

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
 WESTERN DIVISION
 CASE NO. _____

PAMELA L. HENSLEY,)	
)	
Plaintiff,)	
)	
v.)	
)	
JOHNSTON COUNTY BOARD OF)	
EDUCATION, and,)	
ANTHONY L. PARKER, in his capacity)	
as superintendent of Johnston County)	
Schools and in his individual capacity,)	
)	
Defendants.)	

NOTICE OF REMOVAL

Defendants Johnston County Board of Education (“the Board”), and Anthony L. Parker in his capacity as Superintendent of Johnston County Schools and in his individual capacity, hereby give notice that they are removing this action to the United States District Court for the Eastern District of North Carolina, and as grounds therefore state as follows:

1. Plaintiff filed this action in Johnston County Superior Court captioned as *Pamela L. Hensley v. Johnston County Board of Education and, Anthony L. Parker, in his capacity as Superintendent of Johnston County Schools and in his individual capacity*, Case No. 07-CVS-01534, on May 24, 2007 (hereinafter “Civil Action”).
2. Defendants received the Complaint and Civil Summons in the Civil Action on May 29, 2007.
3. This action arises under federal law in that the action alleges deprivation of rights under the United States Constitution, under Title VII of the Civil Rights Act of 1964, as

amended, and under the Americans With Disabilities Act. Accordingly, the federal courts have jurisdiction of the matter pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Defendants are entitled to remove this entire action pursuant to 28 U.S.C. § 1441.

5. The state law claims contained in the Complaint are also removed pursuant to the doctrine of supplemental jurisdiction as provided by 28 U.S.C. § 1441(c).

6. The Notice of Removal is timely filed under 28 U.S.C. § 1446(b), in that it is filed within 30 days of defendants' receipt of the initial pleading purporting to set forth the claim for relief on which this action is based.

7. Defendants are filing herewith a copy of the state court filing including copies of all pleadings, process and other documents with which they have been served [Exhibit A].

This the 20th day of June, 2007.

Respectfully submitted,

/s/ Daniel W. Clark
Tharrington Smith, L.L.P.
209 Fayetteville Street
Post Office Box 1151
Raleigh, North Carolina 27602-1151
Telephone: (919) 821-4711
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/s/ Christine T. Scheef
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State Bar No. 34874

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing NOTICE OF REMOVAL was served this day via United States mail, postage prepaid, addressed to the following:

Mary-Ann Leon
THE LEON LAW FIRM, P.C.
Attorney For Plaintiff Pamela L. Hensley
Post Office Box 20338
Greenville, North Carolina 27858
Telephone: (252)830-5366
Fax: (252)830-9366
E-mail: maleon@leonlaw.org
State Bar No. 26476

This the 20th day of June, 2007.

/s/ Daniel W. Clark
Attorney for Defendant
Tharrington Smith, L.L.P.
209 Fayetteville Street
Post Office Box 1151
Raleigh, North Carolina 27602-1151
Telephone: (919) 821-4711
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State Bar No. 15804

STATE OF NORTH CAROLINA

MAY 29 2007

File No.

7CV 01534

JOHNSTON County

JOHNSTON COUNTY SCHOOLS SUPERINTENDENTS OFFICE

In The General Court Of Justice District Superior Court Division

Name Of Plaintiff

PAMELA L. HENSLEY

Address

c/o THE LEONLAW FIRM, P.C. P.O. Box 20338

City, State, Zip

GREENVILLE, NC. 27858

ORIGINAL

Will R. Crocker
Clerk of Superior Court

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS

VERSUS

G.S. 1A-1, Rules 3, 4

Name Of Defendant(s)

JOHNSTON COUNTY BOARD OF EDUCATION, and,
ANTHONY L. PARKER, as superintendent of Johnston County Schools and in his Individual Capacity

Date Original Summons Issued

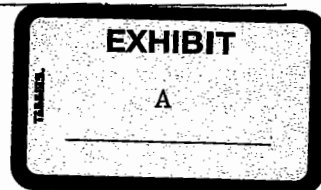
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

ANTHONY L. PARKER
2320 US 70 Business East
Smithfield, NC. 27577-1336

Name And Address Of Defendant 2



A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

MARY-ANN LEON
THE LEONLAW FIRM, P.C.
P.O. Box 20338
Greenville, NC 27858

Date Issued

5-24-07

Time

11:36

AM PM

Signature

Jackie Barlow

Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

AM PM

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

AOC-CV-100, Rev. 10/01

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(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service *(specify)*
- Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service *(specify)*
- Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

~~CVS~~
~~7CV~~ 01534

PAMELA L. HENSLEY,)
)
Plaintiff,)
)
v.)
)
JOHNSTON COUNTY BOARD OF)
EDUCATION, and,)
ANTHONY L. PARKER, in his capacity)
as superintendent of Johnston County)
Schools and in his individual capacity,)
Defendants.)

COMPLAINT
AND
JURY TRIAL DEMAND

BY
[Signature]
JOHNSTON COUNTY C.S.C.

