

**United States District Court
For the Southern District of New York**

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Jane Doe

Plaintiff

v.

**04 CV 6740 (SHS)
ECF CASE**

Hunter College of the City University of New York
695 Park Ave.
New York, NY 10021

Jennifer Raab, President
Hunter College of the City University of New York
695 Park Ave.
New York, NY 10021

Eija Ayravainen, Acting Vice President and Dean of Students
Hunter College of the City University of New York
695 Park Ave.
New York, NY 10021

Defendants
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**SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT,
PERMANENT INJUNCTIVE RELIEF AND DAMAGES**

NATURE OF THE ACTION

1. This is an action for declaratory judgment, permanent injunctive relief, and damages for discrimination on the basis of handicap in the exclusion from dormitory housing pursuant to the Fair Housing Amendments Act of 1988 (FHAA), the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973. Defendant, Hunter College of the City University of New York, the owner and manager of Brookdale Residence Hall, a dormitory, and Defendants Jennifer Raab and Eija Ayravainen, employees of and President and Vice President of Hunter College,

respectively, discriminated against Plaintiff by wrongfully evicting her and denying her residence in dormitory housing on the basis of disability. Defendants stated that they could not be responsible for Ms. Doe's recovery. Defendants further discriminated against Plaintiff by conditioning her re-admission to the residence hall on her agreement to conditions not imposed on students who do not have a disability. Finally, Defendants refused to provide Plaintiff Doe an accommodation in its rules, policies, practices or services that was necessary to afford her an equal opportunity to use and enjoy the dormitory housing.

JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by 42 U.S.C. § 3613(a), 42 U.S.C. § 12132 and 42 U.S.C. § 2000a-3(a); 28 U.S.C. § 1367 and by 28 U.S.C. §§ 1331, 1343(a)(4), 1367(a), and 2201 and 29 U.S.C. §§ 794 and 794a.

3. The amount in controversy exceeds \$10,000, exclusive of interests and costs.

4. Venue is proper in this district because the claim arose in this district and the Defendants conduct business in this district.

PARTIES

5. Plaintiff Jane Doe is 19 years old, a full time student and a sophomore at Hunter College. Ms. Doe suffers from Major Depressive Disorder and Attention Deficit Hyperactivity Disorder. At times, Ms. Doe's depression becomes so severe that it substantially limits her major life activities, such as sleeping, eating, socializing, and perceiving. At those times, Ms. Doe has engaged in suicidal gestures. Plaintiff is a person with a disability. Plaintiff has a history of being a person with a disability within

the meaning of the ADA, Section 504 of the Rehabilitation Act, and the FHAA.

Defendants regard Ms. Doe as a person with a disability, substantially limited in her ability to care for herself. As a student admitted to the Hunter College Honors Program, Doe has met the essential eligibility requirements for residence in the Brookdale Residence Hall, and is “qualified” to participate in Defendants’ programs, services, and activities. Plaintiff is not and has never been a threat to others.

6. Doe was a resident of Brookdale Residence Hall in New York until evicted by Defendants in June 2004. From June 2004 until January 2005, she resided in her mother’s apartment in Queens, NY, while continuing to attend class at Hunter College. In January 2005, Ms. Doe was re-admitted to the Brookdale Residence Hall subject to conditions not imposed on students who do not have a disability, a record of disability, or who are not regarded as having a disability. Plaintiff continues to be adversely affected by the acts, policies, and practices of Defendants and/or their agents.

7. Upon information and belief, Defendant Hunter College of the City University of New York (“Hunter College”) is a College duly chartered by the Board of Regents of the State of New York and located in New York, NY. Upon information and belief Hunter College and its programs and activities receive Federal financial assistance. Upon information and belief Hunter College is a “public entity” under 42 U.S.C. § 12131, and is subject to Title II of the ADA. Upon information and belief Hunter College owns and operates Brookdale Residence Hall. At all times material hereto, Hunter College operated and acted as management of Brookdale Residence Hall, its dormitory located at 425 East 25th St. between First Avenue and the FDR Drive, New York, NY, and acted with the actual and/or apparent authority of the owner of the

property. Upon information and belief, Defendant Jennifer Raab is the President of Hunter College, which operates Brookdale Residence Hall. Upon information and belief, Defendant Eija Ayravainen, is the Acting Vice President of Student Affairs and Dean of Students of Hunter College, which operates Brookdale Residence Hall. As Defendants Ayravainen and Raab are responsible for administering a public entity, Hunter College, they are subject to Title II of the ADA. As Defendants operate programs, services and activities receiving federal funds, they are subject to Section 504 of the Rehabilitation Act.

