IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

WHITE COUNTY HIGH SCHOOL PEERS RISING IN DIVERSE EDUCATION, an unincorporated association; KERRY PACER and LINDSAY PACER, by and through their next friends SAVANNAH PACER and WILLIAM PACER; CHARLENE HAMMERSEN, by and through her next friend ELEANOR BERRONG; and KIMBERLEE GOULD, by and through her next friend KIMBERLEE HILTS,	)	
Plaintiffs,	)	Civil Action File No.:_____
vs.	)	
WHITE COUNTY SCHOOL DISTRICT d/b/a WHITE COUNTY PUBLIC SCHOOLS; and PAUL SHAW, as Superintendent of White County School District; BRYAN DORSEY, as Principal of White County High School; SANDY BALES, as Assistant Principal of White County High School; and RODNEY GREEN, as Principal of White County Ninth Grade Academy, in their official and individual capacities,	)	
Defendants.	)	

COMPLAINT

INTRODUCTION

1.

This is an action for declaratory and injunctive relief and for money damages to redress the deprivation of rights secured to Plaintiffs by the federal Equal Access Act, 20 U.S.C. § 4071, the First and Fourteenth Amendments to the United States Constitution, and Paragraphs II and V of Section 1 of Article I of the Constitution of the State of Georgia.

2.

This civil rights action seeks to enjoin and otherwise remedy unlawful action by Defendants that has prevented the White County High School non-curricular student group Peers Rising in Diverse Education ("P.R.I.D.E.") and its member students from meeting on campus during non-instructional time on the same terms and conditions as those that Defendants offer to other non-curricular student groups. This action also seeks to enjoin and otherwise remedy the unconstitutional actions of Defendants in otherwise censoring the speech of Plaintiff students and in intentionally treating and/or protecting Plaintiff students unequally because of their sexual orientation.

3.

Defendants have acted and continue to act under color of state law to violate Plaintiffs' statutory and constitutional rights. Defendants' actions against Plaintiffs violate the federal Equal Access Act, 20 U.S.C. § 4071, which requires a public secondary school that receives federal financial assistance to allow *any* non-curricular student group to meet if it allows even one such group to meet; the Free Speech Clause of the First Amendment, U.S. Const. amend. I, as applied to the States through the Fourteenth Amendment, U.S. Const. amend. XIV, and its state constitutional analog, Ga. Const. art. I, § I, ¶ V, which guarantee the expressive association rights of all people and which prohibit a government actor such as a public school or a public school official from censoring speech because of its content or viewpoint; and the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, and its state constitutional analog, Ga. Const. art. I, § I, ¶ II, which prohibit a government actor such as a public school or a public school official from treating and/or protecting students unequally, including by ignoring or otherwise fostering harassment against lesbian, gay or bisexual students.

JURISDICTION AND VENUE

4.

This action is brought pursuant to 20 U.S.C. § 4071, and 42 U.S.C. § 1983.

5.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 in that it arises under the Constitution of the United States and an Act of Congress; 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 for equal rights of all persons; under 28 U.S.C. § 1343(a)(4) in that it seeks to secure damages and equitable and other relief under an Act of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights; and under 28 U.S.C. § 2201(a) in that one purpose of this action is to secure declaratory relief.

6.

This Court has supplemental jurisdiction over the state constitutional claims pursuant to 28 U.S.C. § 1367 (a).

7.

Venue is proper in this Court under 28 U.S.C. § 1391(b) in that all Defendants are situated, and all claims asserted by Plaintiffs arose, within the Court's jurisdictional boundaries.

PARTIES

8.

The White County High School non-curricular student group "P.R.I.D.E." (hereinafter referred to as the "Club" or the "GSA"), which is a type of non-curricular student group commonly known as a Gay-Straight Alliance ("GSA"), is an unincorporated association of students who attend White County High School and wish to meet to support those who have been bullied or harassed because of their identity (i.e., because of their race, ethnicity, sex, religion, etc.) and to help educate the school community about respecting diversity and preventing bullying and harassment. In particular, the Club wishes to meet to support students who are lesbian, gay, bisexual or transgender ("LGBT"), students who are perceived to be LGBT and students with LGBT family members, as well as their allies. The Club brings this action on behalf of both itself and its student members.

9.

Plaintiff Kerry Pacer ("Kerry") is, and at all times relevant hereto was, a natural person, a minor, a citizen and a resident of the State of Georgia, who resides within this judicial district in White County, Georgia. Kerry was, at the time of the events first giving rise to this action, a 16-year-old student in the eleventh grade at White County High School (hereinafter referred to as "WCHS"). Kerry is now a 17-year-old senior at WCHS. Kerry is a founding member and the current president of P.R.I.D.E. Kerry brings this action by her next friends Savannah Pacer and William Pacer, her natural parents and legal guardians.

10.

Plaintiff Lindsay Pacer ("Lindsay") is, and at all times relevant hereto was, a natural person, a minor, a citizen and a resident of the State of Georgia, who resides within this judicial district in White County, Georgia. Lindsay was, at the time of the events first giving rise to this action, a 14-year-old student at White County Ninth Grade Academy. Lindsay is now a 15-year-old sophomore at WCHS. Lindsay is currently a member of P.R.I.D.E. Lindsay brings this action by her next friends Savannah Pacer and William Pacer, her natural parents and legal guardians.

11.

Plaintiff Charlene Hammersen ("Charlene") is, and at all times relevant hereto was, a natural person, a minor, a citizen and a resident of the State of Georgia, who resides within this judicial district in White County, Georgia. Charlene was, at the time of the events first giving rise to this action, a 16-year-old student in the tenth grade at WCHS. Charlene is now a 17-year-old junior at WCHS. Charlene is a founding and a current member of P.R.I.D.E. Charlene brings this action by her next friend Eleanor Berrong, her natural parent and legal guardian.

12.

Plaintiff Kimberlee Gould ("Kimber") is, and at all times relevant hereto was, a natural person, a minor, a citizen and a resident of the State of Georgia, who resides within this judicial district in White County, Georgia. Kimber was, at the time of the events first giving rise to this action, a 15 -year-old student in the tenth grade at WCHS. Kimber is now a 16-year-old junior at WCHS. Kimber is currently a member of P.R.I.D.E. Kimber brings this action by her next friend Kimberlee Hilts, her natural parent and legal guardian.

13.

Defendant White County School District ("WCSD") is a municipal entity in the State of Georgia that was created and is maintained pursuant to O.C.G.A. § 20-2-50 for the purpose of providing public education to school-aged pupils within its geographical borders. WCSD is a public school system organized and maintained under the laws of the State of Georgia and is a "person" within the meaning of 42 U.S.C. § 1983. On information and belief, WCSD is comprised of five schools, including one high school, WCHS. On information and belief, WCHS is a public secondary school that receives federal financial assistance.

14.

Defendant Paul Shaw is, and at all times relevant hereto was, a natural person, citizen, and resident of the State of Georgia, residing within this judicial district in White County, Georgia, and is the Superintendent of WCSD. Defendant Shaw is sued in his official and individual capacities.

15.

