

STATE OF LOUISIANA :

PARISH OF CALCASIEU :

THIRD AFFIDAVIT OF COLLETTE COVINGTON

BEFORE ME, the undersigned notary, on this 1st day of October, 2009, personally came and appeared: COLLETTE JOSEY COVINGTON CORLEY, who declares under oath:

Introduction

1.

That she enrolled at McNeese State University in 1993 and majored in Early Childhood Education with the goal of becoming a school teacher. Since 1993, she has utilized the Louisiana Vocational Rehabilitation program because of her disabilities.

2.

Upon enrolling at McNeese, she informed her advisor, the University Police, and the infirmary that she had disabilities, including epilepsy. At the time, she was able to ambulate relatively well.

3.

She attended McNeese in the 1990s and earned good grades and was active in numerous extracurricular activities. After her first three semesters at McNeese, she had a 3.6 grade point average. She wrote for the student newspaper and yearbook and worked in the campus photography office, where her photos were often used by the student newspaper and yearbook. She was an honor roll student who served in the student senate and, in 1994, was selected by the McNeese Administration to be a McNeese Ambassador—a competitive and prestigious honor that allowed her to represent McNeese at numerous galas and other formal events.

Mid-1990s

4.

In the mid-1990s, she met numerous students with disabilities on campus who had great difficulty maneuvering around campus with crutches and wheelchairs. Over the course of several years, she witnessed these students being late to class or unable to get to their classrooms because of physical barriers. These barriers included steep ramps, long and difficult routes, a lack of curb cuts, ramps, and signage, narrow and heavy doors, faulty elevators, furniture blocking their pathways, and other hazards. They often could not use water fountains, restrooms, telephones, and other campus facilities, and they were discouraged from participating in extracurricular activities due to these non-compliant facilities.

5.

In the mid-1990s, she helped to form an organization called Students Offering Support (SOS) to assist disabled students at McNeese. McNeese initially denied this student organization the right to exist and to lawfully meet on campus, despite its complying with all McNeese requirements as a student organization. Eventually, the McNeese administration allowed the

group to organize. Its members sold raffle tickets and raised money for McNeese and presented that money to McNeese so that it could install electric doors on campus to help disabled students.

6.

Its members also petitioned McNeese President Robert Hebert and other administrators for certain rights for disabled students, including the right to facilities which comply with the Americans with Disabilities Act (“ADA”) and the right to have additional time and assistance to get around the McNeese campus when facilities fail to comply with the ADA.

7.

On each occasion that she was present for such conversations, she witnessed McNeese President Robert Hebert deny the disabled students’ requests, telling them that they should be able to “get anywhere” on the sprawling 100-acre McNeese campus within three to five minutes, and that no accommodations would be made for “slow” people in crutches or wheelchairs. McNeese President Robert Hebert dismissively informed her during one of these meetings that the disabled are “always asking for something.”

8.

She witnessed a number of disabled students forced to withdraw from McNeese because they could not get to class due to inaccessible facilities at McNeese and a disrespectful and unaccommodating attitude toward the disabled by the McNeese administration.

9.

On numerous occasions in the 1990s, she read articles in the McNeese student media about the difficulties encountered by disabled students on campus and the lack of resources being devoted to ADA compliance at McNeese. These students frequently documented poor restroom and other facilities on campus. McNeese and University of Louisiana System officials were often quoted in these articles as saying that McNeese would not be brought into compliance with the law.

Period between 1996 and 2001

10.

In 1996, she fell into a hole at McNeese and her health deteriorated. As a result of several factors, including the fall, she began experiencing problems ambulating. At times, she was able to ambulate without assistance, while at other times she walked slowly and with great pain or required crutches or other aids. She was forced to withdraw from McNeese several times, in part because she realized that the campus was not in compliance with the ADA and that no accommodations would be made for her. She also stopped participating in extracurricular activities.

11.

