty members explained to Miss Keeton that they considered her to be failing to conform to certain professional standards.

28. The written Remediation Plan given Miss Keeton presents two areas of required improvement. One identifies that her written assignments need to improve in technical-grammatical and organizational quality, and requires certain remediation steps to be taken. The second



identifies as professionally suspect her views on homosexuality and transgendered persons.

29. The Remediation Plan, at page 3, states as follows:

Another equally important question that has arisen over the last two semesters is Jen's ability to be a multiculturally competent counselor, particularly with regard to working with gay, lesbian, bisexual, transgender, and queer/questioning (GLBTQ) populations. Jen has voiced disagreement in several class discussions and in written assignments with the gay and lesbian "lifestyle." She stated in one paper that she believes GLBTQ "lifestyles" to be identity confusion. This was during her enrollment in the Diversity Sensitivity course and after the presentation on GLBTQ populations.

30. The faculty members were not only provoked by the views that Miss Keeton allegedly presented in the classroom. Her alleged discussions outside of class also gave them concern. The written Remediation Plan continues:

Faculty have also received unsolicited reports from another student that [Miss Keeton] has relayed her interest in conversion therapy for GLBTQ populations, and she has tried to convince other students to support and believe her views.

31. The faculty presentation in the written Remediation Plan goes on to opine that Miss Keeton's alleged speech, which presents the ideas recounted above, is a violation of the codes of ethics to which counselors and counselors-in-training are required to adhere, including those of the American Counseling Association and the American School Counselors Association.

32. The faculty members in the Remediation Plan further opine that Miss Keeton's views depart from what "the psychological research about GLBTQ populations asserts," *viz.*, that "sexual orientation is not a lifestyle or choice, but a state of being."

33. The faculty members also stated in the Remediation Plan their opinion that psychological research reveals that conversion therapy is ineffective and may be harmful. The faculty members additionally note in the Remediation Plan that the American Psychological Association in 1973 removed homosexuality from its list of mental disorders.

34. The Remediation Plan further sets forth that Miss Keeton, "[t]o address issues of

multicultural competence and develop understanding and empathy,” must do the following:

- Jen will attend at least three workshops prior to the end of the fall 2010 semester which emphasize improving cross-cultural communication, developing multicultural competence, or diversity sensitivity training toward working with GLBTQ populations. She will provide to her advisor evidence in the form of attendance certificates.
- Jen will continue to develop her knowledge base on GLBTQ issues by outside reading on the topic. She will read at least ten articles in peer-reviewed counseling or psychological journals that pertain to improving counseling effectiveness with GLBTQ populations. There is much research available on the ALGBTIC [Association for Lesbian, Gay, Bisexual, and Transgender Issues in Counseling] webpage under Resources.
- Jen will work to increase exposure and interaction with gay populations. One such activity could be attending the Gay Pride Parade in Augusta. She will report on these interactions in her reflections (below).
- Jen will familiarize herself with the ALGBTIC Competencies for Counseling Gays and Transgender Clients.
- Each month Jen will submit a two-page reflection to her advisor that summarizes what she learned from her research, how her study has influenced her beliefs, and how future clients may benefit from what she has learned.
- Based on these written reflections and two scheduled meetings with Jen prior to December 2010, faculty will decide the appropriateness of her continuation in the counseling program.

35. The written Remediation Plan concludes with the following admonition:

Please note that failure to complete all elements of the remediation plan will result in dismissal from the Counselor Education Program.

36. The ALGBTIC Competencies cited in the Remediation Plan refers to the standards of counseling urged by the Association for Lesbian, Gay, Bisexual, and Transgender Issues in Counseling. The ALGBTIC takes the organizational position that transgender and homosexual behavior and identification is moral and healthy. The resources found on its website affirm, as a general matter, the ethical propriety of homosexual identification and behavior, and the non-binary and choice-susceptible character of gender.

37. The counseling faculty's inclusion of the writing and composition component in Miss Keeton's Remediation Plan was pretextual.

#### **REMEDICATION PLAN MEETING DISCUSSION**

38. In the May 27, 2010 meeting in which this Remediation Plan was discussed, the faculty members directed almost the entirety of the discussion to Miss Keeton's views on matters pertaining to gender and homosexuality, which views they identified as unacceptable in the counseling profession.

39. In the meeting, Dr. Schenck referenced a time in which Miss Keeton had in class stated her view that homosexuality implicates a behavioral choice, after Dr. Schenck had opined in that class that homosexuality is not a choice, but a state of being. Dr. Schenck stated that after that class incident she had made a note to herself that this was a matter she would need to address later with Miss Keeton.

40. Miss Keeton stated to the faculty members at the meeting that she never has communicated anything about "conversion therapy" as such, though she has spoken with other students about her religious beliefs on GLBT issues.

41. Miss Keeton stated that she did not understand why the faculty thought it a problem that she shared her religious beliefs with other students. Dr. Schenck responded that there are limits on what views Miss Keeton may express even outside the classroom or the counseling room.

42. Miss Keeton further stated to the faculty members that she does not see why her biblical ethical views would disqualify her competence as a counselor or should affect her standing in the counseling program. She noted that the faculty had no basis for assuming her clinical performance as a counselor would be in any way inappropriate.

43. Dr. Anderson-Wiley critically asked Miss Keeton to explain what the Bible stated about homosexuality. Miss Keeton noted that she was not prepared to give extemporaneously a

comprehensive answer to that question, but did respond by briefly discussing one portion of biblical material on the issue, and she stated that homosexuality implicates a choice of conduct.

44. Miss Keeton asked Dr. Anderson-Wiley how her Christian convictions are any less acceptable than those a Buddhist or Muslim student may possess. Dr. Anderson-Wiley stated, “Christians see this population as sinners.”

45. Miss Keeton responded to Dr. Anderson-Wiley that all people are sinners, including herself, and she would be happy to concede that to anyone, in any population.

46. Dr. Anderson-Wiley, holding her hands out to represent the two options, told Miss Keeton that she had a choice of standing by the Bible or by the ACA Code of Ethics.

47. Miss Keeton stated if there is no middle ground that conforms to both, her fidelity is to the Bible.

48. Dr. Schenck stated to Miss Keeton, “You couldn’t be a teacher, let alone a counselor, with those views.” Miss Keeton was stung by that comment, which excluded her and those with her convictions from two professions.

49. Dr. Anderson-Wiley and Dr. Schenck stated their opinion that Miss Keeton is prejudiced because of her ethical views on GLBT issues.

50. Miss Keeton stated to these professors that their assessment was unfair, and that they had no basis on which to conclude that she harbors irrational prejudice against anyone, or treats or would treat any person less than respectfully.

51. Dr. Anderson-Wiley explained to Miss Keeton that the faculty members were asking her to alter some of her beliefs.

52. Dr. Anderson-Wiley suggested that if Miss Keeton were to depart from the ASU counseling program, she had other educational options. Dr. Schenck suggested to Miss Keeton

that she might consider stepping away from the ASU program to pursue a degree through a Christian counseling program.