Defendant Bryan Dorsey is, and at all times relevant hereto was, a natural person, citizen, and resident of the State of Georgia, residing within this judicial district in White County, Georgia, and is the Principal of WCHS. Defendant Dorsey is sued in his official and individual capacities. Defendant Dorsey has

been formally delegated decisionmaking authority over matters concerning non-curricular student groups at WCHS.

16.

Defendant Sandy Bales is, and at all times relevant hereto was, a natural person, citizen, and resident of the State of Georgia, residing within this judicial district in White County, Georgia, and is an Assistant Principal of WCHS. Defendant Bales is sued in her official and individual capacities.

17.

Defendant Rodney Green is, and at all times relevant hereto was, a natural person, citizen, and resident of the State of Georgia, residing within this judicial district in White County, Georgia, and is the Principal of White County Ninth Grade Academy. Defendant Rodney is sued in his official and individual and official.

FACTUAL ALLEGATIONS

DEFENDANTS IMPERMISSIBLY DISCRIMINATED AGAINST THE GAY-STRAIGHT ALLIANCE
(Spring 2005)

18.

Kerry first sought recognition of a GSA at WCHS in early January 2005 after Defendant Dorsey denied her request to hang up posters around school

advocating for tolerance of gay people and advocating against anti-gay bullying. On information and belief, at that time, although the WCHS in fact recognized non-curricular student groups, there was no formal policy setting forth the process by which WCHS recognized non-curricular student groups.

19.

According to WCSD policy JHC, extra-curricular clubs "must be approved by the principal of each school."

20.

Defendant Dorsey demanded that Kerry first write and submit a paper explaining and supporting her reasons for wanting to start a GSA. On information and belief, no such requirement had been uniformly imposed on other non-curricular student groups as a condition of recognition.

21.

Kerry immediately wrote and submitted a paper that stated as follows:

> I believe that starting a GSA (gay/straight alliance) would be very helpful t[o]war[d] the antibullying policy. Many LGBT students get bullied everywhere and we must stop it!
>
> Bullying gets in the way of education. That[']s why states like Georgia have laws against it.

> LGBT students prob[a]bly exp[e]r[i]ence it worse than others. Many LGBT students have a hard time accepting themselves let along trying to be accepted at school.
>
> Starting a GSA would allow LGBT students and anyone else to talk and let out their feelings without feeling embar[r]assed or ashamed. If we had a safe ground for students to go to, we could help build up self este[e]m[], and even try to gap the bridge between LGBT and others who have a hard time accepting differences.
>
> There are many people whom have already agreed to partake in helping get a GSA started. I am in the Gain[e]sville chapter of PFLAG (Parents and Friends of Lesbians and Gays)[.] [T]heir encouragement and support has made me confident to believe that this can be done. I believe we can make a change and a difference.

22.

Defendant Dorsey informed Kerry that she could not start a GSA and discouraged further efforts to do so.

23.

On or about January 10, 2005, Kerry, Charlene and other students met with Defendants Dorsey and Bales and again requested recognition of a GSA. In support of their request, the students provided Defendants Dorsey and Bales with documents explaining WCHS's legal obligation to recognize the Club pursuant to the Equal Access Act. Defendants Dorsey and Bales refused to recognize and discouraged the formation of the Club.

24.

On or around January 20, 2005, Kerry arranged for a meeting with Defendant Shaw and sent him a written request for recognition of a GSA along with materials explaining WCHS's legal obligations under the Equal Access Act.

25.

On or around January 24, 2005, Kerry and other students met with Defendants Shaw and Dorsey to discuss the formation of a GSA. Defendants Shaw and Dorsey again discouraged formation of the Club.

26.

On or around January 31, 2005, Defendant Shaw sent a letter to Kerry telling her that she could "proceed with the formation of a club" but explaining that she needed "to work through Mr. Dorsey" and provide him "a list of proposed members, a club faculty member, and a list of proposed by-laws and other pertinent information that Mr. Dorsey may need" before the Club would be recognized. On information and belief, no such set of requirements had been uniformly imposed on other non-curricular student groups as a condition of recognition.

27.

Kerry immediately provided Defendant Dorsey a list of members, a name of a faculty advisor (Kelly Williams), a set of by-laws, and a mission statement. The mission statement explained that the Club's "goal is to provide a haven for students harassed for being who they are" and that its "message is this: Peace, love, acceptance, equality and unity."

28.

On or around February 3, 2005, Defendant Shaw sent out a mass e-mail to faculty and staff informing them that students were forming a GSA and implying that Defendants were opposed to the formation of the Club, but that federal law required that the Club be allowed to form.

29.

The next day, Defendant Dorsey used the school public address system to make an announcement about the Club. He indicated that there was no Club yet, and that he strongly disapproved of the Club.

30.

In the days that followed, as Plaintiffs awaited approval in order to begin meeting, Defendant Shaw was interviewed on local radio where he explained that the Club had not been approved and indicated that it was only tentative.

31.

In the days that followed, as Plaintiffs awaited approval in order to begin meeting, Defendant Shaw was interviewed on local television where he made statements indicating that the school board had authority to deny or approve the club; that the school board was considering "all [its] options," taking into account the community's perspective; and that Defendants would do what was "morally right."

32.

Shortly after Defendant Dorsey's announcement and Defendant Shaw's broadcasts, several students came to school for several days wearing t-shirts bearing the message "No GSA" and other t-shirts bearing anti-gay slogans. Several members of the Club brought the t-shirts to the attention of school administrators. On information and belief, the students who wore the t-shirts were not censored by school administrators.

33.

On or about February 7, 2005, as Plaintiffs continued to await approval of the Club in order to begin meeting, a closed school board meeting was held. On information and belief, during the meeting, the school board took up the question of whether to recognize the Club. On information and belief, the

school board had not taken up the question of whether to recognize other non-curricular student groups. Afterward, Defendant Dorsey told the Club's faculty advisor, Ms. Williams, that she could not yet meet with the Club.

34.

On or about February 8, 2005, Defendant Shaw sent out another mass e-mail to faculty and staff falsely claiming that no paperwork had been submitted by the Club; asserting that he and Mr. Dorsey believed new "guidelines regarding the formation of new clubs should be explored;" and promising that the "White County Board of Education will carefully consider all suggested options."

35.

On or about February 9, 2005, Kerry and other students met with Defendants Dorsey and Bales again to request official approval of the Club again. All requirements to start the Club were satisfied, but Defendants Dorsey and Bales refused to give official approval of the Club and stated that Defendants were still "figuring out" what needed to be done.

36.

In the weeks following, as Plaintiffs anxiously awaited approval of the Club, the school resource officer was overheard calling the Club the "Gay Stupid Alliance."

37.

On or about February 23, 2005, Ms. Williams met with several Club members and officers, advising and suggesting that they could get official approval to start the Club if they would agree to change their name and by-laws to avoid emphasizing that the focus of the Club was on supporting gay students. Ms. Williams was ultimately successful in convincing the students that, in order to receive the approval for which they had been waiting nearly two months, they could simply change the name and revise the by-laws slightly in order to take the focus off sexual orientation. Shortly thereafter, Plaintiffs submitted a letter to Defendant Dorsey informing him of their decision to allow the Club to be called "P.R.I.D.E." (Peers Rising In Diverse Education) and submitted a revised set of bylaws reflecting the new name and a reworded mission statement that shifted the focus from supporting gay students to ending harassment and bullying more generally, but that did not eliminate the support of gay students from the mission altogether.