FACTUAL BACKGROUND

8. Jane Doe is 20 years old, a full time student and a sophomore at Hunter College. Beginning in 2001, during her junior year in high school, Ms. Doe began to experience depression. At times, she engaged in self-injury such as cutting. “Cutting” is when someone cuts their own skin with a sharp object, usually glass or a razor blade; it is not typically linked to suicide or violence. Rather, individuals typically engage in cutting to provide relief from psychological pain, tension reduction, connection with or disassociation from feelings, connection with physical boundaries, or a means of communication.

9. At times, Ms. Doe’s depression became so severe that it caused perceptual disturbances including difficulty thinking, concentrating or making decisions; decreased appetite; ennui decreased energy and fatigue; anxiety; and difficulty interacting with her peers. At such times, Ms. Doe has periodically had suicidal ideation. During the 2001 academic year, Ms. Doe was hospitalized for depression for seven days. Due to her

severe depression, Ms. Doe took a voluntary medical leave of absence and was home schooled for the majority of her junior year of high school.

10. Ms. Doe has a history of being substantially limited in the major life activities of sleeping, eating, thinking, learning, interacting with others, and caring for herself. Since November 2001, Ms. Doe has been under the care of psychiatrist, Dr. _____, whom she sees once per month. Doe has also been treated by Ms. _____, a licensed clinical social worker, whom she sees once per week. Dr. _____ has diagnosed Ms. Doe as suffering from Major Depressive Disorder and Attention Deficit Hyperactivity Disorder. Ms. Doe has been prescribed medication for her depression and for difficulties with focus and attention.

11. Ms. Doe returned to high school for her senior year in 2002. She continued her treatment with Drs. _____ and _____. At the time, her depression was not severe and she was not substantially limited in any major life activities. She attained a 90 average during her senior year.

12. Before attending Hunter College, Ms. Doe applied and was accepted to SUNY Purchase, SUNY Albany, SUNY Buffalo, SUNY StonyBrook, SUNY Oswego, SUNY Genesco, and Middlebury College. She was offered dormitory housing at all of the colleges and scholarships at all of the SUNY colleges.

13. Hunter College accepted Ms. Doe into its Honors Program. Hunter College does not offer dormitory housing to all of its students. However, students in the Honors Program are entitled to elect either dormitory housing or an annual stipend to offset housing costs. Ms. Doe would not have chosen to attend Hunter College if it had not provided dormitory housing. Ms. Doe elected to live in the Residence Hall.

14. As a student admitted to the Hunter College Honors Program, Ms. Doe has met the essential eligibility requirements for dormitory housing and is “qualified” to live in Brookdale Residence Hall. At no time has Ms. Doe ever presented a danger to others that would disqualify her from residential housing. Ms. Doe began living in Hunter College Brookdale Residence Hall in September of 2003. When Ms. Doe began attending college in September 2003, she stopped seeing Dr. _____. She did continue to see Dr. _____ on a monthly basis.

15. In January 2004, Ms. Doe had severe migraine headache which lasted at least one week. Ms. Doe took Tylenol for several days to ease the pain]. Ms. Doe also took other over-the-counter pain killers such as Aspirin and Advil to alleviate her symptoms. Ms. Doe’s boyfriend became concerned about Ms. Doe’s headaches, and nausea and the amount of medication Ms. Doe took to alleviate them, and called 911. Ms. Doe was taken to the Cabrini Hospital by Emergency Medical Services. Ms. Doe was seen in the medical emergency room.

16. Security guards at the Brookdale Residence hall informed Pamela Burthwright, Director of Residence Life, about the incident. Ms. Burthwright left a note under Ms. Doe’s door, asking Ms. Doe to see her the following day.