Between 1996 and 2000, she made McNeese aware of her disabilities and medical problems, both orally and in writing, but no accommodations were made for her. Nevertheless, she attempted to enroll numerous times during this period, until she lost her eligibility for financial aid. Indeed, in 1999, the McNeese Financial Aid Committee, which included McNeese President Robert Hebert, acknowledged her disabilities but denied her at least six financial aid appeals.

12.

In 1996, prior to her difficulties ambulating, she had earned 87 hours and had a 3.1 grade point average with only a few semesters left before graduation. Once she started having difficulty ambulating, she was only able to earn 33 hours of credits in five years and was forced

to withdraw from 92 hours. Her grade point average between 1996 and 2001 was a 2.07, bringing down her cumulative grade point average from a 3.1 to a 2.77.

13.

One reason she suffered academically was that she encountered numerous physical barriers and policies which made it difficult and dangerous for her at McNeese. These barriers include steep ramps with sharp drop-offs and no wheel guards, buildings without accessible restrooms or water fountains, doorways that were too narrow or heavy to safely pass through, frequently out-of-service elevators, narrow sidewalks with abrupt drop-offs, a lack of curb-cuts so that she could cross streets, accessible routes and pathways being blocked by long-term furniture storage and other obstacles, accessible doors which were locked, the lack of an emergency procedure for evacuating the disabled, as required by the ADA, the refusal of instructors to provide additional time to get to class, and other barriers. She encountered these barriers both in older buildings and in buildings which she knows have been built since 1990.

14.

On numerous occasions between 1996 and 2001, she was ridiculed or singled-out by instructors because of her disabilities or the consequences of her disabilities. One example includes being told by a science professor that she would be unable to earn higher than a "C" in his class because he required that students meet in the Frasch Planetarium, a new facility which was inaccessible to those in wheelchairs. The professor admitted that he never understood why the architects built the new building the way that they did. Another example occurred when she was embarrassed by her instructor in front of her classmates and penalized because she was unable to drive to a class field trip.

15.

On numerous occasions, she was locked out of Farrar Hall and forced to sit outside in the cold and rain because the doors at the top of the only ramps into the building were locked. On other occasions, she was forced to miss class because elevators did not work. Each time that she was excluded from attending class, she missed the opportunity to listen to essential lectures and/or to take tests, thus putting her at a significant disadvantage to her classmates.

16.

On numerous occasions in 2000 and 2001, as her condition continued to deteriorate and she became more dependent on her crutches and wheelchair, she went to the McNeese Office of Services for Students with Disabilities Director Tim Delaney and made him aware of her disabilities and the dangers she was encountering on campus. Delaney did not offer her any accommodations because his office does not accommodate those with physical disabilities and helps only those who have learning disabilities. Nevertheless, she "registered" with his office in 2000 and 2001 so that her disabilities and her accommodation requests would be documented.

17.

On January 31, 2001, while waiting for her Louisiana Vocational Rehabilitation transportation, she attempted to use the Old Ranch Student Union restroom. She was unable to successfully do so and was forced to urinate on herself. As she was exiting the restroom, she injured her arm trying to open the heavy door, which she later learned was not ADA-compliant. She filed an accident report with the McNeese police, and, when Tim Delaney again reiterated that McNeese would not accommodate her in a wheelchair, she withdrew from McNeese and filed suit seeking damages for her injuries and requesting accommodations under the ADA.

Period between 2001 and 2009

18.

After she filed her lawsuit, McNeese began aggressively threatening Covington in writing and by telephone demanding money for her student loans. She advised the callers that she had a lawsuit pending against McNeese and that she is disabled and unable to earn income without a college degree. She further advised them to contact her attorneys, and she provided their names and telephone numbers. However, even today, McNeese continues to contact her directly demanding money on a regular basis.

19.