38.

On or about February 24, 2005, Kendyl Brock, President of the WCSD Board of Education, read the letter that announced the name change and the reworded mission statement at a WCSD Board of Education meeting. Ms. Brock announced that the Board would take public comment on the question whether to recognize the Club but that no decision regarding recognition of the Club would be made that evening.

39.

On or about February 25, 2005, Plaintiffs submitted a letter to Defendant Dorsey clarifying that, although the Club was changing its name and revising its by-laws slightly, it was remaining a GSA.

40.

On or about March 21, 2005, nearly three months after first requesting to start a GSA, Plaintiffs were finally informed by Ms. Williams that the Club could meet on campus during non-instructional time, but subject to the following restriction: Defendant Bales was required to be present at every meeting. On information and belief, no other non-curricular student group was encumbered with a similar requirement, and no other non-curricular student group had to endure such a long wait for recognition.

41.

A few days later, Defendants announced a proposal to eliminate all non-curricular student groups at WCHS.

42.

The Club met for the first time in early April without incident or disruption. On or about April 20, 2005, the Club members hung up posters around school announcing their second meeting. Most of these posters were torn down by other students. Several students, including Charlene and Kerry, witnessed the vandalism and reported the names of those responsible to Club members. Charlene, Kerry and other students reported the vandalism, along with the names of the perpetrators and witnesses, to Defendant Bales. Defendant Bales, however, admonished them for reporting the destruction of their property, and told them not to "bother" her with the information.

43.

On information and belief, no discipline resulted from the eyewitness accounts of the vandalism. Charlene, however, was reprimanded by Defendant Bales for alleged "dishonesty" in reporting the vandalism and given three days of In-School Suspension as punishment. Charlene's father went to the school to discuss the incident and the punishment with Defendant Bales. Defendant Bales

adamantly refused Charlene's father's request that Charlene be allowed to be present during the meeting, and refused to arrange a separate meeting with Charlene and her father to allow Charlene to defend herself against the allegations of lying that Defendant Bales continued to maintain. During the meeting with Charlene's father, Defendant Bales indicated that she felt that the GSA should not be allowed at WCHS.

44.

On or about April 28, 2005, approximately twelve people addressed the WCSD Board of Education about the proposal to eliminate extra-curricular clubs at a WCSD Board of Education meeting. None of them spoke in favor of the proposal; all were opposed to the proposed rule seeking to ban extra-curricular clubs.

45.

The Club met on campus after school approximately two more times during the remainder of the 2004/2005 school year. Along with Defendant Bales and Ms. Williams, approximately thirteen students participated in these meetings. At these meetings, Club members discussed, among other things, the harassment of gay, lesbian, and bisexual students at WCHS. None of these meetings caused any disruption to the school environment.

DEFENDANTS CONTINUE TO DISCRIMINATE AGAINST THE GAY-STRAIGHT ALLIANCE
(Fall 2005 and Spring 2006)

46.

On or about June 16, 2005, the committee formed by the WCSD Board of Education to consider the proposal to eliminate extra-curricular clubs at WCHS recommended adopting the proposal. When students began the 2005/2006 school year on or about August 8, 2005, they were informed by a letter from Defendant Dorsey and by the 2005/2006 WCHS Student Handbook that non-curricular student groups were no longer allowed to meet on campus at WCHS.

47.

On information and belief, the decision to ban all non-curricular student groups was motivated solely by a desire to ban the Club and to suppress the content and viewpoint of its members' speech.

48.

Relying on the new policy, Defendants have not permitted the Club to meet during the 2005/2006 school year. The new policy is Defendants' sole justification for not permitting the Club to meet during the 2005/2006 school year.

49.

Because Defendants have not permitted the Club to meet during the 2005/2006 school year, Plaintiffs have been greatly hampered in their ability to come together to express themselves in the pursuit of their common cause: eradicating discrimination against gay students. Ironically, this comes at a time when the problem that they have sought to redress has been exacerbated by the fact that Defendants' desire to ban the Club has sent a message to other students and teachers that discrimination against gay students is okay.

50.

Notwithstanding the avowed dissolution of all non-curricular student groups, throughout the 2005/2006 school year, the Student Council has continued to meet and hold elections and organize activities on campus during non-instructional time in a manner substantially similar to the manner in which it did so in previous school years. The actual subject matters of Student Council meetings are social events, such as homecoming and prom, and community service. Student Council members do not discuss matters or participate in activities directly related to any regularly offered course or to the curriculum in general; they do not participate in planning the curriculum. Academic credit is

not provided for participation in the Student Council, and participation in the Student Council is not required for any course.

51.

Notwithstanding the avowed dissolution of all non-curricular student groups, the Youth Advisory Council ("YAC") has continued to meet and organize activities on campus during non-instructional time throughout the 2005/2006 school year in a manner substantially similar to the manner in which it did so in previous school years. The actual subject matter of YAC meetings is prevention of drug, alcohol, and tobacco use and teen prevention. YAC members do not discuss matters or participate in activities directly related to any regularly offered course or to the curriculum in general. Academic credit is not provided for participation in YAC, and participation in YAC is not required for any course.

52.

Notwithstanding the avowed dissolution of all non-curricular student groups during the 2005/2006 school year, WCHS allows, encourages and facilitates a Shooting and/or Shotgun Club to meet on campus during non-instructional time. On information and belief, the Shooting and/or Shotgun Club does not discuss matters or participate in activities directly related to any

regularly offered course or to the curriculum in general. Academic credit is not provided for participation in the shooting club, and participation in the shooting club is not required for any course.

53.

Notwithstanding the avowed dissolution of all non-curricular student groups during the 2005/2006 school year, WCHS allows, encourages and facilitates the Beta Club to meet on campus during non-instructional time. The actual subject matter of Beta Club meetings is community service. Beta Club members do not discuss matters or participate in activities directly related to any regularly offered course or to the curriculum in general. Academic credit is not provided for participation in the Beta Club, and participation in the Beta Club is not required for any course.

54.

On at least one occasion during the 2005/2006 school year, WCHS allowed/or and facilitated a meeting of students before school at the school flagpole to discuss religion and/or pray together. This group of students has met and continues to meet on campus during non-instructional time. The WCHS administration has allowed and/or facilitated this group of students to meet by, among other things, using the school public address system to

announce their meetings, and allowing them to hand out bracelets to other students to publicize their meetings while prohibiting similarly situated groups of students from doing likewise. This student group is non-curricular.

55.

Notwithstanding the avowed dissolution of all non-curricular student groups during the 2005/2006 school year, WCHS allows, encourages and facilitates the meeting of a group of students who meet on campus during non-instructional time in order to discuss matters and participate in activities related to dance and to form the Dance Team. Dance is not taught in Physical Education classes, and the Dance Team does not discuss matters or participate in activities directly related to any regularly offered course or the curriculum in general. Academic credit is not provided for participation in the Dance Team, and participation in the Dance Team is not required for any course.