53. At the end of the meeting, the faculty present sought to obtain Miss Keeton's agreement to sign off on the remediation plan.

54. In participating in the meeting, Miss Keeton was substantially intimidated, being sensitive to the evident power imbalance in the gathering. She was alone and without assistance, outnumbered by her more knowledgeable, sophisticated, and experienced professors, who made it clear they held power over her academic future. While she maintained the strength of her convictions, she was intimidated by the accusations directed at her and by her professors' confident assertions that her biblical convictions rendered her unfit for her chosen profession.

55. Miss Keeton resisted signing the Remediation Plan, stating that she needed time to consider carefully all that had been presented her.

56. The participating faculty members proposed reconvening at a second meeting to discuss the remediation plan with Miss Keeton. In the days that followed, it was resolved that the next meeting would be set for Thursday, June 10, 2010.

#### **MISS KEETON'S EVALUATION OF THE REMEDIATION PLAN**

57. Miss Keeton gave consideration to her options in the days following the May 27, 2010 meeting. She did not want to be subject to the terms of the second portion of the remediation plan, which required her to be subject to a sustained program of proselytizing that was overtly hostile to her Christian convictions, which no other student was required to endure in order to remain in good standing in the program.

58. But Miss Keeton also did not want to be dismissed from the ASU counseling program. Upon investigation, Miss Keeton found that tuition is significantly more expensive at other schools with graduate counseling programs in the area. Also, those other schools would

not accept all of the class credits she had accrued at ASU, thus would not only require redundant academic work, but her transfer into such an alternate program would postpone the completion of her degree and her entry into the counseling profession—thereby disrupting specific plans she had made.

59. Miss Keeton resolved that since the only way for her to avoid being expelled from the program was to sign the Remediation Plan, she would sign the plan and thereafter seek to convince the faculty that her Christian views should not keep her from successfully completing the program.

60. On or about the end of the first week of June, 2010, Miss Keeton registered for the course “College Composition 1,” as required by the first portion of the Remediation Plan.

#### **SECOND REMEDIATION PLAN MEETING**

61. Miss Keeton appeared at the second scheduled remediation plan meeting on Thursday, June 10, 2010, and stated to the gathered faculty members that she was willing to sign the remediation plan, and wondered, therefore, if she needed to stay for a meeting.

62. The meeting, held again in the conference room of the counseling faculty office, proceeded. The faculty members present at the meeting were Dr. Anderson-Wiley, Dr. Schenck, and Dr. Deaner.

63. Early in the meeting, Dr. Schenck and Dr. Anderson-Wiley asked Miss Keeton to explain why she had decided that she was now willing to sign the Remediation Plan. Miss Keeton stated to them that upon reflection she determined that she is able both to affirm the dignity of her clients and to maintain her biblical values. She also explained that she wanted to complete the counseling program at ASU.

64. Dr. Schenck stated her concern that Miss Keeton’s decision to sign was motivated by an interest in remaining in the program, rather than a genuine willingness to reconsider her

views on GLBT matters.

65. Dr. Anderson-Wiley stated to Miss Keeton that her biblical views could be harmful to her future clients. Dr. Anderson-Wiley stated that in the remediation process she would want to see Miss Keeton consider that impact and recognize her need to alter some of her beliefs accordingly.

66. Dr. Schenck explained to Miss Keeton that a superficial change in her behavior was not their objective, but rather a fundamental change in her outlook. She explained that Miss Keeton should not think that she can maintain her current beliefs and successfully complete the Remediation Plan.

67. Miss Keeton explained that while she was willing to learn and expand her awareness of relevant professional considerations, she had entered the program with the understanding that she would be able to maintain her beliefs. Dr. Anderson-Wiley wondered where she would have gotten that idea.

68. Miss Keeton explained to the faculty that she wanted to stay in the program and proceed with the Remediation Plan, with hope that she could fulfill the required standards. Dr. Anderson-Wiley stated that this would be acceptable only if she understood what would be required of her, and that she should not waste her time otherwise.

69. The faculty presented to Miss Keeton the following as an instructive example of the required relationship between a counselor's personal beliefs and professional conduct: that while a counselor might oppose abortion personally, that counselor must affirm a client's decision to have an abortion and the propriety of that client's values in reaching such a conclusion.

70. Dr. Schenck asked Miss Keeton what she imagined the faculty wanted her to do in order to obtain their favorable review of her participation in the Remediation Plan. Miss Keeton responded that in addition to attending the events and completing the reading

assignments listed on the remediation plan, she understood from Dr. Anderson-Wiley's statement at the May 27th meeting that the faculty would like to see that she has altered certain of her beliefs.

71. Dr. Schenck explained that the alteration of beliefs that they were looking for is that Miss Keeton would no longer believe that her views should be shared by other people, and that she would come to believe that persons of homosexual orientation need not change and are fine just as they are.

72. Dr. Anderson-Wiley reiterated to Miss Keeton that the faculty's concerns about her arose because of statements that she had made in class regarding matters of sexual orientation, and from the fact that Miss Keeton had conversations with people in which she sought to convince them of her point of view.

73. Miss Keeton stated that she is still in the learning process, but at this point does not see her role as counselor as requiring her to reorder the lives of her clients, which her professors seemed to conclude was her position.

74. Dr. Deaner strongly recommended that Miss Keeton attend the Gay Pride Parade held in Augusta on the following weekend. Dr. Schenck and Dr. Anderson-Wiley suggested Miss Keeton seek out involvement with GLBT-affirming student groups in high schools. They also suggested resources for Miss Keeton to read, including materials made available by entities identified by the acronyms GLSEN and PFLAG.

75. At the end of the meeting, Miss Keeton signed the remediation plan.

#### **REVOCATION OF CONSENT TO THE REMEDIATION PLAN**

76. On Monday, June 14, 2010, Miss Keeton sent an email message to Drs. Deaner, Anderson-Wiley, and Schenck, which stated as follows:



I have been doing a lot of thinking since our meeting last Thursday when we talked about the remediation plan. At the meeting Dr. Anderson-Wiley and Dr. Schenck said it seemed like I was agreeing to the plan because I wanted to continue in the counseling program, not because I was willing to really consider changing my biblical views. That is true. I have thought all along that I am truly able to affirm the dignity of all my clients and give respect to them without agreeing that their sexual behaviors are right or healthy. That's why I thought I could sign the plan to stay in the program, and show you that my views are consistent with counseling goals.