McNeese has reported her loans as delinquent, thus significantly impacting her credit score. Furthermore, interest continues to accumulate on these loans, which she is unable to pay. She disputes any charges for semesters that she was unable to access classes that she paid to take.

20.

After filing suit, she noticed a vehicle parked outside her home with what appeared to be a person inside, watching and filming her intermittently for several years. This frightened her, causing her great fear and emotional distress. She later learned that McNeese had hired a private investigator to follow her and spy on her and her daughter at their home.

21.

She attempted to re-apply to McNeese in 2005, 2006, and 2007, in the hope that McNeese would change its position and offer her accommodations under the ADA. She was very excited about the possibility of returning to school and completing her education, and she believed that McNeese's position might change once it became aware of its legal obligations. Furthermore, she was advised by her counsel to try to return to school because he was devoting extensive time and resources attempting to instruct McNeese's counsel about the ADA.

22.

When she applied to McNeese in 2005, she contacted McNeese Director of Services for Students with Disabilities Tim Delaney, who angrily informed her that McNeese was not ADA compliant and no accommodations would be made for her. Furthermore, he told her that she should transfer to the University of Louisiana at Lafayette if she expects to be accommodated in a wheelchair. After speaking with Delaney, she was humiliated and felt unwelcome at McNeese.

23.

Nevertheless, she again applied to McNeese in 2006 under the advice of counsel. She again contacted McNeese Director of Services for Students with Disabilities Tim Delaney to request accommodations. During this conversation, he made it clear that he was still angry with her because he had to be deposed in this case. He yelled at her and criticized her for filing her lawsuit against McNeese. He told her that she was "nobody special". He reiterated that she would not be accommodated at McNeese in her wheelchair and was unwelcome on campus. Once again, she felt humiliated and belittled.

24.

She applied to McNeese again for the spring, 2007 semester. After consulting with counsel and learning that McNeese had not changed its position, she did not schedule any classes and did not attempt to contact Tim Delaney.

25.

In 2006, McNeese filed pleadings in the 14th Judicial District, Calcasieu Parish, Louisiana, which accused her of fabricating her disabilities and in which McNeese claimed that it was unaware that she was disabled and that she refused McNeese's unspecified "help". In those pleadings, McNeese also implied that it was not required to bring its buildings into compliance with the ADA. This position was supported by the testimony of McNeese officials, including President Robert Hebert and Disability Director Tim Delaney.

26.

In 2007, she prevailed on a summary judgment which concluded that McNeese violated her rights under the ADA. McNeese filed an appeal with the Third Circuit Court of Appeals and then writs to the Louisiana Supreme Court. The Third Circuit Court of Appeals affirmed the trial court's ruling by a 3-0 margin, and the Supreme Court denied writs by a 7-0 margin.

27.

During the pendency of the appeal, McNeese made unfounded accusations against her in a manner which was designed to destroy her reputation. McNeese alleged in the public record, for instance, that she fabricated her disabilities and suggested that she is insane and unable to tell the truth. There was no rational basis for these, and other, derogatory statements against her, and they caused her great emotional distress.

28.

She is aware, through her counsel and through McNeese's discovery answers, that during the appeal, Tim Delaney contacted the Louisiana Bar Association in an effort to discredit her counsel in this case.

29.

She filed a grievance against McNeese with the U.S. Department of Justice, and she is aware that the U.S. Department of Justice Civil Rights Division has responded by initiating a site inspection and investigation of McNeese, and that this site inspection and investigation has uncovered millions of dollars in ADA violations, both in existing buildings and new buildings, which are not being designed to meet decades-old building codes. She has seen emails in which the U.S. Department of Justice Civil Rights Division instructed McNeese not to engage in any retaliation under the ADA.

Fall, 2009

30.

Several months after the Louisiana Supreme Court upheld her summary judgment, McNeese offered to allow her to return to school for the Fall, 2009 semester. This was the first time that McNeese has ever offered her any accommodations or acknowledged her right to attend McNeese in a wheelchair, which she still requires in order to ambulate any appreciable distance. This represents a significant change in the relationship between the parties.