56.

Notwithstanding the avowed dissolution of all non-curricular student groups, throughout the 2005/2006 school year, WCHS has allowed, encouraged and facilitated the Family, Career and Community Leaders of America ("FCCLA") to meet on campus during non-instructional time. The actual subject matters of FCCLA meetings are socializing and fundraising. FCCLA

members do not discuss matters or participate in activities directly related to any regularly offered course or the curriculum as a whole. Academic credit is not provided for participation in FCCLA, and participation in FCCLA is not required for any course.

57.

Notwithstanding the avowed dissolution of all non-curricular student groups during the 2005/2006 school year, WCHS allows, encourages and facilitates a group of students who meet on campus during non-instructional time to discuss matters and participate in activities related to cheerleading, and to form a group collectively referred to as the Cheerleaders. Cheerleading is not taught in Physical Education classes. The Cheerleaders do not discuss matters or participate in activities directly related to any regularly offered course or the curriculum in general. Academic credit is not provided for participation in the Cheerleaders, and participation in the Cheerleaders is not required for any class.

58.

Notwithstanding the avowed dissolution of all non-curricular student groups, WCHS allows, encourages and facilitates various sports-related teams and/or groups, which meet on campus during non-instructional time to, among other things, discuss matters and participate in activities concerning wrestling,

swimming, golf and tennis. The school does not regularly offer courses in Physical Education that teach any of these sports, nor do these sports relate to the body of courses as a whole. Academic credit is not provided for participation in football, track and field, wrestling, swimming, golf or tennis, and participation in these sports is not required for any class.

59.

The purported prohibition on all non-curricular student groups runs contrary to Defendants' purported mission of providing the most optimal learning environment that they can provide for their students. Non-curricular student groups can play an invaluable role in the learning process of any student. Indeed, WCSD Board of Education policy prior to the formation of the GSA stated that extra-curricular clubs "are to be encouraged to the extent that they contribute to the training and development of the student."

THE NEED FOR THE GAY-STRAIGHT ALLIANCE: DEFENDANTS HAVE BEEN AND CONTINUE TO BE DELIBERATELY INDIFFERENT TO SEVERE AND PERVASIVE HARASSMENT OF, AND DISCRIMINATION AGAINST, GAY STUDENTS AND THEIR SUPPORTERS

60.

Plaintiffs have sought to form the Club and meet on campus during non-instructional time in order to combat Defendants' longstanding and continuing

deliberate indifference to the severe and pervasive harassment and discrimination that they and other gay students have suffered, and continue to suffer, at the hands of their peers and even their teachers at WCHS and throughout WCSD.

61.

Anti-gay harassment was and is commonplace at WCHS and throughout WCSD. Plaintiffs and other students who are, or are perceived to be, gay do not feel safe – and, indeed, are not safe – at school, where many of them report hearing anti-gay slurs from their peers – and even from their teachers – dozens of times a day, every day. In the hallways between classes, on the grounds before and after school, and even during instructional time, students hurl anti-gay epithets at other students who are, or who are perceived to be, gay, threaten them with physical harm, and in fact physically harm them. Although all of these threatening, harassing and abusive actions are well-known to Defendants, they occur on campus with impunity. With Defendants refusing to respond to their pleas for assistance, gay students have paid a high price. Among other things, they have not enjoyed a full and fair opportunity to learn.

62.

Defendants disadvantage gay students by, among other things, tolerating and thereby fostering an anti-gay hostile environment at WCHS and throughout WCSD and by preventing students from organizing to address anti-gay harassment.

63.

Plaintiffs are aware of at least two gay former students who were forced to drop out of the WCSD system and were otherwise seriously harmed because of the WCSD system's deliberate indifference to severe and pervasive harassment based on actual or perceived sexual orientation and/or gender stereotypes. Kimber's brother attended WCHS from 2001-2002. As a result of his sexual orientation and/or gender stereotypes, he was harassed relentlessly by his peers from his first day, and throughout his enrollment, at WCHS, including but not limited to the following: being assaulted by another student who threw a full, unopened can of soda at him, hitting him in the neck, while shouting anti-gay slurs at him; being violently pushed through a vending machine by another student; being constantly pummeled with thrown objects in the lunchroom, hallways and classrooms, including but not limited to ice, food, lunch trays, pencils, papers and rocks; hearing anti-gay insults directed at him

by other students daily, often more than a hundred times a day, and often in the presence of indifferent school officials; being spit on by other students repeatedly; having another student expose his penis to him in the hallway between classes and tell him to "suck it" in plain view of other students and at least one teacher; and hearing a teacher call him an "abomination" on account of his sexual orientation. Kimber's brother and his mother repeatedly reported these incidents to school administrators. But not only did school administrators fail to take action against his harassers, they told him that the harassment was his own fault and even took action against him for reporting the harassment and/or for simply being gay.

64.

Plaintiffs are also aware that another former student, C.G, was forced to drop out of the WCSD system because of the WCSD system's deliberate indifference to pervasive and severe harassment based on actual or perceived sexual orientation and/or gender stereotypes. C.G. attended WCHS from 2003-2004. As a result of his sexual orientation and/or gender stereotypes he was harassed relentlessly by his peers throughout his enrollment at WCHS, including but not limited to being intentionally hit in the head with a large piece of lumber by other students, and being called anti-gay slurs by other students

on a daily basis. C. G.'s repeated pleas for assistance from school administrators fell on deaf ears.

65.

These are not the only instances of deliberate indifference to anti-gay harassment within the WCSD system before the first requests to form the Club.

66.

Before the first requests to form the Club, several teachers made anti-gay comments to students during instructional time, including a substitute teacher who stated his opinion that gays should be quarantined to their own island to die of extinction.

67.

During the 2004/2005 school year, before the first requests to form the Club, a full soda bottle was thrown at Club member Alex Sherman by another student while the student shouted anti-gay slurs at Alex. Charlene reported the incident to school administrators, and identified the student assailant, but they refused to investigate the incident because she was not the "victim" of the assault.

68.

After the first requests to form the Club, the deliberate indifference to anti-gay harassment within the WCSD system grew worse. During the weeks in which they awaited official approval or denial of the Club, Kerry, Charlene, and other Club members were subjected to increased anti-gay verbal abuse and physical harassment by their peers, often multiple times a day, and often in the presence of indifferent teachers, and even were subjected to increased anti-gay comments by their teachers. Kerry reported the increase in abuse and harassment to a guidance counselor, who failed to take any action and instead told her that she had brought this on herself through her own actions.

69.

When Charlene was forced to pick up trash as punishment for allegedly violating a school rule, she was told by the school official assigned to supervise her that there were no rubber gloves that she could wear. After she found a plastic bag to protect herself while picking up the garbage, he snatched the bag from her and told her that she didn't deserve it and gave it to another student, who he said had more worth than Charlene. The next day, Charlene complained to the same school official about pain in her arm and he told her that he thought it was "that gay club rubbing off" on her. His degrading

statements and actions were clearly based on Charlene's sexual orientation and his anti-gay animus.

70.