2007 MAY 24 A 11: 36

FILED

Plaintiff Pamela L. Hensley, for her Complaint, alleges:

I. NATURE AND HISTORY OF ACTION

1. This is an action for deprivation of rights under the First and Fourteenth Amendments of the United States Constitution, pursuant to 42 U.S.C. §1983, and under Article I §§1, 13, and 14 of the North Carolina Constitution, to enforce the equal protection clause of Article I, §19 of the North Carolina Constitution, for deprivation of rights under Title VII of the Civil Rights Act of 1964, as amended, and for deprivation of rights under the Americans With Disabilities Act. Plaintiff is a teacher employed by defendants. Plaintiff was falsely accused of derogating her students' religious beliefs and retaliating against students who expressed certain religious beliefs. Defendants investigated the allegations against plaintiff and found no merit to the allegations. Despite their findings, defendants insisted that plaintiff sign a letter, written by school officials, apologizing to parents and students and insisted that the letter be broadly disseminated. When plaintiff objected to being compelled to speak as defendants required, she was stripped of the teaching assignment she had held for nearly seven years and

placed in a remedial education program in a "make-work" position. Plaintiff, who is a qualified employee with a disability, asked that defendants accommodate her disability with a more appropriate teaching assignment. Defendants indicated that their willingness to offer a specific accommodation was contingent upon plaintiff's forbearance of all her legal claims. Plaintiff seeks injunctive relief, including lost employee benefits, and monetary relief to compensate her for the loss of her constitutional rights and other damages.

II. JURISDICTION

2. The Superior Court has jurisdiction under N.C. Gen. Stat. §§ 7A-240 and 243 as this matter arises under the constitutions of this State and of the United States, and Plaintiff seeks to redress the deprivation under color of state law of rights secured by the equal protection clause of Article I §19 of the North Carolina Constitution and of the Fourteenth Amendment to the United States Constitution, and seeks damages in excess of \$10,000.00. Furthermore, the Court has the authority to grant declaratory relief pursuant to N.C.Gen. Stat. §7A-245.

III. PARTIES

3. Plaintiff Pamela Hensley (hereinafter "Plaintiff" or "Ms. Hensley") is a citizen and resident of Wilson County, North Carolina. At all times herein relevant plaintiff was a "career employee" as that term is defined in North Carolina General Statute §115C-325.

4. Defendant Johnston County Board of Education (hereinafter "the Board") is a body corporate and politic established pursuant to Article 5 of Chapter 115C of the North Carolina General Statutes. The Board has the power to control and supervise matters pertaining to the public schools in Johnston County, North Carolina and has the power and authority to hire and assign personnel.

5. Plaintiff is informed and believes that defendant Anthony J. Parker (hereafter "Parker") is an adult resident of Johnston County, North Carolina, and is the superintendent of the Johnston County Public

Schools. He is responsible for recommending to the Board those persons to be hired and assigned for all school positions.

IV. FACTS

6. Plaintiff has been a public school teacher since 1983. She became employed with the Johnston County, North Carolina school system in 1994, began teaching at North Johnston Middle School in 1998, and, taught eighth grade science at North Johnston Middle School between August 2000 and December 2005.

7. Throughout her career as a teacher, Plaintiff has been recognized by her peers and employers as an exemplary teacher. For instance, she has published work on teaching methods for hearing impaired students, has twice been listed in the "Who's Who Among American Teachers," and, between 1993 and the present time, has repeatedly received awards for, and recognition of, her outstanding teaching performance.

8. Ms. Hensley has a hearing impairment, which she has had since birth. However, for five years she was able, despite her impairment, to teach science without an accommodation by her employer.

9. In December 2003, Ms. Hensley attended a curriculum seminar sponsored and presented by the North Carolina Center for the Advancement of Teachers ("NCCAT"). The NCCAT is a constituent element of the University of North Carolina, established by the North Carolina legislature in 1986, whose purpose is to strengthen teacher's classroom expertise by exposing them to new ideas and activities they can use with their students. Teachers who attend NCCAT seminars are selected on the basis of their applications which must be approved by the teachers' school principals. Ms. Hensley's application to attend the December 2003 seminar was approved by her principal at North Johnston Middle School. Ms. Hensley was accepted for a curriculum seminar focused on teaching the topic of

evolution in science classes. She returned from the seminar with lecture and discussion materials, including a videotape, which she shared with her colleagues.

10. During the Spring 2004 semester of the school year, Ms. Hensley taught the topic of evolution in her eighth grade science class at North Johnston Middle School, using the materials she had obtained at the NCCAT seminar. Her class engaged in a discussion of the materials presented. There were no complaints or concerns raised by students or parents concerning the manner in which Ms. Hensley taught any topic in her Spring 2004 science class.

11. In November 2004, Ms. Hensley again presented her eighth grade science class with the lecture and discussion materials from the NCCAT seminar on the topic of evolution. Her class engaged in a lively discussion and Ms. Hensley allowed the discussion to continue in lieu of the videotape she had anticipated showing the class. There were no complaints or concerns raised by students or parents immediately following that class period, nor were there any raised that day, that week or that month.

12. On or about January 11, 2005 North Johnston Middle School students' semester grades were sent home.

13. On January 12, 2005, a parent, (hereinafter "Jane Doe"), came to Ms. Hensley's classroom to complain about her daughter's science grade. Ms. Hensley provided information on the students' performance on tests and other assignments. On January 13, 2005 parent Jane Doe and her spouse (hereinafter "John Doe") met with North Johnston Middle School Principal Ray Stott and alleged that their daughter's science grade was the result of Ms. Hensley retaliating against their daughter for comments made during the November 2004 class discussion on the topic of evolution.