I do want to get through the program and become a competent counselor. But after thinking more about all that was said at the meeting about needing to change certain views, I know I can't do that. My Christian moral views are not just about me. I think the Bible's teaching is true for all people, and it shows the right way to live. I don't think these views get in the way of ethical counseling. I really want to stay in the program, but I don't want to have to attend all the events about what I think is not moral behavior, and then write reflections on them that don't meet your standards because I haven't changed my views or beliefs, as stated in these papers or at our meetings. With that, I cannot honestly continue with the second part of the remediation plan. My biblical views won't change.

77. Later that day, Dr. Anderson-Wiley responded to Miss Keeton by email, thanking her for sharing her honest views and stating that the faculty would discuss her concerns and get back with her within the week.

78. Also responding by email to Miss Keeton later that day was Dr. Schenck. In her email, she stated the following:

Jennifer, you misinterpreted what I was saying. I do not expect you to change your personal beliefs and values. What is the issue is if you believe your personal beliefs and values should be the same beliefs and values for all people. This is the unethical part—applying your own personal beliefs and values on other people and not truly accepting that others can have different beliefs and values that are equally valid as your own.

79. On Tuesday, June 15, Dr. Anderson-Wiley again sent an email message to Miss Keeton, which contained the following:

Hi Jen,

I am writing to get clarification on your email. Are you saying that you have chosen not to complete the remediation plan in place and plan to withdraw from the program?

80. On Wednesday, June 16, Miss Keeton responded by email to Dr. Anderson-Wiley's request for clarification. In that message Miss Keeton wrote the following:

Dr. Anderson-Wiley,

I have not chosen to withdraw from the program. I really want to complete it. It's just that I know that I can't in good conscience go forward with the second part of the remediation plan after what you and Dr. Schenck told me at last Thursday's meeting about needing to alter my beliefs about whether other people's sexual decisions and transgender identities are okay. I can't do that. I believe the Bible's teaching applies to all people on who they are and how they should act, not just to me. From that, I see that some behaviors are not moral or positive. But it's because of my biblical beliefs that I do respect and care for all people and want to serve as a counselor. I think I can do that in a professional and ethical way without having to alter my beliefs on the GLBTQ issues. Does that give you more clarity?

Jen

81. On Friday, June 18, 2010, Dr. Anderson-Wiley sent an email message to Miss Keeton that included the following:

Hi Jen,

The faculty would like to meet with you to get clarity/closure on the Remediation Plan. Would you be available to meet on Monday, 6/21, or Tuesday, 6/22 at 2:00 pm? We will be off after that until August. Please let me know.

### **THIRD REMEDIATION PLAN MEETING**

82. On Tuesday, June 22, 2010, Miss Keeton met again with Dr. Anderson-Wiley, Dr. Schenck, and Dr. Deaner to discuss the remediation plan.

83. At the beginning of the meeting, Dr. Anderson-Wiley gave Miss Keeton a copy of a letter to her which she had drafted, and the faculty had agreed upon, which was to serve as an addendum to the Remediation Plan. Dr. Anderson-Wiley read the letter aloud at the meeting. That written addendum is attached as Exhibit C to this Verified Complaint, and its content incorporated herein by this reference.

84. The Addendum reiterates that the faculty's concerns about Miss Keeton "arose

through faculty interactions with you during classes, papers written by you for classes, and behaviors toward and comments to fellow students in your classes.” The faculty members in the letter also note that statements Miss Keeton made in her recent emails to them also give them concern.

85. The Addendum then specifically targets Miss Keeton’s beliefs. It observes that Miss Keeton believes that other people should act in accordance with her moral values. That belief, the faculty wrote, contradicts the principles contained in the American Counseling Association and American School Counselor Association Code of Ethics.

86. The faculty in the Addendum later explain the moral relativism that counselors must adopt in the counseling context:

The counseling profession requires its practitioners to recognize that people set and adhere to their own moral compass. The professional counselor’s job is to help clients clarify their current feelings and behaviors and to help them reach the goals that they have determined for themselves, not to dictate what those goals should be, what morals they should possess, or what values they should adopt.

87. The Addendum thereafter explains to Miss Keeton that she needs to “recogniz[e] that the client’s values should always be upheld, not questioned or altered.” The logical implications of that purported requirement were not explored in the letter.

88. The Addendum concludes by stating that if Miss Keeton chooses to not complete the plan as written, she will be dismissed from the counseling program.

89. After Dr. Anderson-Wiley read aloud the Addendum, Dr. Schenck told Miss Keeton that it was unethical for her to believe that her convictions should also be shared by other persons. Dr. Schenck explained that while Miss Keeton is free to have points of view about how she personally should conduct and define herself, she may not believe that others should adopt the standards she personally is convinced are true.

90. Dr. Schenck explained her point with the example she had shared at their previous meeting. Dr. Schenck stated that while she might personally oppose abortion, she would affirm

another person's right to choose to abort, and would not judge them negatively for doing so.

91. Miss Keeton stated that the Addendum inaccurately assumes that she would not be comfortable interacting with persons whose behavior or convictions she disagreed with, and that the faculty's conclusions are drawn exclusively from her statements about her biblical convictions (which do not imply the conclusion the Addendum draws), not from any demonstrated or observed social or professional conduct itself.

92. Miss Keeton explained that she can maintain a professional demeanor when counseling, and her beliefs do not entail that she must impose values on unwilling clients.

93. Miss Keeton further doubted the fairness of being charged with counseling incapacity because of her views when she had attained an A in the class specifically directed to the issue under discussion. That grade attainment, she stated, demonstrates her understanding of expected standards of interacting with diverse populations.

94. Moreover, Miss Keeton observed the faculty's peculiar justification for subjecting her to the remediation program—which includes conversations she had with other students outside of class. Miss Keeton noted this appears to show that the faculty members view her identity and beliefs as the reason for subjecting her to the remediation plan.

95. Miss Keeton asked the faculty members present whether they conceived any difference between imposing values on a client and not agreeing that a client's behavior was proper.

96. Dr. Deaner answered by stating that when one counsels a client who had or was planning on having an abortion, the counselor must not attempt to convince the client that having an abortion is the wrong course to take if the client wants to have an abortion. Dr. Schenck further elaborated that the counselor may not judge the abortion to be an immoral act if the client does not think it is.

97. Dr. Anderson-Wiley again reiterated that Miss Keeton's speech in the classroom and in conversation with other students is the foundation for their decision to subject her to the remediation plan. Dr. Schenck at times added that the content of Miss Keeton's email messages have since confirmed their concerns about Miss Keeton's views.

98. Miss Keeton also stated that she did not want to proceed with the plan because her success turns on the content of her reflection papers, which seem to require an evaluation of her beliefs, which to date have been the source of the trouble she now faces. As a result, she did not feel comfortable with proceeding in a plan that left her so apparently vulnerable to dismissal because of the content of her beliefs.

99. Miss Keeton stated to the faculty members that she believes that she will be able to avoid imposing her beliefs on a client, while also maintaining her convictions that certain behaviors are improper.