Charlene was inappropriately interrogated about her sexual orientation during a school-sponsored activity by a teacher, who also asked her to reveal the sexual orientation of other Club members.

71.

Charlene found, on separate occasions, that the air had been let out of her tires and that her car had been keyed. The school resource officer and other school officials refused to investigate the incidents.

72.

On or about February 12, 2005, Kerry was booed loudly by other students on account her sexual orientation after a female presented her with a rose during a school assembly. Defendant Dorsey had the ability to control the crowd's humiliating actions, but chose to take no steps to admonish students or quell the negative response, which continued for several minutes. In contrast, later in the assembly, Defendant Dorsey stopped the assembly, explaining that he was doing so because a few students were being loud and disrespectful.

73.

In April of 2005, the same student who had earlier been identified to school administrators by Charlene as having thrown a full soda bottle at Alex while shouting anti-gay slurs at him, threw a rock at Charlene and Alex, hitting Alex in the leg, and shoved Charlene twice. Several other students witnessed the assaults, which were accompanied by anti-gay slurs, including the epithets "fucking faggot" and "piece of shit lesbian." When Charlene later confronted the student about the incident, he shoved her, saying "you better fuck off you fucking lesbian," in front of a teacher, who did nothing about it. Charlene and Alex reported the assaults to school administrators and reminded them that the student was the perpetrator of the earlier assault. The student who committed these two assaults was identified by name to Defendant Shaw.

74.

In April of 2005, Alex and Charlene were called "damn queers," as well as other anti-gay names, and intentionally "body-slammed" by another student. Charlene was hurt in the incident, in which the student intentionally thrust his body weight into Alex's shoulder causing Alex to slam into Charlene and causing Charlene to slam into a wall, which in turn caused her books to be

rammed into her abdomen in a painful manner. The student who committed this assault was identified by name to school administrators.

75.

On information and belief, no student was ever appropriately disciplined for the anti-gay physical attacks and verbal abuse directed at Charlene and Alex described above.

76.

On multiple occasions, Plaintiffs and other students have been turned away from the principal's office by staff who tell them that the principal may not be bothered even to have anti-gay discrimination reported to him. Even when Plaintiffs and other students have not been turned away outright and been permitted to report incidents of anti-gay discrimination, Defendants have taken no meaningful action – and, indeed, have more often than not taken no action whatsoever – to address the acute and persistent anti-gay harassment problem.

77.

Defendants have admonished, and even punished, Plaintiffs and other students for reporting anti-gay violations of school rules and anti-gay acts of intimidation directed against them.

78.

Defendants have exacerbated the anti-gay hostile environment within the WCSD system by publicly and repeatedly announcing their disapproval of the Club, thereby reinforcing the notion that gay students do not belong in the WCSD system.

79.

On information and belief, despite the fact that several organizations and individuals have recommended and offered to provide training opportunities that would help the WCSD system to redress the anti-gay harassment problem, no training session aimed at reducing anti-gay bullying or harassment has ever been scheduled or conducted, and no policy aimed at reducing anti-gay bullying or harassment has ever been promulgated or implemented.

80.

Plaintiffs continue to feel unsafe at school because they continue to have no confidence that Defendants will be anything other than deliberately indifferent to anti-gay discrimination that they may continue to suffer.

DEFENDANTS IMPERMISSIBLY CENSORED AND CONTINUE TO CENSOR STUDENT SPEECH

81.

On or about February 11, 2005, in an effort to advocate for the recognition of the Club and in order to show opposition to the negative public statements of the WCSD administration and other students (including their anti-gay t-shirts) regarding the Club, Lindsay and her friend created t-shirts bearing the word "Hate," crossed out, on the front and a heart with the initials "G.S.A." on the back, and wore them to school. No disruption occurred as result of the wearing of the t-shirts. Nonetheless, Defendant Green, Principal of White County Ninth Grade Academy, required them to change their shirts or face suspension.

82.

In early March 2005, while Plaintiffs awaited official approval or denial of the Club, Defendant Bales disciplined Kerry for wearing an "I ♥ Lesbians" t-shirt to school, which Kerry had worn to school in order to show opposition to an anti-gay protest that took place across the street from the school. Although no disruption occurred as a result of the wearing of the t-shirt, and although no students who wore anti-gay shirts were disciplined, Kerry was placed in In-School Suspension for wearing her pro-gay t-shirt. Defendant Bales warned

Kerry that she would face harsher discipline if she were to wear the t-shirt to school again.

83.

Defendants' policies authorize school principals to establish discipline policies. Pursuant to this authority, WCHS and the White County Ninth Grade Academy have established dress codes with identical wording. The "Student Dress Code" under which Kerry and Lindsay were disciplined provides that "NO APPAREL CAN BE WORN WHICH THE ADMINISTRATION DETERMINES TO BE UNACCEPTABLE BY COMMUNITY STANDARDS . . . ," and, alternatively, that "[c]lothing and/or jewelry with words or symbols which are offensive . . . will not be permitted at school."

84.

Kerry and Lindsay would like to wear their t-shirts to school again. In light of the provisions of the "Student Dress Code" and their applications to their t-shirts, however, they are chilled from doing so.

85.

The remaining Plaintiffs, including Club members, would like to wear similar t-shirts to school. In light of the provisions of the "Student Dress Code"

and their applications to Kerry's and Lindsay's t-shirts, however, they are chilled from doing so.

87.

In early March 2005, Defendant Bales forced Charlene to remove a rainbow flag, a commonly recognized symbol of the gay community, and a "Hate is not a Christian value" sign from her car before being allowed to drive it onto school property. Neither the flag nor the sign had caused any disruption.

88.

Charlene would like to drive her car onto school property bearing the flag and the sign again. In light of the censorship of the flag and the sign, however, she is chilled from doing so.

89.

Also in early March 2005, Charlene dropped friends off at school before school started and proceeded to drive across the street to meet her mother and other club members in order to participate in a counter-demonstration to an anti-gay protest that as expressing opposition to the Club. After the counter-demonstration ended, Charlene returned to school before school started. Notwithstanding the fact that Charlene was neither absent from, nor tardy to, any class that day, she was punished for "cutting class" by Defendants Bales

and Dorsey. On information and belief, the sole motivation for the discipline was a desire to retaliate against her for her participation in the counter-demonstration.

90.

WCSD policies do not provide for appeals of discipline that involves less than ten days of Out-of-School Suspension. Kerry, Lindsay and Charlene exhausted their avenues of redress by seeking relief from appropriate school officials as set out in WCSD policies. No further administrative appeals were available to them at the time of the events described herein.

91.

In the Spring of 2005, prior to official recognition of the GSA, Plaintiffs attempted to hand out to other students anti-bullying cards that contained information about identifying and reporting bullying. They were told by Defendant Dorsey that they could not distribute such information because they were not an officially recognized club. In contrast, other students were allowed to distribute information pertaining to religious activities, and to distribute flyers advertising their bands.

CLAIMS REGARDING DISCRIMINATION AGAINST THE GAY-STRAIGHT ALLIANCE

COUNT I

Discrimination Against the Gay-Straight Alliance in Violation of the Equal Access Act

(All Plaintiffs against Defendants White County School District, Paul Shaw, Bryan Dorsey, and Sandy Bales)

93.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

94.