17. The following day Ms. Doe met with Ms. Burthwright and explained that she had had headaches and nausea and accidentally took too much medication. Ms. Burthwright did not seem to believe Ms. Doe and told her about counseling services available at the school.

18. During the following semester, Ms. Doe saw Ms. Burthwright. Ms. Burthwright pointed at Ms. Doe's arms, which were scarred from the time when Ms. Doe was cutting, and asked Ms. Doe if she was "getting help for that."

19. In the Fall 2003 semester, ending in December 2003, Ms. Doe received 3 As and one B in her classes.

20. During final exams for the Spring semester, Ms. Doe studied rigorously and did not keep regular 9-5 hours. Her depression had lessened. As a result, she forgot to take her medication for several weeks. In June 2004, Ms. Doe experienced a worsening of her depression. She felt anxious, overwhelmed and alone.

21. In the early morning of Saturday, June 5, 2004, Ms. Doe swallowed 20 Tylenol PM pills and then dialed 911. She was taken by ambulance to Cabrini Medical Center, and was voluntarily admitted.

22. Cabrini Medical Center determined that Ms. Doe was not a threat to herself or others, and released her on Wednesday, June 9, 2004. Before her release, Ms. Doe arranged to resume her weekly sessions with Dr. _____, and implemented safeguards to ensure that she remained on her medication.

23. Despite the recurrence of her severe depression and associated symptoms, Ms. Doe received four As and one incomplete during the semester ending June 2004.

24. Brookdale security informed Ms. Burthwright about Ms. Doe's hospitalization on June 5, 2004. While Ms. Doe was in the hospital for evaluation and treatment of her severe depression, Defendants decided that they would not allow Ms. Doe back into the dormitory and changed the lock to her room.

25. Ms. Doe returned to her dormitory on June 9, 2004 to find that she was locked out of her room and the locks had been changed. A staff member allowed her into her room to retrieve some possessions.

26. On June 10, 2004, Ms. Doe met with Pamela Burthwright and Defendant Ayravainen. They informed her that she had to vacate her room. Defendant Ayravainen stated that Hunter College could not be responsible for her recovery and that the action they were taking was pursuant to Hunter's policy. Defendants did not conduct any individualized assessment of Plaintiff. Defendants evicted Plaintiff Doe due to her actual disability, her history of disability, or because they regarded her as a person with disability.

27. On June 14, 2004, Ms. Doe wrote to Ms. Burthwright and Defendants Ayravainen and Raab stating:

By refusing to allow me to enter my room, by forcing me to leave without an official explanation, and by threatening to charge me for every day I do not vacate my room, Brookdale is not only subjecting me to great quantities of emotional stress and personal trauma, but they are unfairly and illegally discriminating against me on the basis of my mental health condition.

28. On or about June 21, 2004, Defendant Ayravainen wrote to Ms. Doe reiterating the decision that due to the incident on June 5, 2004, Ms. Doe must "relinquish your place in the Residence Hall through the Fall 2004 semester." She stated that Ms. Doe had to vacate her room by June 28, 2004. She stated that the decision was based upon a review of the records of the June 5th episode, that it was consistent with action taken by the college in similar situations in the past, and that it followed the relevant provisions of the College's 2003-2004 Housing Contract, Section I which states:

A student who attempts suicide or in anyway attempts to harm him or herself will be asked to take a leave of absence for at least one semester from the residence Hall and will be evaluated by the school psychologist or his/her designated counselor prior to returning to the residence Hall. Additionally, students with psychological issues may be mandated by the Office of Residence Life to receive counseling.

29. Defendant Ayravainen admitted that she did not believe that Ms. Doe could emotionally care for herself: “We believe this decision is in your best interest and the best interests of the Residence Hall community. Our goal is to enable you to receive intensive mental health counseling in a setting with reduced pressures and distractions, which will in turn help you return to the Residence Hall better able to handle the challenges of academic and residential life.”

30. Defendant Ayravainen's letter further stated that Ms. Doe could request to return to college housing starting with the Spring 2005 semester and that her request would be reviewed at that time and she would be notified of a decision. Along with the request, Ms. Doe would also have to submit “information and medical documentation regarding measures you have taken to address your emotional well-being and ability to live in a residential community.”