100. However, Miss Keeton did state that she would not in a counseling session agree with the propriety of homosexual relations, nor affirm the propriety of a client pursuing a life of, and a self-definition based on, homosexual relations.

101. Dr. Schenck and Dr. Deaner explained to Miss Keeton that it was a life and death matter to not affirm a client's sexual decisions, and that failing to do so has led and could lead to suicides by clients who are not affirmed in their sexual preferences.

102. Feeling entirely manipulated and intimidated by her professors' presentation, Miss Keeton thereafter stated that she was willing to comply with the previously resisted second portion of the Remediation Plan.

103. But Miss Keeton reiterated that she was uncomfortable going forward because when she has given voice to her beliefs—in class discussion, written assignments, or private

conversations—it resulted in her current precarious position and the faculty’s determination to subject her to remediation. Her biblical convictions have been the cause and target of the probation she now faces.

104. Dr. Anderson-Wiley confirmed that Miss Keeton will not be able to successfully complete the Remediation Plan and thus complete the ASU counseling program unless she commits to affirming the propriety of gay and lesbian relationships if such an opportunity arises in her future professional efforts.

105. Dr. Anderson-Wiley urged Miss Keeton to not spend any more time in the program, or pursue the Remediation Plan, if she does not think she will be willing or able to affirm clients’ homosexuality. She also urged Miss Keeton to consider completing her degree at another school, whose program is more consistent with her beliefs.

106. At the end of the meeting, Dr. Anderson-Wiley drafted a handwritten summary of the outcome of the meeting. Miss Keeton and each of the faculty members present then inscribed their initials on the document. Its contents read as follows:

6-22-10 Faculty met with Jen today and read the addendum. Jen seems to understand the faculty’s concern about the ethical violation of imposing one’s values on a client. Jen has agreed to complete the remediation plan that was signed on June 22 as written. Faculty agreed to allow Jen to take Practicum in fall 2010 and that the remediation plan must be completed to faculty satisfaction before she could enter Internship I. Jen needs to complete practicum (at ACS) and will complete Int[ernship] I and II in public school setting. Right now, Jen cannot affirm and attend to relationship issues of gay and lesbian persons, but she recognizes that through the remediation plan she may further learn to separate personal values and beliefs from those of the client so that she may attend to any need of future clients in an ethical manner.

(This document is attached hereto as Exhibit D, and incorporated herein by this reference.)

107. The faculty members provided a copy of the Addendum to Dr. Wayne Lord, Chairman of the Department of Educational Leadership, Counseling and Special Education at ASU. Drs. Anderson-Wiley, Schenck, and Deaner have consulted with Dr. Lord about their

intention to subject Miss Keeton to the Remediation Plan, their reasons for doing so, and their intention to expel Miss Keeton from the counseling program if she does not meet the conditions they have imposed. Dr. Lord has concurred in and authorized their continuing course of action.

#### **MISS KEETON'S WITHDRAWAL FROM REMEDIATION PLAN**

108. On Saturday, June 26th, 2010, Miss Keeton sent an email message to Dr. Anderson-Wiley, Dr. Schenck, and Dr. Deaner, stating the following:

The last few days I have again been doing a lot of reflecting. I have been reading through the papers you gave me at the meeting on Tuesday and thinking about all that was said there.

I had written to you before the meeting and said at the beginning of our meeting that I did not want to go forward with the second part of the remediation plan. I felt pressured into agreeing to the plan by the end of the meeting. But I am not willing to go through with that because I know what it will require from me.

At times you said that I must alter my beliefs because they are unethical. Other times you said that I can keep my beliefs so long as they are only personal and I don't believe that anyone else should believe like me. But that is just another way of saying that I must alter my beliefs, because my beliefs are about absolute truth. I understand the need to reflect clients' goals and to allow them to work toward their own solutions, and I know I can do that.

I know there is often a difference between personal beliefs and how a counseling situation should be handled. But in order to finish the counseling program you are requiring me to alter my objective beliefs and also to commit now that if I ever may have a client who wants me to affirm their decision to have an abortion or engage in gay, lesbian, or transgender behavior, I will do that. I can't alter my biblical beliefs, and I will not affirm the morality of those behaviors in a counseling situation.

I don't want any more meetings. My final answer is that I am not going to agree to a remediation plan that I already know I won't be able to successfully complete.

Jen

109. Miss Keeton remains committed to performing all of the terms of the first portion of the Remediation Plan, related to her composition skills.

110. Whether Miss Keeton declines to participate in the second portion of the

Remediation Plan, or agrees to participate but upon completion has not altered her beliefs on moral objectivity and agreed to affirm behavior she deems immoral, Defendants will expel her from the ASU graduate counseling program. Defendants have left Miss Keeton with no option that allows her to both maintain personal integrity and remain a student in the ASU counseling program.

### **CHILLING EFFECT OF FACULTY POLICIES AND RETALIATION**

111. The counseling faculty's adoption of policies drawn from professional ethics codes, and the faculty's retaliation for Miss Keeton's speech, has had and continues to have a chilling effect on Miss Keeton, causing her to self-censor in and out of academic settings at ASU.

112. In one such instance, in late June of this year, Miss Keeton attended her "Seminar in Group Process" psychology class, during which her professor presented statements to the students on matters of human sexuality and gender that conflicted with her biblical ethical views. Having been chastened by her counseling professors, and aware of the particular scrutiny to which she is now subject and the standards of measure being applied to her, Miss Keeton feared the negative consequences that might attend to her dissenting speech on this issue in a class required for her degree completion. As a result, she refrained from expressing her disagreement with the perspective propounded by her professor when that opportunity was available.

## **II. RELEVANT ASU POLICIES**

### **ASU STUDENT HANDBOOK**

113. The opening phrase of the ASU Student Handbook recites: "The student has a right to take reasoned exception to data and views offered in the classroom and to reserve judgment about matters of opinion without fear of penalty." (This handbook is attached hereto as Exhibit E, and its content incorporated herein by this reference.)

114. The ASU Student Handbook later states, under the heading "Classroom Expression & Course Related Behavior":



Discussion and expression of *all views relevant to the subject matter* are permitted in the classroom, subject only to the responsibility of the instructor to maintain order.

...

A. Students are responsible for learning *the content* of any course for which they are enrolled.

(Emphasis added.)

115. The Board of Regents for the University System of Georgia has issued the policies contained the “Board of Regents Policy Manual.” (Policy accessible at <http://www.usg.edu/policymanual/>.) Section 4.1.2 of the Board’s Policy sets forth in relevant portion the following:

The Board of Regents stipulates that no USG student, on the ground of . . . religion, [or] creed . . . be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Board of Regents of the University of Georgia or any of its several institutions now in existence or hereafter established.