The Equal Access Act mandates that, where a public secondary school that receives federal financial assistance permits even one non-curricular student group to meet on campus during non-instructional time, it must permit all other non-curricular student groups to do so, too, and to do so on equal terms.

95.

WCHS is a public secondary school that receives federal financial assistance that permits non-curricular student groups to meet on campus during non-instructional time.

96.

Defendants have not permitted and continue not to permit the Club to meet on campus during non-instructional time on terms equal to those on which other non-curricular student groups meet because the content of its speech.

97.

Because Defendants have not permitted and continue not to permit the Club to meet on campus during non-instructional time on terms equal to those on which other non-curricular student groups to meet because of the content of its speech, they have violated and continue to violate the Equal Access Act.

98.

As a direct and proximate result of Defendants' actions, Plaintiffs have been denied and continue to be denied the opportunity to meet in order to discuss and learn about matters, and engage in activities, relevant to LGBT students and their heterosexual supporters, including what the harmful effects of anti-gay discrimination are and how to make schools physically and emotionally safe for gay teenagers. Plaintiffs have also suffered and continue to suffer stigmatic harm on account of being the discriminatory treatment of their viewpoint. Plaintiffs seek nominal damages and the declaratory and injunctive relief as set forth in the prayer for relief.

COUNT II

Discrimination Against the Gay-Straight Alliance in Violation of the First and Fourteenth Amendment to the United States Constitution

(All Plaintiffs against Defendants White County School District, Paul Shaw, Bryan Dorsey, and Sandy Bales)

99.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

100.

The Free Speech Clause of the First Amendment to the United States Constitution prohibits a government actor from denying access to a limited public forum to a speaker, including an expressive association, based on its viewpoint.

101.

Defendants are government actors who have opened a limited public forum to expressive associations by permitting non-curricular students to meet on campus during non-instructional time.

102.

Defendants have not permitted and continue not to permit the Club to meet on terms equal to those on which other non-curricular student groups meet because of its viewpoint.

103.

Because Defendants have denied and continue to deny the Club access to their limited public forum based on its viewpoint, Defendants have impermissibly deprived and continue to deprive Plaintiffs of their right to expressive association guaranteed to them by the First and Fourteenth Amendments to the United States Constitution.

104.

As a direct and proximate result of Defendants' actions, Plaintiffs have been denied and continue to be denied the opportunity to meet in order to discuss and learn about matters, and engage in activities, relevant to LGBT students and their heterosexual supporters, including what the harmful effects of anti-gay discrimination are and how to make schools physically and emotionally safe for gay teenagers. Plaintiffs have also suffered and continue to suffer stigmatic harm on account of being the discriminatory treatment of their

viewpoint. Plaintiffs seek nominal damages and the declaratory and injunctive relief as set forth in the prayer for relief.

COUNT III

Discrimination Against The Gay-Straight Alliance in Violation of the Article I, Section I, Paragraph V of the Georgia Constitution

(All Plaintiffs against Defendants White County School District, Paul Shaw, Bryan Dorsey, and Sandy Bales)

105.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

106.

Article I, Section 1, Paragraph V of the Georgia Constitution prohibits a government actor from denying access to a limited public forum to a speaker, including an expressive association, based on its viewpoint.

107.

Defendants are government actors who have opened a limited public forum to expressive associations by permitting non-curricular student groups to meet on campus during non-instructional time.

108.

Defendants have not permitted and continue not to permit the Club to meet on terms equal to those on which other non-curricular student groups meet because of its viewpoint.

109.

Because Defendants have denied and continue to deny the Club access to their limited public forum based on its viewpoint, they have impermissibly deprived, and continue to deprive, Plaintiffs of their right to expressive association guaranteed to them by Article I, Section 1, Paragraph V of the Georgia Constitution.

110.

As a direct and proximate result of Defendants' actions, Plaintiffs have been denied and continue to be denied the opportunity to meet in order to discuss and learn about matters, and engage in activities, relevant to LGBT students and their heterosexual supporters, including what the harmful effects of anti-gay discrimination are and how to make schools physically and emotionally safe for gay teenagers. Plaintiffs have also suffered and continue to suffer stigmatic harm on account of being the discriminatory treatment of their

viewpoint. Plaintiffs seek nominal damages and the declaratory and injunctive relief as set forth in the prayer for relief.

CLAIMS REGARDING DELIBERATE INDIFFERENCE TO HARASSMENT OF, AND DISCRIMINATION AGAINST, GAY, LESBIAN, AND BISEXUAL STUDENTS

COUNT IV

Deliberate Indifference to Harassment of, and Discrimination Against, Gay, Lesbian, and Bisexual Students in Violation of the Right to Equal Protection Guaranteed by the Fourteenth Amendment to the United States Constitution

(Plaintiffs White County High School Peers Rising in Diverse Education, on behalf of its members, Kerry Pacer, Charlene Hammersen, and Kimberlee Gould against Defendants White County School District, Paul Shaw, Bryan Dorsey, and Sandy Bales)

111.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

112.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits a government actor from discriminating against a class without a constitutionally sufficient justification.

113.

Deliberate indifference of a public school district and public school district officials to severe and pervasive harassment of a class of students is a form of invidious discrimination against a class without a constitutionally sufficient justification.

114.

Plaintiffs and other gay students at WCHS and throughout WCSD have suffered and continue to suffer severe and pervasive harassment and discrimination at the hands of their peers and even their teachers because of their sexual orientation, to which Defendants have been and continue to be deliberately indifferent. Defendants do not allow heterosexual students to suffer severe and pervasive harassment and discrimination. Defendants are not indifferent to the harassment and abuse of students who are not, or are not perceived to be, gay, lesbian or bisexual.

115.

Because Defendants have been and continue to be deliberately indifferent to severe and pervasive harassment of gay students because of their sexual orientation, they have deprived and continue to deprive Plaintiffs of their right to equal protection guaranteed to them by the Fourteenth Amendment.

116.

Defendants have engaged and continue to engage in this course of conduct with reckless disregard for Plaintiffs' constitutional rights.

117.

As the direct and proximate result of Defendants' actions, Plaintiffs have suffered and will continue to suffer pain, suffering, consternation and emotional distress as a result of the deprivation of their rights under the Fourteenth Amendment. Plaintiffs seek compensatory and punitive damages and the declaratory and injunctive relief set forth in the prayer for relief.

COUNT V

Deliberate Indifference to Harassment of, and Discrimination Against, Gay, Lesbian, and Bisexual Students in Violation of the Right to Equal Protection Guaranteed by Article I, Section I, Paragraph II of the Georgia Constitution

(Plaintiffs White County High School Peers Rising in Diverse Education, on behalf of its members, Kerry Pacer, Charlene Hammersen, and Kimberlee Gould against Defendants White County School District, Paul Shaw, Bryan Dorsey, and Sandy Bales)

118.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

119.

Article I, Section 1, Paragraph II of the Georgia Constitution prohibits a government actor from discriminating against a class without a constitutionally sufficient justification.

120.

