

**WINDY HEATH,**  
**Plaintiff,**

**V.**

**VIRGINIA COLLEGE, LLC, A**  
Foreign Limited Liability Company Who  
Owns and Operates **VIRGINIA**  
**COLLEGE** at **KNOXVILLE**,  
and **CHRISTINE ADAMS**,  
Academic Dean, of **Virginia College**  
**at Knoxville**, Individually and in her  
capacity as an Employee of Defendant  
**Virginia College, LLC**,  
**Defendant(s).**

**CASE NO.:** \_\_\_\_\_

## JURY TRIAL DEMANDED

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

**COMES NOW** Plaintiff, Windy Heath, by and through her undersigned attorneys, and files this her complaint against Virginia College, LLC at its Virginia College at Knoxville campus, a private institution owned by Virginia College, LLC, and Christine Adams, and shows to the Court the following:

## PARTIES

**PLAINTIFF**

1. Plaintiff Windy Heath was enrolled in the Cosmetology program at the Defendant Virginia College, LLC in Knoxville, Knox County, Tennessee and was using Federal loans to pay for her tuition.
2. At all times material hereto Plaintiff suffered from a health condition that fell under the Americans With Disabilities Act definition of disability and protected her

from discrimination due to her health condition. 42 U.S.C. § 12102. Furthermore, Plaintiff was protected by the Rehabilitation Act.

3. At all times material hereto Plaintiff's medical condition was protected under HIPAA from the unauthorized disclosure to others.

### **DEFENDANTS**

4. Defendant Virginia College, LLC, a foreign limited liability company doing business in Knox County, Tennessee owns and operates Virginia College at Knoxville which is a private institution physically located at 5003 N. Broadway Street, Knoxville, Knox County, Tennessee. Tuition for students at Defendant College is largely paid for by Federal grants and loans, and Federally guaranteed financial aid. As such, it falls under Section 504 (b)(2) and/or (3) of the Rehabilitation Act of 1973 and, falls under 42 U.S.C. § 12100 et seq. as a place of public accommodation; a private entity within the definitions in 42 U.S.C. § 12181 (6); and/or is considered a place of public accommodation because it affects interstate commerce and is a place of education within the definition set out in 42 U.S. C. 12181 (7). (Title II and Title III) It could not lawfully discriminate against Plaintiff on the basis of her disability. 42 U.S.C. § 12182 (a).

5. Virginia College, LLC is a wholly owned subsidiary of Education Corporation of America, a foreign corporation doing business in Tennessee through its operation of Virginia College in Knoxville, Tennessee.

6. At all times material hereto, the President of Virginia College at Knoxville was Sergio Takahashi who had the authority to act on behalf of Virginia College LLC and bind it by his actions and statements.

7. At all times material hereto Christine Adams was the Academic Dean and an employee of Virginia College LLC working at the Knoxville “campus”.

8. At all times material hereto, Defendant Virginia College LLC and its Virginia College at Knoxville campus were required to comply with Americans with Disabilities Act, 42 U.S.C: Public Health and Social Welfare and the Family Educational Rights and Privacy Act, 20 U.S.C § 1232 g. (“FERPA”) and the Rehabilitation Act.

9. At all times material hereto Defendant Virginia College LLC and its Virginia College at Knoxville campus were required to comply with the mandates of HIPAA and FERPA not to disclose without proper authorization the confidential protected medical health information of students in its programs.

### **JURISDICTION AND VENUE**

10. Plaintiff brings this action under the Americans with Disabilities Act (42 U.S.C. § 12101, et seq. hereinafter referred to as the “ADA”), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794, hereinafter referred to as “the Rehabilitation Act”), and Tennessee common law.

11. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 for claims arising under the Constitution or laws of the United States.

12. This Court has jurisdiction under 28 U.S.C. § 1343 (3) and (4) for actions to secure civil rights extended to a person by the United States government.

13. This Court has jurisdiction under 28 U.S.C. § 1367, which provides supplemental jurisdiction over state law claims. Plaintiff’s state law claims arose out of events, which took place in this judicial district.

14. Venue is appropriate in this judicial district under 28 U.S.C. § 1391 (b) inasmuch as the events giving rise to these claims all occurred in this district.