#### **AUTHORITY GRANTED TO ASU PRESIDENT AND FACULTY BY USG BOARD OF REGENTS**

116. Under the terms of the Board of Regents Policy Manual section 2.5.1 (“Executive Head of Institution”), the President of ASU (as a member of the University System of Georgia) is responsible for the operation and management of the University, and for the execution of all directives of the Board of Regents and Chancellor. Under Board of Regents Policy Manual section 2.5.2, the president has the power to veto any act of any council, faculty, or committee of the University.

117. Section 3.1 of the Board of Regents Policy Manual sets forth the following:

The Board of Regents shall rely on the Chancellor, the presidents of all USG [University System of Georgia] institutions, and their deans and faculties to develop, adapt, and administer the academic methods and procedures deemed by them to be most effective in promoting efficiency of operations and most appropriate to the advancement of learning. \* \* \* The Board of Regents shall expect of each president, his/her faculty and staff, the deans, and the faculties of each USG institution efficient service measured by approved academic standards, and shall look to them to promote effective higher education . . . . The Board is of

the opinion that it would not be reasonable to make USG academic authorities accountable for results obtained and at the same time deny them the power to choose ways and means they believe to be best adapted to achieve the ends desired.

118. The Board of Regents has delegated to the president and faculty of ASU the authority to create and enforce policies pertaining to student life and conduct, as well as educational environment and programs. Section 3.2.4 of the Board of Regents Policy Manual (“Faculty Rules and Regulations”) sets forth that:

The faculty, or the council, senate, assembly, or such other comparable body at an institution . . . shall, subject to the approval of the president of the institution:

1. Make statutes, rules, and regulations for its governance and for that of the students;
- . . .
3. Prescribe regulations regarding admission, suspension, expulsion, classes, courses of study, and requirements for graduation; and,
4. Make such regulations as may be necessary or proper for the maintenance of high educational standards.

. . . The faculty shall also have primary responsibility for those aspects of student life which relate to the educational process, subject to the approval of the president of the institution.

119. In conformity with the Board of Regents policies set forth above, the faculty and president of ASU have established, authorized, and published the policies set forth in the allegations that follow.

**COUNSELING DEPARTMENT PROGRAM POLICIES:**

▪ **ASU EDUCATION COUNSELING PROGRAM HANDBOOK**

120. The ASU Education Counseling Program Student Handbook (at pages 62 and following) sets forth that the ASU Counselor Education Program has adopted into its own program standards the external standards published by the Professional Standards Commission (PSC) and National Council on the Accreditation of Teacher Education (NCATE), as well as

other relevant (though unnamed) professional standards. The Handbook also announces the applicability in the counseling program of relevant Board of Regents (BOR) standards.

121. The ASU Education Counseling Program Student Handbook similarly sets forth (at page 63) the requirement that all degree candidates must demonstrate the following “disposition”:

Candidates are familiar with the dispositions expected of professionals. Their work with students, families, and communities reflects the dispositions delineated in professional, state, and institutional standards.

Candidates: (both initial/advanced & Ed. Leadership, Counseling)

1. demonstrate the dispositions (emotions, *values*, *ethics*, etc.) expected of all professional educators (as delineated in professional, PSC, BOR [Board of Regent] standards)
2. recognize when their own dispositions may need to be adjusted
3. develop plans for adjusting dispositions (that they have recognized as needing adjustment)

(Emphasis added.)

122. The ASU Education Counseling Program Student Handbook also sets forth (at page 64) that the Counselor Education Program uses relevant external professional standards, in addition to PSC and BOR standards, as reference points for assessing students in the program.

123. The ASU Education Counseling Program Student Handbook (at pages 73 and following) also presents the Board of Regents’ Principles and Actions for the preparation of school counselors. These standards were established by the University System of Georgia Board of Regents in 2003, and became binding on the operation of the counseling program in the fall semester of 2004.

124. In the Board of Regents’ standards is found the following:

IIA(9). Demonstrate mastery and application of the *content knowledge* in each of the following eight core areas of counseling recommended by CACREP: 1) Professional Identity and Orientation; 2) Social and Cultural Diversity; 3) Human Growth and Development; 4) Career Development; 5) Helping Relationships; 6) Group

Work; 7) Assessment and Evaluation; and 8) Research and Program Evaluation.

(Emphasis added.)

▪ **ACA CODE OF ETHICS**

125. Drs. Anderson-Wiley, Schenck, and Deaner, in the written Remediation Plan and Addendum, and in the remediation plan meetings, instructed Miss Keeton that the American Counseling Association (ACA) Code of Ethics binds the students enrolled in the ASU school counselor program. (The ACA Code of Ethics is attached hereto as Exhibit F, and its content incorporated herein by this reference.)

126. The ACA Code of Ethics in its Purpose Statement identifies its purpose as disclosing the ethical standards that govern members of the American Counseling Association. The Code does not purport to govern the thoughts, beliefs, and speech of nonmembers.

127. Defendants Anderson-Wiley, Schenck, and Deaner applied the terms of the ASCA ethics document to Miss Keeton, asserting that it forbids her views and speech.

128. Included in the ACA Code of Ethics is the following provision:

**A.1.a. Primary Responsibility**

The primary responsibility of counselors is to respect the dignity and to promote the welfare of clients.

The code sets forth no required standard for how “the welfare of clients” is to be assessed and defined.

129. Also included in the ACA Code of Ethics is the following provision:

**A.4.a. Avoiding Harm**

Counselors act to avoid harming their clients, trainees, and research participants and to minimize or to remedy unavoidable or unanticipated harm.

The code sets forth no required standard for how “harm” is to be assessed and defined.

130. Also included in the ACA Code of Ethics is the following provision:

#### **A.4.b. Personal Values**

Counselors are aware of their own values, attitudes, beliefs, and behaviors and avoid imposing values that are inconsistent with counseling goals. Counselors respect the diversity of clients, trainees, and research participants.

The code sets forth no statement of which values are consistent with counseling goals.

131. Also included in the ACA Code of Ethics is the following provision:

#### **C.5. Nondiscrimination**

Counselors do not *condone* or engage in discrimination based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital status/ partnership, language preference, socioeconomic status, or any basis proscribed by law. Counselors do not discriminate against clients, students, employees, supervisees, or research participants in a manner that has a negative impact on these persons.

(Emphasis added.) The Code does not define what constitutes “discrimination” on the listed bases, nor does it apparently limit the reach of its “condone or engage” prohibition to the counseling setting.

132. The Introduction paragraph to **Section H** of the ACA Code of Ethics initiates with the following statement: “Counselors behave in a legal, ethical, and moral manner in the conduct of their professional work.” The Code does not identify the standard or standards legitimately applied to define the “moral” character of the conduct at issue, nor does it exclude any particular source of moral authority from guiding that decision.

133. The ACA Code asserts in section **F.8.a.** that counselors-in-training “have the same obligation to *clients* as those required of professional counselors.” (Emphasis added.)