Deliberate indifference of a public school district and public school district officials to severe and pervasive harassment of a class of students is a form of invidious discrimination against a class without a constitutionally sufficient justification.

121.

Plaintiffs and other gay students at WCHS and throughout WCSD have suffered and continue to suffer severe and pervasive harassment and discrimination at the hands of their peers and even their teachers because of their sexual orientation, to which Defendants have been and continue to be deliberately indifferent. Defendants do not allow heterosexual students to suffer severe and pervasive harassment and discrimination. Defendants are not indifferent to the harassment and abuse of students who are not, or are not perceived to be, gay, lesbian or bisexual.

122.

Because Defendants have been and continue to be deliberately indifferent to severe and pervasive harassment of gay students because of their sexual orientation, they have deprived and continue to deprive Plaintiffs of their right to equal protection guaranteed to them by Article I, Section 1, Paragraph II.

123.

Defendants have engaged and continue to engage in this course of conduct with reckless disregard for Plaintiffs' constitutional rights.

124.

As the direct and proximate result of Defendants' actions, Plaintiffs have suffered and will continue to suffer pain, suffering, consternation and emotional distress as a result of the deprivation of their rights under Article I, Section1, Paragraph II. Plaintiffs seek compensatory and punitive damages and the declaratory and injunctive relief set forth in the prayer for relief.

CLAIMS REGARDING OTHER CENSORSHIP OF STUDENT SPEECH

COUNT VI

Facial Overbreadth And Vagueness Of Dress Code Policies in Violation of the First and Fourteenth Amendments to the United States Constitution

(All Plaintiffs against all Defendants)

125.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

126.

The Free Speech Clause of the First Amendment to the United States Constitution prohibits censorship of student speech by a public school district of public school officials if the student speech does not substantially disrupt the school environment or substantially interfere with the rights of others.

127.

Defendants' dress code policies purport to permit them to censor messages on clothing that are "unacceptable by community standards" or are "offensive."

128.

Because Defendants' dress code policies purport to permit them to censor messages on clothing even if the student speech does not substantially disrupt

the school environment or substantially interfere with the rights of others, they are facially overbroad and vague in violation of the First and Fourteenth Amendments.

129.

As the direct and proximate result of Defendants' dress code policies, Plaintiffs have suffered, and continue to suffer, the chilling of their right to free expression and seek nominal damages and the declaratory and injunctive relief set forth in the prayer for relief.

COUNT VII

Facial Overbreadth and Vagueness of Dress Code Policies in Violation of Article I, Section I, Paragraph V of the Georgia Constitution

(All Plaintiffs against all Defendants)

130.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

131.

Article I, Section 1, Paragraph V of the Georgia Constitution prohibits censorship of student speech by a public school district of public school officials if the student speech does not substantially disrupt the school environment or substantially interfere with the rights of others.

132.

Defendants' dress code policies purport to permit them to censor messages on clothing that are "unacceptable by community standards" or are "offensive."

133.

Because Defendants' dress code policies purport to permit them to censor messages on clothing even if the student speech does not substantially disrupt the school environment or substantially interfere with the rights of others, they are facially overbroad and vague in violation of Article I, Section 1, Paragraph V.

134.

As the direct and proximate result of Defendants' dress code policies, Plaintiffs have suffered, and continue to suffer, the chilling of their right to free expression and seek nominal damages and the declaratory and injunctive relief set forth in the prayer for relief.

COUNT VIII

Application of Dress Code Policies in Violation of the First and Fourteenth Amendments to the United States Constitution

(Plaintiffs Kerry Pacer and Lindsay Pacer against all Defendants)

135.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

136.

The Free Speech Clause of the First Amendment to the United States Constitution prohibits censorship of student speech by a public school district of public school officials if the student speech does not substantially disrupt the school environment or substantially interfere with the rights of others.

137.

Defendants have censored and continue to censor Plaintiffs' t-shirts even though they did not substantially disrupt the school environment or substantially interfere with the rights of others, and were not obscene, lewd, threatening, or harassing.

138.

Because Defendants have censored and continue to censor Plaintiffs' t-shirts even though they did not substantially disrupt the school environment or

substantially interfere with the rights of others, and were not obscene, lewd, threatening, or harassing, Defendants have deprived and continue to deprive Plaintiffs of their rights under the First and Fourteenth Amendments.

139.

As the direct and proximate result of Defendants' actions, Plaintiffs have suffered and will continue to suffer the chilling of their right to free expression. Plaintiffs seek nominal damages and the declaratory relief set forth in their prayer for relief.

COUNT IX

Application of Dress Code Policies in Violation of Article I, Section I, Paragraph V of the Georgia Constitution

(Plaintiffs Kerry Pacer and Lindsay Pacer against all Defendants)

140.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

141.

Article I, Section I, Paragraph V of the Georgia Constitution prohibits censorship of student speech by a public school district of public school officials if the student speech does not substantially disrupt the school environment or substantially interfere with the rights of others.

142.

Defendants have censored and continue to censor Plaintiffs' t-shirts even though they did not substantially disrupt the school environment or substantially interfere with the rights of others, and were not obscene, lewd, threatening, or harassing.

143.

Because Defendants have censored and continue to censor Plaintiffs' t-shirts even though they did not substantially disrupt the school environment or substantially interfere with the rights of others, and were not obscene, lewd, threatening, or harassing, Defendants have deprived and continue to deprive Plaintiffs of their rights under Article I, Section 1, Paragraph V.

144.

As the direct and proximate result of Defendants' actions, Plaintiffs have suffered and will continue to suffer the chilling of their right to free expression. Plaintiffs seek nominal damages and the declaratory and injunctive relief set forth in their prayer for relief.

COUNT X

Other Censorship of and Retaliation Against Student Speech in Violation of the First and Fourteenth Amendments to the United States Constitution

(Plaintiffs White County High School Peers Rising in Diverse Education, on behalf of itself and its members, Kerry Pacer, and Charlene Hammersen against Defendants White County School District, Paul Shaw, Bryan Dorsey and Sandy Bales)

145.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

146.

The Free Speech Clause of the First Amendment to the United States Constitution prohibits censorship of student speech by a public school district of public school officials if the student speech does not substantially disrupt the school environment or substantially interfere with the rights of others.

147.

Defendants have censored and continue to censor Plaintiff Hammersen's flag and sign even though they did not substantially disrupt the school environment or substantially interfere with the rights of others, and were not obscene, lewd, threatening, or harassing.

148.

Because Defendants have censored and continue to censor Plaintiff Hammersen's flag and sign even though they did not substantially disrupt the school environment or substantially interfere with the rights of others, and were not obscene, lewd, threatening, or harassing, and have retaliated against her because of her speech, Defendants have deprived and continue to deprive Plaintiff of her rights under the First and Fourteenth Amendments.

149.

Defendants have prevented Plaintiffs from distributing anti-bullying cards and other information, even though the information did not substantially disrupt the school environment or substantially interfere with the rights of others, and was not obscene, lewd, threatening, or harassing.

150.

Because Defendants have censored and continue to censor Plaintiffs' anti-bullying cards and other information even though the information did not substantially disrupt the school environment or substantially interfere with the rights of others, and was not obscene, lewd, threatening, or harassing, Defendants have deprived and continue to deprive Plaintiffs of their rights under the First and Fourteenth Amendments.