31.

In August, 2009, she and her counsel met with McNeese Vice President Jeanne Daboval, Registrar Stephanie Tarver, ADA Coordinator Rosemary Gray, and McNeese's counsel. At this meeting, she was enrolled in courses for the Fall, 2009 semester, but she was advised that because of changes in her degree plan, she would have to take approximately two extra years to get her degree in Elementary Education.

32.

At this meeting, she was further advised that she would encounter many barriers on the McNeese campus and that she was to follow a pre-determined route once she arrived on campus. She was told that she “did not need” to go to places on campus such as the bookstore. This policy directly contradicts her understanding that the ADA allows her to access every “service, program, and activity” at McNeese and directly contradicts her understanding of the rulings in her case.

33.

She registered for five classes for Fall, 2009. Three of the classes are taught online (“online classes”), and two are taught on campus (“campus classes”). She has never taken an online class before this semester, and she prefers taking campus classes because the online format does not allow her to attend lectures or interact conventionally with her instructors or classmates. Furthermore, the online format can be difficult to understand as has presented some logistical difficulties.

Accessible transportation shelter

34.

The campus classes are difficult for her to access. Her para-transportation van drops her off and picks her up at a location designated by McNeese, which is an exposed driveway without curb ramps in front of Kaufman Hall. Kaufman Hall has no accessible restrooms and no access ramps near where she must wait. Therefore, she is forced to wait for her transportation while exposed to the elements without any nearby shelter or facilities. On several occasions in August and September, 2009, it rained on her while she waited outside in her wheelchair. She has already been hospitalized with pneumonia this semester, and she fears that she will get sick again if she is forced to continue waiting in the rain, especially in the winter. She seeks an injunction mandating that McNeese find a more appropriate and accessible shelter or shelters on campus to designate for the disabled to wait for their transportation.

Sidewalk pathways

35.

The two buildings in which she attends classes this semester, Kirkman Hall and Frasch Hall, are difficult to get to and pose hazards for her. She must travel halfway across campus from her drop-off point to these buildings, and her path requires that she navigate sidewalks with steep ramps, slanted angles, large expansion gaps, and broken pieces. These obstacles make it very difficult for her to maneuver her wheelchair because her arms must compensate for the unlevel surfaces, thus impeding the pathway to her classes.

36.

Some of the sidewalks along her daily path are now partitioned with construction tape and often closed. She has never been provided with a transition plan warning her of the purpose and duration of this construction, there is no signage indicating an alternate route for those in wheelchairs. She has asked her professors and ADA Coordinator Rosemary Gray specific questions about the duration of this construction or whether any future construction which would affect her has been scheduled. However, neither of them have been able to answer her questions. She has attached numerous photographs that she took of these sidewalks as she attempted to get to class in September, 2009.

37.

On her path between her classes in Kirkman Hall and Frasch Hall, she is required to cross a street and a parking lot (“library parking lot”) which has no crosswalk. She fears for her safety

while traversing this path, because she must maneuver her wheelchair several hundred feet through the library parking lot as vehicles traveling quickly and back up with numerous blind spots. She sits low to the ground in her wheelchair, and it is more difficult for a motorist to see her in her wheelchair than it is for a motorist to see a standing person. She would more easily and safely be able to navigate between these two buildings if there was a compliant sidewalk with curb ramps along the library parking lot or a cross walk through the library parking lot.

38.

In September, 2009, McNeese constructed a new sidewalk on her path between Kinkman Hall and Frasch Hall. This new sidewalk slopes steeply down from the Student Services Office to Beauregard Street and has no handrails, wheel guards, grooves or other devices to slow her wheelchair. She sometimes fears that she will not be able to stop her wheelchair when traveling down toward the road during heavy morning traffic.

Frasch Hall

39.