#### **▪ ASCA Code of Ethics**

134. The American School Counselor Association (ASCA) publishes a document entitled “Ethical Standards for School Counselors,” last revised June 26, 2004. (This document is attached hereto as Exhibit G, and its content incorporated herein by this reference.)

135. The guidelines in that document are directed to those who are “professional school counselors.” While the Preamble of the ASCA document states that it “specifies the principles of ethical behavior necessary to maintain the high standards of integrity, leadership and professionalism *among its members*” (emphasis added), it further states that it lays claim to “[s]erve as a guide for the ethical practices of all professional school counselors,” regardless of population served by such counselors, or even whether they are members of the ASCA.

136. The content of the ASCA Ethical Standards for School Counselors document does not state that it presents standards that govern the thoughts, beliefs, or speech of those who are not professional school counselors.

137. Defendants Anderson-Wiley, Schenck, and Deaner applied the terms of the ASCA ethics document to Miss Keeton, asserting that it forbids her views and speech.

138. The Preamble to the ASCA document additionally states that

Professional school counselors . . . subscrib[e] to the following tenets of professional responsibility:

- Each person has the right to be respected, be treated with dignity and have access to a comprehensive school counseling program that advocates for and affirms all students from diverse populations regardless of ethnic/racial status, age, economic status, special needs, English as a second language or other language group, immigration status, sexual orientation, gender, gender identity/expression, family type, religious/spiritual identity and appearance.

The ASCA document does not explain the practical significance of a professional school counselor’s subscribing to such values or “tenets.” For instance, the document does not appear to authorize school counselors to give counsel to students that they should avoid relationships in which their “right” to be “respected” and “treated with dignity” is being abused. And the ASCA document does not identify what standard of evaluation informs the assessment of whether a person is, for example, being “respected” and “treated with dignity,” as opposed to being debased or exploited.

139. Defendants Anderson-Wiley, Schenck, and Deaner (in the written Remediation

Plan at page 3) have cited to and quoted the foregoing portion of the Preamble of the ASCA document as authority which forbids Miss Keeton’s “statements” and communicative “behaviors.”

140. The ASCA ethics document additionally presents the following:

**E.2. Diversity**

The professional school counselor:

- a. Affirms the diversity of students, staff and families.
- b. Expands and develops awareness of his/her own attitudes and beliefs affecting cultural values and biases and strives to attain cultural competence.
- c. Possesses knowledge and understanding about how oppression, racism, discrimination and stereotyping affects her/him personally and professionally.
- d. Acquires educational, consultation and training experiences to improve awareness, knowledge, skills and effectiveness in working with diverse populations; ethnic/racial status, age, economic status, special needs, ESL or ELL, immigration status, sexual orientation, gender, gender identity/expression, family type, religious/spiritual identity and appearance.

The ASCA document does not define or explicate what the phrase “affirms the diversity of” means, what “cultural competence” means, or what “oppression,” “discrimination,” and “stereotyping” encompass, or how such standards interact with the document’s later prohibition on the introduction of the counselor’s values in a counseling situation.

141. Defendants Anderson-Wiley, Schenck, and Deaner (in the written Remediation Plan at pages 3–4) have identified the foregoing content in section E.2. as forbidding Miss Keeton’s “statements” and communicative “behaviors,” though not explaining which specific portions forbid her speech, or why.

142. The ASCA Ethical Standards of School Counselors document additionally states:

**A.1. Responsibilities to Students**

The professional school counselor:

...

- c. Respects the student’s values and beliefs and does not impose the counselor’s personal values.

The ASCA document does not elaborate the logical implications of this counseling-room standard, and other sections of the document imply a contrary admonition.

- 143. The ASCA ethics document states at section **F.1.e.**:

The professional school counselor:

...

Clearly distinguishes between statements and actions made as a private individual and those made as a representative of the school counseling profession.

### **ASU SEXUAL HARASSMENT POLICY**

144. The ASU Faculty acting in assembly, together with the President of the University, have established a speech code policy that governs all ASU faculty and students. That policy is enshrined in the University’s Sexual Harassment Policy, and the terms of that policy are published in the ASU Student Handbook and at various links on the ASU website.

- 145. The Sexual Harassment Policy defines “Sexual Harassment” as follows:

Sexual harassment is unwelcome verbal or physical conduct of a sexual nature, which creates an unproductive or offensive, hostile, or intimidating working or learning environment and which has a harmful effect on an individual. . . .

146. The policy does not define the term “harmful effect,” or explain what “unproductive,” “offensive,” “hostile,” or “intimidating,” means in the context of the policy.

- 147. The policy goes on to state the penalties that attend to violation of the policy.

Sexual harassment of employees or students in the University System of Georgia is prohibited (Section 802.18 of Board of Regents Policy) and shall subject the offender to dismissal or other penalties in compliance with procedural due process requirements.

148. The written policy elaborates that “Unwelcome . . . verbal . . . conduct of a sexual nature [is] inappropriate in the university environment.”



149. The written policy presents non-exhaustive examples of forbidden sexual harassment, which include “*inappropriate comments* of a sexual nature including remarks about a person’s . . . *sexual activity . . . or orientation*” (emphasis added); and “*inappropriate* letters, notes, or other written materials.” (Emphasis added.) The policy does not explain what standard of measure is applied to determine the “inappropriateness” of comments or other forms of speech.

150. The policy confirms that a single remark can indeed constitute sexual harassment; though the policy notes that the violation in such case is unlikely. But the policy offers no explanation for that conjecture, and so it does not define the circumstances in which a single remark could constitute a violation of the policy. The policy merely states: “A single remark is *not likely* to be considered sexual harassment.” (Emphasis added.)

151. Moreover, the policy establishes that the ultimate determination of what constitutes sexual harassment is left to the subjective impression of an offended person, and to the calculation of a faculty committee. The policy states:

Such conduct constitutes sexual harassment when the Sexual Harassment *Committee confirms* that the conduct constitutes sexual harassment and when the *offended party perceives* the conduct to have the same effect as described in . . . :

. . .

3. Such conduct *unreasonably interferes* with an individual’s work or academic performance or creates an *intimidating, hostile, or offensive* working or academic environment.

(Emphasis added.)

152. “Unreasonably interferes,” “intimidating,” “hostile,” and “offensive” in this context remain undefined in the policy.

153. Highlighting again the determinative significance of the subjective impressions of an offended person, the policy later states that “[i]t is important to note” that sexual harassment “can result from a lack of awareness of the offended person’s sensitivities or from an attitude of

general indifference toward the sensitivities of others.”

154. The policy does not require *quid pro quo* as an element of its violation. The policy recites that “[o]ffensive conduct is a basis for complaint even where no conditions regarding employment or academic standing have been implied or expressed.” “Offensive” remains undefined in the policy.

155. The policy provides that “[a]ll complaints consistent with the definitions of sexual harassment herein should be forwarded to and processed by the Sexual Harassment Committee,” and that “[a]ll allegations of sexual harassment will be investigated promptly and thoroughly by the Sexual Harassment Committee.”