151.

As the direct and proximate result of Defendants' actions, Plaintiffs have suffered, and will continue to suffer, the chilling of their right to free expression. Plaintiffs seek nominal damages and the declaratory and injunctive relief set forth in their prayer for relief.

COUNT XI

Other Censorship of and Retaliation Against Student Speech in Violation of Article I, Section I, Paragraph V of the Georgia Constitution

(Plaintiffs White County High School Peers Rising in Diverse Education, on behalf of itself and its members, Kerry Pacer, and Charlene Hammersen against Defendants White County School District, Paul Shaw, Bryan Dorsey and Sandy Bales)

152.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim and allegation set forth in this Complaint.

153.

Article I, Section 1, Paragraph V of the Georgia Constitution prohibits censorship of student speech by a public school district of public school officials if the student speech does not substantially disrupt the school environment or substantially interfere with the rights of others.

153.

Defendants have censored and continue to censor Plaintiff Hammersen's flag and sign even though they did not substantially disrupt the school environment or substantially interfere with the rights of others, and were not obscene, lewd, threatening, or harassing.

154.

Because Defendants have censored and continue to censor Plaintiff Hammersen's flag and sign even though they did not substantially disrupt the school environment or substantially interfere with the rights of others, and were not obscene, lewd, threatening, or harassing, and have retaliated against her because of her speech, Defendants have deprived and continue to deprive Plaintiff of her rights under Article I, Section 1, Paragraph 5.

155.

Defendants have prevented Plaintiffs from distributing information in the form of anti-bullying cards and other information, even though the information did not substantially disrupt the school environment or substantially interfere with the rights of others, and was not obscene, lewd, threatening, or harassing.

156.

Because Defendants have censored and continue to censor Plaintiff's anti-bullying cards and other information even though the information did not substantially disrupt the school environment or substantially interfere with the rights of others, and was not obscene, lewd, threatening, or harassing, Defendants have deprived and continue to deprive Plaintiffs of their rights under Article I, Section 1, Paragraph V.

157.

As the direct and proximate result of Defendants' actions, Plaintiffs have suffered, and will continue to suffer, the chilling of their right to free expression. Plaintiffs seek nominal damages and the declaratory relief set forth in their prayer for relief.

PRAYER

WHEREFORE, having fully stated their claims against Defendants, these complaining Plaintiffs demand entry of judgment for Plaintiffs and against Defendants on all Counts, and relief on all Counts as follows:

(1) On Counts I, II, and III:

(a) A declaration that Defendants' discrimination against Plaintiff White County High School Peers Rising in Diverse Education

and its members, including Plaintiffs Kerry Pacer, Lindsay Pacer, Charlene Hammersen, and Kimberlee Gould, is a violation of the Equal Access Act and the rights of expressive association guaranteed by the United States and Georgia Constitutions;

(b) An injunction ordering Defendants (i) to recognize Plaintiff White County High School Peers Rising in Diverse Education as a non-curricular club, (ii) to permit Plaintiff White County High School Peers Rising in Diverse Education to meet, at a minimum, on terms equal to those on which any other non-curricular student group has met during the 2005/2006 school year, including enjoyment of school privileges (e.g., use of the school public address system, school bulletin boards, or the school website to publicize meetings), and (iv) not to retaliate against Plaintiff White County High School Peers Rising in Diverse Education or its members, including Plaintiffs Kerry Pacer, Lindsay Pacer, Charlene Hammersen, and Kimberlee Gould; and

(c) Nominal damages; and

(2) On Counts IV and V:

(a) A declaration that Defendants' deliberate indifference to the harassment of and discrimination against Plaintiffs Kerry Pacer, Charlene

Hammersen, and Kimberlee Gould and members of Plaintiff White County Peers Rising in Diverse Education is a violation of the rights to equal protection guaranteed by the United States and Georgia Constitutions;

(b) An injunction ordering Defendants (i) to take all action necessary to ensure, within reason, that such harassment and discrimination and such deliberate indifference to such harassment and discrimination cease, (ii) to expunge the disciplinary records of Plaintiffs Kerry Pacer, Charlene Hammersen, and Kimberlee Gould and members of Plaintiff White County Peers Rising in Diverse Education with respect to disciplinary action taken in response to the reporting of incidents of harassment or discrimination, and (iii) not to retaliate against Plaintiffs Kerry Pacer, Charlene Hammersen, or Kimberlee Gould or Plaintiff White County Peers Rising in Diverse Education or its members; and

(c) Compensatory and punitive damages; and

(3) On Counts VI and VII:

(a) A declaration that the portion of Defendants' dress code policies that prohibits dress that is "unacceptable by community standards" or "offensive" is facially overbroad and vague in violation of

the rights to free speech guaranteed by the United States and Georgia Constitutions;

(b) An injunction prohibiting the enforcement of the portion of Defendants' dress code policies that prohibits dress that is "unacceptable by community standards" or "offensive," and any retaliation against Plaintiffs; and

(c) Nominal damages; and

(4) On Counts VIII and IX:

(a) A declaration that the application of Defendants' dress code policies to the t-shirts of Plaintiffs Kerry Pacer and Lindsay Pacer is a violation of the rights to free speech guaranteed by the United States and Georgia Constitutions;

(b) An injunction ordering Defendants (i) to permit Plaintiffs Kerry Pacer and Lindsay Pacer to wear their t-shirts during school, (ii) to expunge the disciplinary records of Plaintiffs Kerry Pacer and Lindsay Pacer with respect to disciplinary action taken in response to the wearing of the t-shirts, and (iii) not to retaliate against Plaintiffs Kerry Pacer and Lindsay Pacer; and

(c) Nominal damages; and

(5) On Counts X and XI:

(a) A declaration that Defendants' censorship of and retaliation against the speech of Plaintiff White County High School Peers Rising in Diverse Education and its members, including Plaintiff Kerry Pacer, and Plaintiff Charlene Hammersen are violations of the rights to free speech guaranteed by the United States and Georgia Constitutions;

(b) An injunction ordering Defendants (i) to permit Plaintiff Charlene Hammersen to display her flag and sign on school property; (ii) to expunge the disciplinary records of Plaintiff Charlene Hammersen with respect to disciplinary action taken in response to the displaying of the flag and sign, (iii) to permit Plaintiff White County High School Peers Rising in Diverse Education and its members, including Plaintiff Kerry Pacer, to distribute anti-bullying cards and similar information to other students during non-instructional time; and (iv) not to retaliate against Plaintiff White County High School Peers Rising in Diverse Education and its members, including Plaintiff Kerry Pacer, and Plaintiff Charlene Hammersen; and

(c) Nominal damages; and

(6) On all Counts:

(a) An award of fees and costs pursuant to 42 U.S.C. § 1988 and/or Fed. R. Civ. P. 54(d), and/or as otherwise provided by law; and

(b) Such further relief as the Court may deem just and proper.

Dated: February 27, 2006.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in accordance with LR 5.1(B). It is presented in Book Antigua, 13 pitch.

_____

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