She is taking Biology 105 this semester in Frasch Hall, Room 136. She has been advised by McNeese not to use the Frasch Hall ramp from the library parking lot, because it is not compliant. Instead, she is forced to travel completely around Frasch Hall and the Frasch Annex Building to use a different ramp which is also steep and difficult for her to navigate. There is no signage in the building letting her know which entrances, pathways, and restrooms comply with the ADA.

40.

She cannot use any restroom in Frasch Hall for several reasons. First, the pathways inside the restrooms are too narrow for her wheelchair to safely maneuver and do not provide sufficient maneuvering space for her wheelchair. Second, the doors are too heavy for her to be able to safely open and close too quickly for her to safely exit. Third, most of the stalls that she has seen are not wide enough for her to safely use. Fourth, McNeese has removed its ADA signage from the restrooms in the building, signifying that they are not safe for her to use. This causes her an extreme hardship, because she has a permanent catheter which must be emptied during the day and must occasionally be adjusted.

41.

On September 29, 2009, she was forced to miss her biology class because she could not find an accessible restroom in which to adjust her catheter. She was forced to urinate on herself, which smelled terribly, soiled her clothes, and required that she leave campus for the day. This caused her great inconvenience and embarrassment, as she had to wait in her urine-soaked clothing for her transportation to pick her up. It also caused her to miss valuable instruction time, and will likely occur again if there are no accessible restrooms in the buildings that she uses.

42.

On the morning of September 29, 2009, as she was looking for a restroom to adjust her catheter, she discovered that the signs which had previously falsely claimed that Frasch Hall had accessible restrooms were removed. She has attached a photograph of the restroom door showing the glue on the wall where the ADA signs had been the week before. Because McNeese refuses to provide her with its legally-mandated transition plan, she does not know why these signs were removed or what plans exist for upgrading these restrooms.

Kirkman Hall

43.

She is taking Math 231 this Fall in Kirkman Hall Room 139E. The pathway to get to Kirkman Hall is steep and difficult for her to use, and there are no crosswalks. As noted, in September, 2009, the sidewalks were blocked due to construction, causing her to be uncertain whether she would be able to attend her class.

44.

Due to the small classroom size in Kirkman and the placement of the furniture, she has been forced to sit in the back of the classroom in her math class for the first third of the Fall, 2009 semester. In this location, she cannot hear her instructor as she lectures and cannot see the board. Furthermore, she was subjected to hallway noise. She has been able to work with her instructor to move to a better location in the classroom; however, she missed crucial classroom time which has harmed her ability to learn and has affected her grade. Furthermore, such problems are likely to occur in future semesters and may not be resolved as easily if she continues to be assigned to classrooms in which she cannot maneuver her wheelchair.

Bookstore

45.

She is required to visit the bookstore in order to purchase books, supplies, and other items for her academic success. She has visited the bookstore on several occasions in August and September, 2009 and been able to make purchases. However, she has had great difficulty using the sidewalks to get to the bookstore and maneuvering in the bookstore. Once she is in the bookstore, she encounters obstacles such as a book return counter, checkout counter, and customer service counter which are all too high for her to use in her wheelchair. This causes her embarrassment and requires that she be singled out by having a bookstore employee come around the counter to assist her.

46.

The week of September 20, 2009, she became trapped in the bookstore because the electric door did not work.

Old and New Ranches and Cafeteria

47.

The Old Ranch where she was injured in January, 2001, still does not have a single accessible restroom, nearly nine years after she was injured. McNeese had placed signage falsely indicating that the restroom was brought into compliance. However, the week of September 28, 2009, McNeese removed that signage, indicating that the restroom does not comply. She has attached a photograph that she took on September 29, 2009 of the glue which is still on the wall where the restroom was previously marked as accessible.

48.