156. Defendant Dr. Anderson-Wiley is the chairman of the Sexual Harassment Committee at ASU.

157. The resolution of a sexual harassment complaint, regardless of outcome, and whether processed through a formal or an informal grievance process, results in a permanent file created and maintained in the office of the President of the University.

158. Being aware of the terms of the ASU sexual harassment policy, Miss Keeton is additionally motivated to self-censor on matters of sexual ethics, so as to avoid further penalties from the University administration.

159. The Defendant counseling faculty members informed Miss Keeton that a fellow student reported her because she shared her views on issues pertaining to persons’ sexual activity and orientation. The faculty members also reported to Miss Keeton that they proceeded with disciplinary action against Miss Keeton in part as a result of that student’s report.

160. Faculty members, including Dr. Anderson-Wiley, have further informed Miss Keeton that they perceive her views to be prejudiced, discriminatory, unprofessional, unethical,

and of such character as to rightly subject her to remediation or dismissal from the counseling program.

161. Miss Keeton for good cause identifies that Dr. Anderson-Wiley and others adjudicating sexual harassment claims, and persons of a mind to register a complaint, could subjectively determine that Miss Keeton's expression of her biblical convictions on matters of "sexual conduct" and "orientation" are "intimidating, hostile, or offensive," in violation of the ASU sexual harassment policy. The terms of the sexual harassment policy affirm and facilitate that result.

### **III. HARM TO PLAINTIFF**

162. The defendant faculty members' imposition on Miss Keeton of the remediation plan requirements, their various correspondence to her, their subjecting her to several meetings in which her beliefs were interrogated and criticized, and their pending threat to dismiss her from the counseling program constitute forms of penalty they have imposed on her for her speech and beliefs. These have caused Miss Keeton to suffer mental and emotional distress.

163. If carried out, Defendants' promised expulsion of Miss Keeton from the ASU School Counselor program will require Miss Keeton to pursue her graduate degree studies at another university, incurring substantially increased tuition costs, redundant academic effort, and substantial delays in completion of her degree and entrance to her chosen profession. The expulsion will also impose reputational harm on Miss Keeton, and she will additionally suffer the detrimental impacts associated with that damage to her reputation.

164. The Defendants' unconstitutional speech-regulating policies and punitive actions taken against Miss Keeton have caused and are continuing to cause a chill on her speech.

165. Unless and until Defendants' unconstitutional speech-regulating policies and threatened punitive actions against Miss Keeton are enjoined, Miss Keeton will suffer and continue to suffer irreparable injury to her constitutional rights.

166. Miss Keeton has no adequate or speedy remedy at law to redress her pending dismissal or her suffering under Defendants' constitutionally infirm speech- and belief-regulating policies.

#### **IV. ALLEGATIONS OF LAW**

167. All acts alleged herein of the Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color of state law, including the imposition of disciplinary proceedings on Miss Keeton, and threat of dismissal from her academic program, and the enactment, implementation and enforcement of the various departmental and university-wide policies challenged herein, and all related regulations, customs, policies and usages of the University discussed herein.

168. Each of the defendants named in individual capacities has had and continues to have personal involvement in the deprivation of Miss Keeton's right to be free from arbitrary and discriminatory action based upon her speech, beliefs, and religious exercise, and each of such defendants has acted and continues to act individually and in concert to deprive her of these rights.

169. Defendants' actions penalizing and coercing Miss Keeton, and their policies, as set forth above do not serve any legitimate or compelling state interest.

170. Defendants' actions and policies alleged above would chill the person of ordinary firmness from engaging in speech on matters of controversy as set forth herein.

171. Defendants have deprived and continue to deprive Miss Keeton of her clearly established rights under the United States Constitution, as set forth below.

## V. CAUSES OF ACTION

### VIOLATIONS OF THE FREEDOM OF SPEECH BY DEFENDANTS' CONDUCT: VIEWPOINT DISCRIMINATION, RETALIATION, AND COMPELLED SPEECH

172. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

173. Defendants' discriminatory treatment of Miss Keeton because of the points of view she communicated in class, outside of class, and in discussions with her professors, as alleged above, constitutes viewpoint discrimination in violation of her right to the freedom of speech under the First Amendment.

174. Defendants' imposition on Miss Keeton of the Remediation Plan requirements and the associated threat of dismissal from the Counselor Education degree program constitutes unlawful retaliation for her speech and beliefs, in violation of the First Amendment.

175. By conditioning Miss Keeton's continued enrollment in the ASU School Counselor masters degree program on her willingness to alter her beliefs and speech, and her willingness to presently commit to affirm in a hypothetical future context the ethical propriety of transgender and homosexual identification and behavior by others, as well as other values and behaviors she now disapproves, Defendants have imposed unlawful coercion to elicit speech of a viewpoint they prefer and to obtain manifestations of altered beliefs.

176. Defendants may not justify their violation of the First Amendment rights of Miss Keeton by reference to standards generated by private organizations that are not restrained by the First Amendment in their enactments.

**VIOLATION OF PLAINTIFF'S RIGHT TO THE FREE EXERCISE OF RELIGION**

177. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

178. Miss Keeton's beliefs on matters of human nature, gender, and ethics which Defendants have targeted for rebuke and punishment are informed by Holy Scripture and constitute central components of her sincerely held religious beliefs.

179. Defendants have impermissibly burdened Miss Keeton's sincere and central religious beliefs, and have done so with the intention of compelling her to both change those religious beliefs and to act in contradiction of them.

180. The unique disabilities that Defendants have imposed on Miss Keeton are neither neutral nor generally applicable but target her religious speech and belief specifically.

181. Defendants have unconstitutionally conditioned state benefits on Miss Keeton yielding her clearly established right to free exercise of religion and belief.

182. No compelling state interest justifies the burdens Defendants imposed upon the exercise of Miss Keeton's rights to the free exercise of religion.

**VIOLATION OF PLAINTIFF'S RIGHT TO BE FREE OF UNCONSTITUTIONAL CONDITIONS**

183. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

184. By conditioning Miss Keeton's continued enrollment in the ASU School Counselor masters degree program on her waiver of rights to speech and free exercise of religion, *viz.*, by requiring that she alter her beliefs and speech, and that she presently commit to affirm in a hypothetical future context the ethical propriety of transgender and homosexual identification and behavior by others, as well as other values and behaviors she now disapproves, and which violates her religious convictions, Defendants have imposed an unconstitutional condition on Miss Keeton.

185. There is no legitimate essential nexus between the conditions Defendants imposed on Miss Keeton, and the educational opportunities made subject to their condition.