14. Plaintiff is informed and believes, and based thereon alleges that Principal Ray Stott wrote a letter to the Doe's and denied that Ms. Hensley had challenged any students' religious belief or that their daughter's grade reflected any kind of retaliatory motive.

15. On or about January 22, 2005, John Doe replied to Principal Stott's letter and stated, *inter alia*, that it was his "intention ... to rid our school system of a 'teacher' that has proven to be antagonistic and rude when her beliefs are challenged by the true '**Christian**' students." (Internal quotation marks and emphasis in original.) John Doe stated that he was determined to "exhaust[ed] 'every' avenue I have to finally stand up for a '**belief system**' that has proven for centuries to be one of the best tools available to 'rear' your children." (Internal quotation marks and emphasis in original.) John Doe also stated that: "You might be surprised at how your 'stock' could go up in our community if you choose to deal more harshly with Ms. Hensley" and that "You have an inferior teacher with a 'disability' who overcomes her 'perceived' shortcomings in life by forcing her 'Alternate Live Views' [sic] on children who have proven they don't subscribe to the same beliefs as her." (Internal quotations in original.)

16. The Johnston County school system contacted Attorney Jonathan Blumberg who, in conjunction with principal Ray Stott, conducted an extensive investigation of the Does' complaint, including, but not limited to, review of documents and interviews of students, staff members and parents.

17. At the conclusion of the investigation, and in a letter dated April 4, 2005, principal Stott communicated to Ms. Hensley that the investigation did not find any support for the Does' allegation that Ms. Hensley had retaliated against students who supported religion or opposed evolution during the classroom discussion nor did it show a link between the discussion and students' grades.

18. Despite conclusions that Ms. Hensley had not violated students' rights, principal Stott addressed teaching and grading practices which he implied were unique to Ms. Hensley and deficient. In particular, the letter erroneously attributed to Ms. Hensley a statement that her classroom discussion "got out of control" and falsely stated that Ms. Hensley had made "religious statements" in her classroom. Principal Stott's letter identified certain grading practices as deficient when they were, in fact, more exacting and detailed than other similarly situated instructors and when they simply reflected categories

on a computerized grading system which all faculty were required to use, regardless of whether the categories were appropriate for the instructor's assignments. Stott criticized Ms. Hensley for failing to keep an appropriate "pace" in the course, when he knew or should have known, that the pace of Ms. Hensley's course was similar to that of science teachers across the state. Finally, Stott provided directives on how to teach the science course which strongly suggested that Ms. Hensley discontinue the teaching of evolution. Stott also admitted in his letter that the school system did not have guidelines for teaching the topic of evolution.

19. Plaintiff is informed and believes and based thereon alleges that while the school system's investigation continued and after it had concluded, John Doe engaged in public communication in which he alleged that his daughter had been victimized by Ms. Hensley and during which he disclosed the grade his daughter received in Ms. Hensley's science class.

20. John Doe and those acting as his agents communicated with mass media outlets and implied that Ms. Hensley had made statements that "amounted to a theology lecture," and that a child had gone "home crying because a person of authority has made an attack on their religious beliefs." Though they knew or should have known that statements made by John Doe and his agents were not true and/or falsely characterized the situation that they had investigated, defendants did nothing to correct the public record or report that their investigation did not find support for John Doe's allegations.

21. Dissatisfied that Johnston County Schools did not terminate Ms. Hensley's employment on the basis of their complaint, John and Jane Doe met with defendant Parker, on May 16, 2005. In that meeting, the Does' demanded that Parker require Ms. Hensley to write a letter of apology to parents, admit that she had attempted to impose her beliefs upon students, and that Parker place a written reprimand in Ms. Hensley's personnel file. Despite having been told of the actual findings from the school system's investigation, the Does' demanded that Ms. Hensley be forced to publicly state that the

school's "investigation proved that she openly and wantonly demonstrated unconstitutional hostility against the beliefs of the Christian students in the classroom by questioning the literal content of the Bible and by teaching her theological position that the Bible contains errors." The Does' also demanded that Ms. Hensley be transferred out of the "North Johnston district" and that she be assigned to teach a subject other than science.

22. In addition to specific demands concerning Ms. Hensley's teaching assignment, the Does' also demanded that the school system adopt teaching guidelines that would be satisfactory to the sectarian interests of the community which the Does' claimed to represent.

23. The school system then began negotiating with the Does' to address their demands and resolve their complaint, though no one communicated with Pamela Hensley until a resolution was close at hand.

24. In August 2005, Pamela Hensley was presented with a DRAFT of a letter which was purported to be authored by her, but which, upon information and belief, was the result of the collaborative efforts of attorneys representing the school system and those representing John and Jane Doe. The proposed resolution of the Does' complaints included a provision that Ms. Hensley sign the letter and allow it to be disseminated, as a true and accurate representation of her thoughts and speech, to all parents of students in her eighth grade science class. An authentic copy of that letter is attached herein as "Exhibit A."