15. Plaintiff is entitled to reasonable Attorney Fees pursuant to 42 U.S.C. § 1988 (b).

### **GENERAL ALLEGATIONS**

16. On July 8, 2016 Plaintiff enrolled in the Cosmetology program at Virginia College, LLC at its Virginia College at Knoxville campus in Knoxville, Knox County, Tennessee. In order to pay for her tuition at Virginia College, Plaintiff applied for and received Federal Financial Aid.

17. In all material respects, Plaintiff complied with the requirements of the Cosmetology program to be in good standing.

18. Prior to August 18, 2016 and prior to commencing a portion of the cosmetology program that included the use of sharp objects and hot instruments, Plaintiff, in private, disclosed to the Dean of the Cosmetology Department, Christine Adams, that Plaintiff was HIV positive as a result of having been a victim of rape years before. Plaintiff advised the Dean that she took medication for her condition and that her HIV was under control and nearly undetectable in her blood, and further advised that she was well aware of precautions she needed to take as a result of her HIV positive status. In response to this information Dean Adams ordered Plaintiff to “clean out her locker” and leave the Program and the College solely due to Plaintiff’s HIV positive status.

19. Plaintiff refused to leave the Program, knowing that the school could not discriminate against her based on her medical condition and protected health status.

20. On August 18, 2016 Defendant Dean Adams came into the salon area where Plaintiff was working and again demanded that Plaintiff clear out her locker and leave the school. When Plaintiff refused, in front of Plaintiff’s entire class, Defendant

Adams grabbed Plaintiff and attempted to forcibly remove Plaintiff from the salon/classroom.

21. Defendant Dean Adams advised students in the Plaintiff's class as well as in the Cosmetology Program that Plaintiff was HIV positive, which was a private medical condition that Adams was not authorized to disclose to anyone.

22. Dean Adams advised Plaintiff at that time that she was no longer a student at Virginia College, despite the fact that Plaintiff had done nothing to warrant being removed from the program.

23. On March 11, 2011, the United States Department of Justice had issued a letter to all State Attorneys General advising that HIV/Aids is a disability covered under the Americans With Disability Act, and that denying persons with HIV/AIDS admission to trade schools and/or denying them occupational licenses because of their HIV status would constitute unlawful discrimination. That determination from the DOJ was made public so that barber schools, beauty colleges, and the like would not deny enrollment to a person on that basis. *See* attached Exhibit A, Letter from the DOJ. This information became widely distributed and available to schools, colleges, universities and trade schools, including trade schools such as Defendant Virginia College, LLC and its Virginia College at Knoxville campus..

24. Virginia College LLC at its Virginia College at Knoxville campus failed to comply with the Department of Justice mandates by physically ejecting Plaintiff from the classroom and advising her that she could not return solely based of her HIV status.

25. On August 19, 2016 Virginia College, LLC's campus President for Virginia College at Knoxville Sergio Takahashi, held a meeting on campus that included Plaintiff and Defendant Adams.

26. In that meeting, President Takahashi, admitted on behalf of Virginia College, LLC at its Virginia College at Knoxville campus that the college was wrong when it told her through Defendant Dean Adams that Plaintiff was being terminated from the Cosmetology program due to her HIV status. He further admitted that no Virginia College employee should ever have placed their hands on Plaintiff in an attempt to forcibly remove her from the premises.

**COUNT I**  
**BATTERY BY CHRISTINE ADAMS**

27. Plaintiff hereby incorporates and adopts each and every allegation as stated and set forth above by reference as if fully set forth herein.

28. Defendant Christine Adams had no right, nor did she have Plaintiff's consent, to grab Plaintiff without Plaintiff's consent and attempt to physically remove Plaintiff from the classroom setting.

29. As a result of said battery, Plaintiff was injured and suffered humiliation and shame in front of her peers.

30. Such conduct on the part of Defendant Adams was intentional, malicious and/or willful or wanton so as to warrant the imposition of punitive damages.

**WHEREFORE**, Plaintiff demands judgment against Christine Adams in the amount of Three Hundred Thousand Dollars (\$300,000.00), One Million Dollars (\$1,000,000.00) in punitive damages, costs of this action, attorney fees, and post-judgment interest.

**COUNT II**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BY CHRISTINE ADAMS**

31. Plaintiff hereby incorporates and adopts each and every allegation as stated and set forth above by reference as if fully set forth herein.