31. On July 2, 2004, David Goldfarb, Esq. wrote to Defendant Raab, stating that he represented Ms. Doe and was “writing to ask you to permit Ms. Doe to return to her room, and to ask that the College reasonably accommodate her – now and in the future – as required by law.” He further wrote:

A policy of automatically evicting students at a moment of great vulnerability constitutes intentional discrimination on the basis of mental disability. In any event, Ms. Doe is entitled, as a matter of reasonable accommodation, to have her residency status immediately reassessed. Disability discrimination and a failure to make a reasonable accommodation are, as you know, violations of a variety of federal, state, and local statutes, including the Fair Housing Act, the Americans with

Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the New York State Human Rights Law, the New York City Human Rights Law, and the NY Real Property Actions and Proceedings Law.

I ask that you immediately reverse Dean Ayravainen's decision and allow Ms. Doe to return to her room....

32. Enclosed with the July 2, 2004, letter to Defendant Raab was a statement from Dr. David M. _____, Ms. Doe's treating psychiatrist stating: that she had been under his care since November 2001; that she is diagnosed as suffering from Major Depressive Disorder and Attention Deficit Hyperactivity Disorder; that he last met with her on June 23, 2004 -- after her hospitalization -- and that she did not exhibit suicidal ideation and did not place herself or others in imminent danger; that the symptoms that were associated with her hospitalization appear to have improved and do not currently disrupt her emotional, academic and social functioning. Dr. _____ further stated:

School has been a very important support in [Doe's] life since she began Hunter's Honors Program and it would be in her best interest to continue her class work and her dorm living. An eviction from the dorm because of the school's understandable concerns regarding her depression would be a rejection that could complicate the course of her illness....

33. On July 14, 2004, Linda Chin, Dean of Faculty and Staff Relations and Special Counsel to the President at Hunter College, wrote to David Goldfarb in response to his letter. She stated that Ms. Doe is not entitled to a room in the Residence Hall as a reasonable accommodation under any of the laws cited by Mr. Goldfarb. Despite Dr. Grdoberg's medical opinion that Ms. Doe was not suicidal and was not a threat to either herself or anyone else, Ms. Chin stated that it is not possible to permit Ms. Doe to reside in the Residence Hall "in light of the possible harm Ms. [Doe] may cause herself and others in the Residence Hall." She re-stated Hunter's Housing Contract, Section 1 (see

paragraph 28 above). She stated that Ms. Doe could first reapply to return to college housing with the Spring, 2005 semester, and urged Ms. Doe to “receive or to continue to receive intensive mental health counseling.”

34. As a result of her eviction from Brookdale Residence Hall, Ms. Doe began living in her mother’s apartment in Queens, New York. Although Defendants refused to allow Ms. Doe to reside in the Residence Hall, they did allow her to attend the Summer School sessions in July and August of 2004. While attending class, Ms. Doe had unrestricted access to the college buildings, and the Residence Hall, but could not live there.

35. Ms. Doe commuted almost one and one-half hours each way to attend class. Not only did this living situation disrupt her emotional, academic and social functioning, but it exacerbated her Major Depressive Disorder and threatened to have a lasting detrimental impact on her. Ms. Doe received grades of “A” in all of her summer courses. Throughout the Summer sessions, Ms. Doe continued treatment with Drs. _____ and _____.

36. On or about July 26, 2004, David Goldfarb spoke to Linda Chin. He explained that Ms. Doe was attending Hunter's Summer Session and requested again that a reasonable accommodation be made by having the Summer Sessions considered the one semester leave of absence required by the housing contract. This would allow Ms. Doe to reapply for housing in August 2004, for the Fall 2004 Semester. Ms. Chin refused to consider that or any other accommodation. By taking this action, Hunter College refused to engage in the interactive process that is required as part of the reasonable accommodation mandate.

37. The accommodation requested on behalf of Ms. Doe would not fundamentally alter the nature of the programs, services, activities offered by the Defendants, nor would such an accommodation result in an undue burden on the Defendants.