25. On August 12, 2005, Ms. Hensley met with representatives of the North Carolina Association of Educators (NCAE) who presented her with the aforementioned letter. One of the representatives was an attorney, who Ms. Hensley believed was appointed by the NCAE to represent her interests. Ms. Hensley did not want to sign the letter and resisted efforts to gain her compliance. The NCAE representatives told her that she should agree to the wording of the proposed letter because it would please the school system if she agreed and that no one involved in the negotiations expected the Doe's to agree to the

proposed letter. Because she felt pressured, Ms. Hensley initially agreed to comply with the school's request to send the letter that had been written by the attorneys.

26. The school system's attorney communicated to the Does' attorney that he had a DRAFT letter for the Does' consideration. The Doe's were specifically asked to "maintain the confidentiality of the letter as it is a DRAFT" (Emphasis in original).

27. Ms. Hensley was then informed, via an email message, that "much to everyone's surprise" the Doe's had agreed to sign the letter and that "hopefully THEY WILL NOT CHANGE THEIR MINDS BEFORE THE RELEASE IS EXECUTED." (Emphasis added.) The message also said: "Please let Pam know this and I'll let you know if and when Pam MUST sign the letter." (Emphasis added.)

28. Ms. Hensley then informed the NCAE representatives that, after considering the language of the letter and its intended recipients, she wanted changes made. As she reviewed the letter, she realized that it contained false statements and she also had concerns about the widespread dissemination of this message to all of the parents of students in her class. The NCAE attorney told Ms. Hensley that she would explore alternatives to this draft of the letter. However, over the next few days the only communication that Ms. Hensley received involved efforts to get her to agree to sign and disseminate the letter as originally drafted. She was even told that she might be putting her "career in jeopardy for insubordination." Ms. Hensley declined to sign the letter as originally drafted.

29. No one from the NCAE nor the school system spoke with Ms. Hensley again about modifications to the draft letter.

30. During the Fall 2005 semester, plaintiff Pamela Hensley resumed her usual teaching assignments, including teaching her eighth grade science class and covering the topic of evolution.

31. On or about October 19, 2005, John Doe completed a request to speak with the Johnston County Board of Education at one of its meetings. Mr. Doe only indicated that he wanted to speak with the board about "a legal matter and complaint."

32. On or about October 24, 2005 defendant Parker decided to remove Ms. Hensley from her teaching position. However, Ms. Hensley was not informed about the decision.

33. On or about November 29, 2005, Ms. Hensley was summoned to her principal's office. Principal Stott asked to review her grades for the Fall semester. Ms. Hensley was also questioned about the topics that she had incorporated into her Fall 2005 lesson plans and was asked in particular about whether and how much time she spent on the topic of evolution in her science class. Principal Stott also asked Ms. Hensley about her sexual orientation.

34. On December 1, 2005, Ms. Hensley was summoned to a meeting with defendant Parker and Ms. Joyce Wade, associate superintendent for human resources at the Johnston County Schools. Mr. Maynard Hyler, NCAE representative was also present. Ms. Hensley was informed, for the first time, at that meeting that she would be transferred from her teaching position at North Johnston Middle School to a position at South Campus Community School. Ms. Hensley was presented with a letter written by defendant Parker which outlined his reasons for the transfer. Ms. Hensley was told that the transfer would be effective the following Monday, December 5, 2005, even though the school semester would not end for another month. Ms. Hensley was told that she was to pack her belongings from her classroom on the following day, Friday December 2, 2005. Ms. Hensley was NOT told what her position at South Campus Community School would be.

35. Defendant Parker's letter alleged that Ms. Hensley had taught the topic of evolution in a "manner that deviated from the curriculum." In fact, as principal Stott had admitted in April 2005, there were no curriculum guidelines regarding the teaching of evolution. Defendant Parker also alleged that Ms.

Hensley was “partially responsible for creating” the situation which arose with the Doe’s and suggested that she should have been willing to sign the letter because she bore partial responsibility. Defendant Parker’s letter inaccurately stated that “the school system had completed multiple [additional] steps, including new guidelines and training” toward the resolution of the Doe’s complaints. Finally, defendant Parker asserted that Ms. Hensley’s unwillingness to sign the letter “sparked additional complaints,” although a more accurate reading of the record reveals that the same family continued to voice the same complaints. Defendant Parker further asserted that the “matter still remains a source of tension and distraction within the school system and has diminished your credibility at North Johnston Middle School.”

36. Ms. Hensley indicated to defendant Parker and to Ms. Wade that she had been willing to sign a revised letter. Defendant Parker stated that his decision was “not negotiable.” When asked whether defendant Parker would consider allowing Ms. Hensley to finish the school semester that she had begun, defendant Parker again indicated that his decision as to the timing of the transfer was “not negotiable.”

37. On or about December 3, 2005, Ms. Hensley sent email messages to colleagues and parents explaining why she had been involuntarily transferred. Ms. Hensley stated that the school had conducted an investigation of allegations that she had given a student a certain grade due to the student’s expression of religious beliefs. She also stated that the school had conducted an investigation and had not found support for the allegations and described the events which transpired regarding the proposed letter of apology. Hensley also stated, “Mr. Hyler and I also asked if he [Parker] could at least wait until after Christmas or the end of the semester so that I could finish out with the students. Hyler asked him twice and Dr. Parker never would reconsider. (What does this tell you about his interest in our students?)”