32. The conduct of Dean Adams on behalf of the Defendant Virginia College, LLC at its Virginia College at Knoxville campus was intentional or reckless.

33. The conduct of Dean Adams was so outrageous as not to be tolerated by a civilized society.

34. Her conduct towards Plaintiff resulted in serious mental injury to Plaintiff.

35. Defendant Virginia College, LLC is liable for Defendant Adams' conduct based on a *respondeat superior* theory.

36. As a result of the conduct of Defendant Adams acting in the course and scope of her employment with Defendant Virginia College LLC at its Virginia College at Knoxville campus Plaintiff suffered fear, humiliation, shame, feelings of loss of control over her circumstances, crying, anger, sleeplessness, and loss of the capacity for the enjoyment of life.

**WHEREFORE**, Plaintiff demands judgment against Defendant Adams and Defendant Virginia College, LLC in the amount of the amount of Three Hundred Thousand Dollars (\$300,000.00), One Million Dollars (\$1,000,000.00) in punitive damages, costs of this action, attorney fees, and post-judgment interest.

**COUNT III**  
**INVASION OF PLAINTIFF'S RIGHT TO PRIVACY**  
***Martin v. Senators, Inc.* 220 Tenn. 465 (1967)**

37. Plaintiff hereby incorporates and adopts each and every allegation as stated and set forth above by reference as if fully set forth herein.

38. Plaintiff's health care status was a private matter. The circumstances surrounding how she came to be infected with HIV were likewise private.

39. Plaintiff disclosed to Defendant Adams *in private* the fact of her HIV positive status so that Defendant would understand that certain accommodations and precautions would need to be taken by Defendants Virginia College LLC and its Virginia College at Knoxville and by Plaintiff now that the curriculum was moving into the use of hot items and sharp objects.

40. Plaintiff was knowledgeable and informed as to what precautions she needed to take and merely wished to inform Defendant Adams in her capacity of the Dean of Cosmetology the reasons Plaintiff would be taking such precautions in the "classroom" setting.

41. Plaintiff's HIV status was not a matter of public concern, was not newsworthy, and was not generally known to the public.

42. Plaintiff's HIV status was of such a personal nature that its unauthorized disclosure would be deemed highly offensive to a reasonable person.

43. Defendant Adams, in her capacity as the Dean of the Cosmetology Department, publicized Plaintiff's HIV status to other students without Plaintiff's permission.

44. To exaggerate the problem on the Facebook page for the parent company, Defendant Virginia College, LLC, an unknown individual on behalf of the college addressed Plaintiff's termination in the context of her HIV status, only removing the post when Plaintiff advised she was going to turn their post over to her attorneys.

45. Such publication of private, intimate protected health information was an invasion of Plaintiff's right to have her personal information kept private.



46. This publication of Plaintiff's private health information resulted in Plaintiff being humiliated, angry, frustrated, shamed, and left her with feelings of worthlessness before her peers, and causing Plaintiff not to want to return to the Virginia College at Knoxville campus where she would have to face classmates who had private confidential information about her.

47. Defendant Adams, acting in her capacity of the Dean of the Cosmetology Department acted in such a willful or reckless manner in disclosing this private information so as to subject the Defendant Virginia College, LLC to punitive damages.

**WHEREFORE**, Plaintiff demands judgment against Defendants Virginia College, LLC in the amount of the amount of Three Hundred Thousand Dollars (\$300,000.00), Twenty Five Million Dollars (\$25,000,000.00) in punitive damages, costs of this action, attorney fees, and post-judgment interest.

**COUNT IV  
VIOLATION OF PLAINTIFF'S RIGHTS UNDER ADA, TITLE IV SECTION  
504 AND 505 AND REHABILITATION ACT.**

48. Plaintiff hereby incorporates and adopts each and every allegation as stated and set forth above by reference as if fully set forth herein.

49. Titles II and III of the Americans with Disabilities Act, prohibit the discrimination in services, programs, and activities against persons on the basis of a disability. That prohibition against discrimination of such persons has been extended to all Federally assisted programs under Section 504 of the Rehabilitation Act of 1973.