She has great difficulty navigating to the Ranch complex, which includes the cafeteria, bookstore, student government offices, student yearbook offices, Student Union Board, computer lab, and other areas. The ramp from the library parking lot into the Ranch complex is steep, has no handrails, and is often blocked by McNeese vehicles. Furthermore, as noted, it requires that she navigate through traffic in her wheelchair, and there are no crosswalks. The ramp from Beauregard Street into the Ranch complex is also steep and has no handrails. The other ramps are far out-of-her way and there are no consistently accessible pathways.

Since she was forced to withdraw from McNeese, McNeese has moved several services, programs, and activities that she previously utilized from first floor locations to locations which are now completely inaccessible to her. For instance, the Student Union Board (SUB), which was previously located in the Old Ranch, is now upstairs in the New Ranch—a building without a single elevator.

The New Ranch building entrance poses difficulties for her. The electric door on the east side of the building is at the top of a ramp which is steep and difficult to navigate, making her feel as if her wheelchair might tip.

Self Evaluation and Transition Plan

McNeese has not provided her with a copy of its ADA self-evaluation or transition plan, despite repeated requests since the mid-1990s. These documents would assist her in understanding McNeese's future plans for accommodation, if any. The last time she requested McNeese's self-evaluation and transition plan, on August 7, Vice President Jeanne Daboval advised her that McNeese had no obligation to create or keep such documents, despite the fact that they are mandated by federal law and were addressed in the Third Circuit opinion rendered in her case.

Transcript

McNeese refuses to provide her with an official transcript, allegedly because she owes McNeese money from prior semesters, including semesters in which she was unable to access her classrooms and unable to complete her courses. She will require an official transcript to secure employment when she graduates or to transfer to another institution. Therefore, as long as McNeese continues to hold hostage her transcript because of charges incurred for an education that she was denied, she will not be able to advance in her career.

Course withdrawal

Covington enrolled at McNeese for the Fall, 2009 under the impression that she would be assigned to facilities which are readily accessible and usable to her. However, she has had great difficulty with McNeese's inaccessible campus and has been forced to miss classes and miss opportunities to learn with her classmates. As a result, she seeks an injunction mandating that these campus facilities be upgraded prior to the Spring, 2009 semester and that she be allowed to re-enroll in Biology 105 and Math 231 this Spring with no economic or academic penalties and under the same scholarship that she is currently receiving.

Necessity for injunctive relief


She believes that injunctive relief is necessary because of her prior injuries on campus, the lack of accessible facilities, the lack of signage, her continuing inability to attend classes because of inaccessible facilities, her being forced to urinate on herself because of her fear of McNeese's inaccessible restrooms, and McNeese officials' continuing claims to her that McNeese is not responsible for complying with the ADA, despite the rulings of this court and the Third Circuit.

Prior to suffering mobility impairments, she regularly excelled in her courses at McNeese. For the last 14 years, she has been forced to drop three classes for every one that she completes because of McNeese's inaccessible campus. Furthermore, among those classes that she completes, her grade point average has dropped a full letter grade because of her inability to receive accommodations. During these 14 years, she has lost wages as a school teacher, lost retirement credits, and lost experience. She suffers tremendously knowing that her career has been needlessly delayed because of McNeese's failure to comply with the law. Therefore, she will suffer irreparable harm if she is not granted injunctive relief so that she may return to school and meaningfully participate in McNeese's services, programs, and activities.

Future accommodations

She anticipates being on the McNeese campus for an additional two to three years prior to completing her degree and will require accommodations in buildings such as Farrar Hall, where most education classes are taught. She also anticipates using the Library and other facilities in the near future. Therefore, she expects to seek further injunctions on a semester-by-semester basis as conditions warrant.

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary, this 1st day of October, 2009,
at Lake Charles, Louisiana.


COLLETTE JOSEY COVINGTON CORLEY
Date 10/1/09


NOTARY PUBLIC

Notary Public ID: 06990BAR NO,

My Commission Expires on: AET DEATH