38. On or about December 9, 2005, defendant Parker sent a letter to Ms. Hensley in response to her email message. He stated, "I did not expect you to send an e-mail to the staff at North Johnston Middle School and to send another e-mail to a wide array of people outside the school system setting forth in detail your version of the events." Defendant Parker also alleged that the student could be identified from Ms. Hensley's email, although the student's father had publicly identified her and her grade and had earlier stated that the grade "stands for her conviction and I could frame it and hang it in her room to remind her to stand up for what she believes in." Defendant Parker concluded by stating: "I will continue to consider and weigh the gravity of your conduct in deciding appropriate disciplinary measures."

39. Ms. Hensley timely filed a grievance, pursuant to School Board Policy Code 5240. Said grievance policy permits an employee to grieve a decision of a school official that "violates a specified federal law [or] state law," as well as other policies. An employee may appeal the decision to the Board of Education. The policy states that a committee shall hear and decide the grievance and that "the decision of the committee shall be final."

40. At no point in the grievance process was Ms. Hensley permitted the opportunity to question defendant Parker about his decision. At the initial step of the grievance, Ms. Hensley was provided, for the first time, with copies of documents depicting defendant Parker's extensive communication with the Doe's. The grievance process provides no mechanism for any kind of formal discovery of documents. The grievance process provides that the record established at the first step of the grievance process is the record from which the Board of Education committee will make its recommendation to the School Board. Based upon references in the documents which were shared, it seemed likely that additional, relevant documents existed and were in the custody and control of defendant Parker. He was not required to, nor did he, include all relevant documents on the record for the Board of Education.

41. After filing her grievance, Ms. Hensley learned that she had been assigned a remedial education position, teaching language arts. Upon learning this was to be her position, Ms. Hensley asked that defendant Parker select a position more accommodating to her hearing impairment and asked that defendant Parker select from one of eight advertised and available positions in the Johnston County School system for which Ms. Hensley was qualified. Defendant Parker, through his attorney, indicated that he would only choose an alternative position if Ms. Hensley would agree to withdraw her grievance and sign a complete release of all legal claims. Ms. Hensley declined to do so.

42. Plaintiff has reported to her assigned position at South Campus Community School. Upon her arrival, Ms. Hensley learned that the position was, in fact, a new position; that South Campus Community School had never had a remediation teacher, prior to the position being created for Ms. Hensley. Furthermore, there appeared to be few students who were identified for remediation outside of their regular classroom. During the Spring 2007 semester, Ms. Hensley often saw as few as three students per day. Plaintiff realized that the position at South Campus Community School was a “make-work” position, not a legitimate teaching assignment.

43. Ms. Hensley has applied for other advertised positions within the school district, but has not been successful in obtaining a position outside the remedial position created for her by defendant Parker. Yet, on or about September 28, 2006, Ms. Joyce Wade, speaking with a newspaper reporter for the Raleigh News and Observer, stated that Johnston County Schools had many unfilled teaching positions, that “we didn’t fill all of our elementary positions” and “we have openings at every level.” The reporter for the News & Observer also reported that a political science teacher was teaching a physical science class at West Johnston High School because the school system was unable to fill the vacancy in the science position.

44. The plaintiff is informed and believes and based thereon alleges that the individual hired to replace Ms. Hensley in the eighth grade science class at North Johnston Middle School does not have the requisite qualifications to teach eighth grade science.

45. Plaintiff Hensley timely filed a charge of discrimination with the Equal Employment Opportunity Commission, alleging that she was discriminated against in her employment because of the school system's preference for a particular religious view, and, on account of her disability, alleging that her employer's willingness to provide certain accommodations was contingent upon forbearance of legal claims. The Raleigh Area Office issued plaintiff a "Notice of Right To Sue," which was mailed to her attorney on February 21, 2007 and was received three days after that. (Attached herein as "Exhibit B.")

46. As a result of defendants' conduct, plaintiff has experienced severe emotional distress for which she has been under the care of a licensed medical professional. In addition, and as a direct result of defendants' conduct, plaintiff has lost employee benefits, suffered damage to her professional reputation and has been denied opportunities to advance and grow in her chosen profession.

47. Defendants' "make-work" position was a deliberate effort on defendants' part to create a working environment which any reasonable professional teacher would find intolerable. Plaintiff was, therefore, forced to find a teaching position outside the Johnston County School system. Plaintiff's new position will result in lower wages and fewer employee benefits than the career teaching position she held with the Johnston County School system.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF THE FIRST AMENDMENT OF THE U.S. CONSTITUTION PURSUANT TO 42 U.S.C. §1983 AGAINST DEFENDANT JOHNSTON COUNTY BOARD OF EDUCATION AND AGAINST DEFENDANT ANTHONY J. PARKER, IN HIS INDIVIDUAL CAPACITY

48. Plaintiff Pamela Hensley repeats and realleges by reference each and every allegation contained in paragraphs 1 through 47 and incorporates the same herein as though fully set forth herein.