50. The Department of Justice had notified each State's Attorney General that HIV positive status constituted a disability for purposes of the ADA. Furthermore, on March 10, 2011, the Department of Justice had notified each State's Attorney General, including the Attorney General of the State of Tennessee, that licensing boards and

trade schools could not require an applicant to provide a medical certification that he or she was free from HIV/AIDS in order to qualify for admission to a program/trade school, nor to obtain a license. *See Exhibit A.*

51. The determination by the Department of Justice that denial of admission to trade schools and/or obtaining of licenses for persons with HIV/AIDS constituted unlawful discrimination was well publicized for years prior to the discriminatory actions by Defendant Virginia College.

52. Notwithstanding the determination that discrimination against persons who were HIV positive was prohibited under the ADA, Defendant Virginia College, LLC at its Virginia College at Knoxville campus advised Plaintiff that her enrollment in their Cosmetology program was terminated due solely to the fact that she was HIV positive.

53. Following this unlawful termination of her enrollment, Sergio Takahashi, in his capacity of President of Defendant Virginia College at Knoxville campus, admitted that the Defendant Virginia College, LLC at its Virginia College at Knoxville had terminated her admission unlawfully.

54. As a result of the unlawful termination of her enrollment, Plaintiff was forced to put her education on hold while she searched for another program that would not discriminate against her because of her HIV status.

55. As a result of this incident, Plaintiff lost time in the pursuit of a degree that would enable her to provide support for herself and her children.

56. Plaintiff has suffered humiliation, shame, fear for her future and that of her children, and emotional suffering and stress.

**WHEREFORE** Plaintiff demands judgment against Defendant Virginia College, LLC as follows:

- a. the sum of One Million Dollars (\$1,000,000.00), costs of this action, reasonable attorneys fees, and prejudgment interest;
- b. an order enjoining or restraining Defendants from further acts of discrimination;
- c. an order requiring Defendants to take other appropriate measures to overcome the discrimination set forth in this complaint;
- d. an order requiring Defendants to draft and publish in all marketing material, including their website, a non-discrimination policy advising that the Defendants do not discriminate against applicants or students on the basis of any disability including their HIV status and that all applicants with disabilities have an equal opportunity to participate in or benefit from the services, facilities, privileges, advantages, and accommodations provided by the Defendants;
- e. an order that Defendants implement training of staff affiliated with the Defendant college in Title III of the ADA focusing on HIV related discrimination; and
- f. such other and further relief as this Court shall deem just and proper under the circumstances.

**COUNT V**  
**INTENTIONAL, MALICIOUS AND RECKLESS BREACH OF CONTRACT**

57. Plaintiff hereby incorporates and adopts each and every allegation as stated and set forth above by reference as if fully set forth herein.

58. Plaintiff applied for and was accepted into the Cosmetology program at Defendant Virginia College, LLC at its Virginia College at Knoxville.

59. Plaintiff performed all conditions for admission to the program or such conditions were waived.

60. Upon learning of Plaintiff's HIV positive status, Defendant Virginia College at Knoxville, through its employee, Defendant Christine Adams, informed Plaintiff that she was terminated from the Program; to "clean out her locker"; and to leave the campus.

61. At the time of such action, Defendant Virginia College, LLC at its Virginia College at Knoxville campus knew, or should have known, that Plaintiff's HIV status did not disqualify her for the program or for a cosmetology license anywhere in the United States, and that had been the law since 2011.

62. Notwithstanding such knowledge, Defendant Virginia College LLC at its Virginia College at Knoxville campus chose to intentionally, recklessly and/or maliciously breach the contract with Plaintiff by terminating her from the program.

63. The termination was done with malice and in bad faith so as to warrant the imposition of punitive damages.

64. Plaintiff lost time towards her degree, suffered emotional pain, shame and humiliation, sleeplessness and depression, and loss of the capacity for the enjoyment of life.

**WHEREFORE**, Plaintiff demands judgment against Defendant Virginia College, LLC in the amount of One Million Dollars (\$1,000,000.00), Five Million Dollars (\$5,000,000.00) in punitive damages, costs of this action, reasonable attorneys fees, and prejudgment interest.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all issues triable as of right by a jury.

**Signature of Counsel on Page 13 of 13**

**RESPECTFULLY SUBMITTED**, this the **18<sup>th</sup>** day of **August**, 2017.

**THE BOWLIN LAW FIRM P.C.**

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