**VIOLATION OF PLAINTIFF’S RIGHT TO EQUAL PROTECTION**

186. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

187. By penalizing Miss Keeton and threatening to dismiss her from the ASU School Counselor degree program because of her maintenance and advocacy of biblical ethical views, Defendants have treated Miss Keeton differently than similarly situated students, based on her exercise of the fundamental rights to the freedom of speech and free exercise of religion. Defendants’ proceeded with discriminatory intent in so acting, and have violated Miss Keeton’s rights under the Equal Protection Clause of the Fourteenth Amendment.

**VIOLATION OF PLAINTIFF’S RIGHT TO THE FREEDOM OF SPEECH: ASU POLICIES**

188. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

189. The ASU university-wide Sexual Harassment policy and those policies applied within the ASU College of Education’s Department of Educational Leadership, Counseling, and Special Education Counselor Education Program as alleged above are vague, overbroad, discriminate on the basis of religious, moral, and ideological viewpoint by requiring fidelity to certain contestable points of view, impose unconstitutional conditions on the receipt of state benefits, and constitute an illegal prior restraint on speech.

190. The Defendants have incorporated into the ASU standards that govern students in the School Counselor program the American Counseling Association (ACA) code of ethics, the American School Counseling Association (ASCA) Ethical Standards for School Counselors, and standards apparently drawn from the Professional Standards Commission (PSC) and National

Council on the Accreditation of Teacher Education (NCATE), including those requiring students to demonstrate “dispositions” indicating their adherence to certain “values” and “ethics.”

191. The content of these several policies, which is expounded in foregoing allegations, privileges certain messages and points of view and penalizes others, is vague, overbroad, manipulable as to meaning and application, and thus authorizes and indeed requires the operation of unbridled discretion in their enforcement against students’ speech and beliefs.

192. The overbreadth of Defendants’ policies chills protected speech by discouraging students from exercising their First Amendment rights based on the fear of being penalized, subjected to onerous remedial requirements, or dismissed from their academic program for exercising their rights. The policies thus coerce silence from dissenters on important matters of contest, thereby artificially creating an environment of intellectual conformity and outward consensus.

193. The ASU Sexual Harassment Policy, by prohibiting “inappropriate” forms of speech that address, *inter alia*, persons’ “sexual behavior” and “orientation,” and that result in a listener’s subjective identification of, *inter alia*, an “offensive . . . environment,” and by failing to define with requisite specificity any of the operative terms in the policy that identify the speech that constitutes a violation of the policy, and by correspondingly authorizing complainants and a Committee to determine subjectively a speaker’s violation of the policy, and by including policy terms emphasizing the authority of the subjective interpretation of hearers as the determinative consideration in identifying violations, is unconstitutional, for it grants unbridled enforcement discretion to complainants and university officials to penalize speakers engaged in constitutionally protected speech.

194. The policies discussed herein are unconstitutional on their face. The Counselor Education Program policies are also unconstitutional as they have been applied to Miss Keeton.



So long as these policies remain in effect, the University is causing ongoing and irreparable harm to Miss Keeton and to every other student subject to such policies.

**VIOLATION OF PLAINTIFF’S RIGHT TO DUE PROCESS**

195. Plaintiff hereby incorporates by reference all foregoing allegations as if set forth fully herein.

196. Defendants’ maintenance of its punitive speech- and belief-regulating policies as alleged above are vague, for these policies fail to provide persons of ordinary intelligence a reasonable opportunity to understand what conduct they prohibit, and they authorize and encourage arbitrary and discriminatory enforcement by Defendants. The policies thereby violate the Due Process Clause of the Fourteenth Amendment.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court:

A. Adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court’s Orders;

B. Pursuant to 28 U.S.C. § 2201, enter a Declaratory Judgment stating that Defendants’ various forms of penalizing, discriminatory treatment of Miss Keeton, including their imposition of the Remediation Plan and threat of expelling her from the ASU counseling program, violate the First and Fourteenth Amendments to the United States Constitution;

C. Pursuant to 28 U.S.C. § 2201, enter a Declaratory Judgment stating that Defendants’ policies governing Miss Keeton and other students in the ASU Counselor Education program, as alleged above, on their face and as applied to Miss Keeton, violate the First and Fourteenth Amendments to the United States Constitution;

D. Pursuant to 28 U.S.C. § 2202, FED. R. CIV. P. 65, and 42 U.S.C. § 1983, preliminarily and permanently enjoin Defendants, their agents, servants, employees, officials, or any other person acting in concert with them or on their behalf, from imposing the Remediation Plan requirements on Miss Keeton, or dismissing her from the ASU School Counseling Program or otherwise penalizing her for her speech and beliefs as alleged herein or for her refusal to participate in the remediation process; without a condition of bond or other surety being required of Plaintiff;

E. Pursuant to 28 U.S.C. § 2202, FED. R. CIV. P. 65, and 42 U.S.C. § 1983, preliminarily and permanently enjoin Defendants, their agents, servants, employees, officials, or any other person acting in concert with them or on their behalf, from enforcing against Plaintiff or any other students the unconstitutional policies identified herein; without a condition of bond or other surety being required of Plaintiff;

F. Award nominal damages to vindicate the constitutional injuries suffered by Plaintiff, to be paid by those Defendants named in their individual capacities;

G. Award actual damages to Plaintiff in an amount to be determined by the finder of fact in accordance with the proof, plus interest at the legal rate until paid, to be paid by those Defendants named in their individual capacities;

H. Award Plaintiff's costs and expenses of this action, including a reasonable attorneys' fee award, in accordance with 42 U.S.C. § 1988, and other applicable law;

I. Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted this 21st day of July, 2010,

JEFFREY A. SHAFER\*  
Illinois Bar No. 6230713  
Ohio Bar No. 0067802  
ALLIANCE DEFENSE FUND  
801 G Street NW, Suite 509  
Washington, DC 20001  
(202) 393-8690  
(202) 347-3622—facsimile  
jshafer@telladf.org  
*Lead Counsel*

JOSEPH J. MARTINS\*  
North Carolina Bar No. 31666  
TRAVIS C. BARHAM\*  
Arizona Bar No. 024867  
ALLIANCE DEFENSE FUND  
12 Public Square  
Columbia, Tennessee 38401  
(931) 490-0591  
(931) 490-7989—facsimile  
jmartins@telladf.org  
tbarham@telladf.org

/s/ Charles C. Stebbins, III

---

CHARLES C. STEBBINS, III  
Georgia Bar No. 667350  
Alabama Bar No. 854  
WARLICK, TRITT, STEBBINS & HALL, LLP  
209 7th Street  
Augusta, Georgia 30901  
(706) 722-7543  
(706) 722-1822—facsimile  
cstebbins@wtshlaw.com

**ATTORNEYS FOR PLAINTIFF**

\*Motion for admission *pro hac vice* submitted and pending

**JURY DEMAND**

Plaintiff hereby requests trial by jury on all issues so triable.

/s/ Charles C. Stebbins, III  
CHARLES C. STEBBINS, III