49. During the course of her employment, Plaintiff raised issues of public concern including, but not limited to, the following:

(a) the content and public dissemination of a statement by the plaintiff concerning the relationship between the school's curriculum and the establishment clause of the first amendment;

(b) whether the school's public constituency was being given accurate information about students' educational experiences;

(c) whether or not the school was accommodating its public school curriculum to the wishes of sectarian religious interests in the community;

(d) whether defendants' transfer was in the best educational interests of students.

50. Each of the defendants herein participated in the decision to transfer plaintiff from the science position she had held for five years to a "make-work" remedial education position, in direct retaliation for plaintiff having raised issues of public concern and in violation of her rights under the First Amendment and 42 U.S.C. § 1983.

51. Plaintiff's protected speech was a substantial factor in defendants' decision to take the adverse actions against her.

52. Plaintiff was adversely affected by said retaliation in a manner that chilled her First Amendment rights.

53. Said misconduct by these defendants, proximately caused plaintiff substantial damages including but not limited to front pay loss, and back benefit loss, loss of earning capacity, emotional distress, loss of career and reputation, and humiliation and embarrassment. The plaintiff will continue to suffer these damages in the future.

54. Said misconduct by the individual defendant was willful, malicious and/or intentional and/or undertaken in reckless disregard of plaintiff's civil rights thereby entitling her to an award of punitive damages against defendant Parker in his individual capacity.

SECOND CLAIM FOR RELIEF

VIOLATIONS OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION PURSUANT TO 42 U.S.C. §1983 AGAINST DEFENDANT JOHNSTON COUNTY BOARD OF EDUCATION AND AGAINST DEFENDANT ANTHONY J. PARKER IN HIS INDIVIDUAL CAPACITY

55. Plaintiff Pamela Hensley repeats and realleges by reference each and every allegation contained in paragraphs 1 through 54 and incorporates the same herein as though fully set forth herein.

56. Defendants treated plaintiff differently than other similarly-situated teachers and there was no rational basis for the difference in treatment when defendants chose to transfer plaintiff from a teaching assignment she had held since 1998, created a teaching assignment where no position was needed, and did so despite other legitimate available positions, ongoing unfilled positions, and when defendants replaced plaintiff with a teacher who did not meet the requisite qualifications for the position that plaintiff held.

57. Upon information and belief, defendants' disparate treatment of plaintiff was due to sheer vindictiveness, illegal animus toward plaintiff, and / or a malicious intent to injure the plaintiff.

58. Defendants' disparate treatment of plaintiff constitutes a violation of the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution.

59. Said misconduct by these defendants, proximately caused plaintiff substantial damages including but not limited to front pay loss, and back benefit loss, loss of earning capacity, emotional distress, loss of career and reputation, and humiliation and embarrassment. The plaintiff will continue to suffer these damages in the future.

60. Said misconduct by the individual defendant was willful, malicious and/or intentional and/or undertaken in reckless disregard of plaintiff's civil rights thereby entitling her to an award of punitive damages against defendant Parker in his individual capacity.

THIRD CLAIM FOR RELIEF

VIOLATION OF THE NORTH CAROLINA CONSTITUTION, ARTICLE I, §13 AGAINST BOTH DEFENDANTS IN THEIR OFFICIAL CAPACITIES

61. Plaintiff Pamela Hensley repeats and realleges by reference each and every allegation contained in paragraphs 1 through 60 and incorporates the same herein as though fully set forth.

62. Defendants' conduct violated plaintiff's rights under Article I, Section 13 of the North Carolina Constitution which provides, in pertinent part, that "no human authority shall . . . control or interfere with the rights of conscience" where defendants indicated that plaintiff had "lost credibility" when she chose to follow the dictates of her own conscience.

63. Furthermore, defendants' conduct was a violation of plaintiff's rights under Section 13, Article I of the North Carolina Constitution in that defendants' conduct was intentionally designed to sponsor a religious view of science in contravention of the nonsectarian curriculum guidelines provided by the North Carolina legislature acting in the capacity of the North Carolina Center for the Advancement of Teachers.

64. Said misconduct by these defendants, proximately caused plaintiff substantial damages including but not limited to front pay loss, and back benefit loss, loss of earning capacity, emotional distress, loss of career and reputation, and humiliation and embarrassment. The plaintiff will continue to suffer these damages in the future.

FOURTH CLAIM FOR RELIEF

VIOLATION OF THE NORTH CAROLINA CONSTITUTION, ARTICLE I, §14 AGAINST BOTH DEFENDANTS IN THEIR OFFICIAL CAPACITIES

65. Plaintiff Pamela Hensley repeats and realleges by reference each and every allegation contained in paragraphs 1 through 64 and incorporates the same herein as through fully set forth.

66. Defendants' conduct violated plaintiff's rights under Article I, Section 14 of the North Carolina Constitution which provides, in pertinent part, that the free speech of citizens shall "never be restrained" under color of state law. Defendants' conduct, described above, was intentionally designed to chill plaintiff's free speech rights.

67. Said misconduct by these defendants, proximately caused plaintiff substantial damages including but not limited to front pay loss, and back benefit loss, loss of earning capacity, emotional distress, loss of career and reputation, and humiliation and embarrassment. The plaintiff will continue to suffer these damages in the future.

FIFTH CLAIM FOR RELIEF

VIOLATION OF THE NORTH CAROLINA CONSTITUTION, ARTICLE I, §1 AGAINST BOTH DEFENDANTS IN THEIR OFFICIAL CAPACITIES

68. Plaintiff Pamela Hensley repeats and realleges by reference each and every allegation contained in paragraphs 1 through 67 and incorporates the same herein as through fully set forth.

69. Defendants' conduct violated Article I, Section 1 of the North Carolina Constitution, which provides in pertinent part that all citizens shall have the right to life, liberty and the fruits of their own labor, where defendants' arbitrary conduct in removing plaintiff from a teaching position deprived her of the opportunity to be employed in a position for which she had trained.

70. Said misconduct by these defendants, proximately caused plaintiff substantial damages including but not limited to front pay loss, and back benefit loss, loss of earning capacity, emotional distress, loss

of career and reputation, and humiliation and embarrassment. The plaintiff will continue to suffer these damages in the future.

SIXTH CLAIM FOR RELIEF

VIOLATION OF THE NORTH CAROLINA CONSTITUTION, ARTICLE I, §19 AGAINST BOTH DEFENDANTS IN THEIR OFFICIAL CAPACITIES

71. Plaintiff Pamela Hensley repeats and realleges by reference each and every allegation contained in paragraphs 1 through 70 and incorporates the same herein as through fully set forth.

72. Article I, Section 19 of the North Carolina Constitution proscribes, in pertinent part, deprivation of liberty or property interests "but by the law of the land."

73. Plaintiff, a career employee, was deprived of a teaching position when defendants, arbitrarily, capriciously, and without a rational basis, transferred plaintiff to a "make-work" remedial education position which provided minimal opportunities to interact with students. Furthermore, Plaintiff was denied a meaningful opportunity for a pre-deprivation hearing when defendant Parker confronted her with his decision and repeatedly indicated that it was "non-negotiable."

74. Upon information and belief, defendant Parker was substantially motivated by reasons of animus, vindictiveness or other illegal motive. Parker's illegal motives were ratified by the Johnston County School Board who failed to view the whole record when it accepted Parker's recommendation that plaintiff be transferred to the "make-work" position.

75. Said misconduct by these defendants, proximately caused plaintiff substantial damages including but not limited to front pay loss, and back benefit loss, loss of earning capacity, emotional distress, loss of career and reputation, and humiliation and embarrassment. The plaintiff will continue to suffer these damages in the future.

SEVENTH CLAIM FOR RELIEF

VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED AGAINST
DEFENDANT JOHNSTON COUNTY BOARD OF EDUCATION

76. Plaintiff Pamela Hensley repeats and realleges by reference each and every allegation contained in paragraphs 1 through 75 and incorporates the same herein as through fully set forth.

77. Title VII of the Civil Rights Act of 1964, as amended prohibits discrimination in employment because of religion.

78. Plaintiff was the target of discriminatory animus because it was believed by her employer, and plaintiff did not deny, that plaintiff's religious beliefs did not include a view that homosexuality was a sin.

79. Plaintiff's employer directly questioned plaintiff about her sexual orientation.

80. Plaintiff's employer took an adverse employment action against the plaintiff because plaintiff's religious views were juxtaposed to the religious tenants of John and Jane Doe and plaintiff's employers, in the form of her supervisors, desired to support the religious views of John and Jane Doe.

81. Furthermore, although plaintiff's job performance was, in fact, satisfactory, plaintiff's employer created a pretext of deficient performance by identifying elements of performance which were not relevant to plaintiff's job, and identifying teaching practices and outcomes which were no different than the teaching practices and outcomes of similarly situated teachers whose religious beliefs were not the subject of a controversy. Plaintiff's employers created this pretext in order to support the religious views of John and Jane Doe and, therefore, to demonstrate their hostility to the perceived religious views of the plaintiff.

82. Plaintiff filed a charge of discrimination based on religion with the Equal Employment Opportunity Commission, has received her Notice of Right to Sue and has, therefore, complied with the

necessary prerequisites for the bringing of an action pursuant to Title VII of the Civil Rights Act of 1964, as amended.

83. Said misconduct by these defendants, proximately caused plaintiff substantial damages including but not limited to front pay loss, and back benefit loss, loss of earning capacity, emotional distress, loss of career and reputation, and humiliation and embarrassment. The plaintiff will continue to suffer these damages in the future. Plaintiff is entitled to compensatory damages from the defendant.

84. Defendant's conduct was willful and wanton and evinced a reckless disregard for the federally protected rights of the plaintiff. Plaintiff is thereby entitled to punitive damages.

EIGHTH CLAIM FOR RELIEF

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §§12101 et. seq. AND THE REGULATIONS THEREUNDER, AGAINST DEFENDANT JOHNSTON COUNTY BOARD OF EDUCATION

85. Plaintiff Pamela Hensley repeats and realleges by reference each and every allegation contained in paragraphs 1 through 84 and incorporates the same herein as through fully set forth.

86. The Americans with Disabilities Act (42 U.S.C. §§12101 et. seq.) and the federal regulations established pursuant to Title I of the statute, prohibit an employer from failing to provide a reasonable accommodation to the know physical limitations of an otherwise qualified employee with a disability, unless the employer can demonstrate that the accommodation to such individual's impairment would impose an undue hardship on the employer. Furthermore, 29 C.F.R. §1630.12 makes it unlawful for an employer to coerce or intimidate any individual in the exercise or enjoyment of any right granted or protected by the Americans with Disabilities Act.

87. Plaintiff is a qualified teacher with a hearing impairment that affects her ability to hear others' oral speech and to orally express speech in the same way that individuals without a hearing impairment express themselves through oral speech. When plaintiff was assigned to teach language arts to students

who would be identified as having deficiencies in verbal expression, plaintiff asked her employer to accommodate her disability by placing her in one of eight advertised, open teaching positions, within the Johnston County Schools which would not emphasize verbal expression.

88. Defendant responded to plaintiff's request stating that: "the school system is willing to consider Ms. Hensley's request that she not serve at South Campus and is willing to consider another assignment if it can be assured that a proposed alternative assignment would be in exchange for complete settlement and release of any and all issues or claims, including the grievance."

89. Defendants' conduct is a violation of plaintiff's rights under the Americans with Disabilities Act and has proximately caused plaintiff substantial damages including but not limited to front pay loss, and back benefit loss, loss of earning capacity, emotional distress, loss of career and reputation, and humiliation and embarrassment. The plaintiff will continue to suffer these damages in the future.

90. Defendant's conduct was willful and wanton and evinced a reckless disregard for the federally protected rights of the plaintiff. Plaintiff is thereby entitled to punitive damages.

WHEREFORE, plaintiff respectfully requests that:

1. The Court declare that defendants' actions are unlawful and unconstitutional, violating §§ 1, 13, 14 and 19 of Article I of the North Carolina Constitution and the First and Fourteenth Amendment of the U.S. Constitution;

2. The Court permanently enjoin defendants, their agents, successors, and employees from engaging in or continuing any and all practices found by this Court to be unlawful or unconstitutional;

3. Plaintiff be reinstated to her position as an eighth science teacher at North Johnston Middle School;

4. Plaintiff each recover lost employee benefits she would have received but for defendants' unlawful acts;

5. Plaintiff recover of defendants compensatory damages, in excess of \$10,000.00, in amounts to be proved at trial;

6. Plaintiff recover of defendant Parker, in his individual capacity, punitive damages;

7. Plaintiff be granted a trial by jury on all issues triable to a jury;

8. The costs of this action, including a reasonable attorney's fee, be taxed against defendants;

and

9. The Court award such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 24th day of May, 2007.

THE LEONLAW FIRM, P.C.

BY: 

Mary-Ann Leon

ATTORNEY FOR PLAINTIFF PAMELA L. HENSLEY

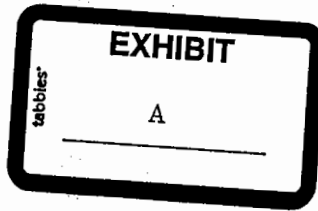
N.C. State Bar Number: 26476

P.O. Box 20338

Greenville, NC 27858

Tel: 252-830-5366

Fax: 252-830-9366



Dear _____:

I am sending this letter to all the parents of the students in the first semester of my 8th grade AIG science class last year. This class included the teaching of evolution, as required by the state's standard course of instruction. While teaching evolution, the students and I had an open discussion about God, religion, and evolution. I cannot recall all the details of the discussion, but I know my intention was to allow everyone to express themselves freely on these topics.

The discussion led to comments about the Bible and how it should or should not be interpreted. This is the first time that I have participated in such a discussion with students, and I regret that certain students perceived it as I was taking a position on how the Bible should be interpreted.

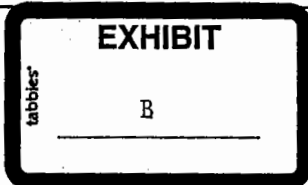
I have learned much from this experience and wish to assure you that I respect your right, and the right of your children, to decide your own views on religion and on the interpretation of the Bible. I know, under the Establishment Clause of our Constitution, that a teacher in the school setting is not to advance or disparage religion or the Bible. Further, I recognize that a teacher should not take a position favoring one religion, or one interpretation of the Bible, over another.

In the future, I will refrain from sharing my personal religious beliefs with the class. While I know my intentions were good and that this was an isolated situation, I do apologize for the manner in which I taught this particular class that day.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Pamela Hensley
4514 Virginia Road
Smithfield, NC 27577



From: Raleigh Area Office - 433
1309 Annapolis Drive
Raleigh, NC 27608

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

Table with 3 columns: EEOC Charge No. (433-2006-01947), EEOC Representative (Ola M. Wiggins, Senior Investigator), Telephone No. ((919) 856-4094)

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

- X More than 180 days have passed since the filing of this charge.
Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
X The EEOC is terminating its processing of this charge.
The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Thomas M. Colclough (Signature)

2-21-07

Enclosures(s)

Thomas M. Colclough,
Director

(Date Mailed)

cc: Anthony L. Parker
Superintendent
JOHNSTON COUNTY SCHOOLS
P.O. Box 1336
Smithfield, NC 27577

Mary Ann Leon
2408 S. Charles Blvd., Suite 3
P.O. Box 20338
Greenville, NC 27858