38. The Fall 2004 Academic Semester at Hunter College commenced on August 27, 2004. On August 27, 2004, Plaintiff's counsel and Defendants' counsel appeared at a pretrial conference on a pending motion for a preliminary injunction. At that time the parties agreed that Defendants would evaluate Ms. Doe and based on their evaluation, determine if she could return the residence hall. The parties memorialized their agreement, as a stipulation on the record, as follows:

That as of now, plaintiff will be admitted to the residence hall at issue on September 7. Hunter intends to have professionals evaluate plaintiff on or before that date, and to attempt to reach a resolution as to whether its appropriate under their policy for her to remain or not.

If the decision is made by Hunter on the basis of the professional evaluation that she cannot enter the residence hall, or if she's already admitted that she can't remain in the residence hall, then Mr. Speres [counsel for defendants] will notify plaintiff's attorney by phone and in writing of that fact, and enable plaintiff to renew her application for a temporary restraining order and a motion for a preliminary injunction.

39. At the request of Defendants, Ms. Doe met with Kathryne Leak and Dawn Klimovich for an evaluation on September 1, 2004. On information and belief, Ms. Leak is a Licensed Master Social Worker, not a licensed clinical social worker, thus she is not permitted to diagnose or treat mental illness. Ms. Klimovich is not professionally licensed by the State of New York. Therefore, in breach of their agreement, Defendants did not have Ms. Doe evaluated by qualified professionals.

40. Neither Ms. Leak or Ms. Klimovich spoke with Dr. Gordberg, Ms. Doe's treating psychiatrist, or Ms. _____. Instead, Ms. Leak questioned Ms. Doe about her mental illness, previous cutting behavior and relationship with her family. Both Ms. Leak and Dr. Klimovich recognized that Ms. Doe's expulsion from the dormitory necessitating her return to live at home with her mother was very difficult for Ms. Doe and exacerbated her condition. They also acknowledged that in the dormitory Ms. Doe "feels connected, accepted, part of a group...feel[s] better when there are people around." Nonetheless, without any medical evidence, and based on prejudice and stereotypes they stated that:

Ms. Doe "appears to be an emotionally very needy individual who seeks attention. There is a great concern that she may again repeat the behaviors she has already exhibited this past year while in the residence. ...Although she has a strained relationship with her mother and we recognize there are cultural differences about mental health issues and their disclosure in public, the residence hall is not to be seen as an escape from the problems she has with her mother."

41. Ms. Leak and Ms. Klimovich, acknowledged that the June 2004 incident occurred while Ms. Doe had stopped seeing her therapist and taking her medication, and admitted that Ms. Doe had "recognized she needed to resume meeting with her therapist," on September 3, 2004, they nonetheless wrote to Linda Chin, that "Both Dr. Leak and Dr. Klimovich concur that the Brookdale Residence Hall is not the appropriate residence for Ms. [Doe] at this time." This decision was based on Ms. Doe's history of mental disability, and/or Defendants perception that Ms. Doe had a disability.

42. Based on the evaluation of Ms. Klimovich and Ms. Leak, Defendant Ayravainen, on September 3, 2004, determined, "Student will not move back into the dormitory at this time."

43. On information and belief, Defendants based their decision on their concern that Ms. Doe would successfully commit suicide and would create a risk of suicide contagion for other students. The decision was not an individualized assessment based on objective medical evidence, rather, it was based on prejudice and stereotypes.

44. In a telephone conference with the Court on September 7, 2004, Plaintiff renewed her motion for a preliminary injunction and a temporary restraining order. By order dated September 10, 2004, the Court denied the motion for a temporary restraining order and ordered the parties to submit memoranda addressing the need for a preliminary injunction.

45. On or about November 2004, attorneys for Plaintiff inquired about the procedure for Plaintiff Doe to reapply for dormitory residence for the Fall Semester. On November 28, 2004, Kathryn Spann, Assistant Attorney General, attorney for Defendants wrote to Plaintiff's counsel to advise that Hunter College had agreed to consider Ms. Doe's reapplication if she submitted a "Hunter College Housing Application" and required documentation as follows:

Ms. [Doe] will need to obtain a letter from her therapist explicitly stating that (1) Ms. [Doe] is capable of living in a structured college residence hall environment with limited psychological and mental health support, (2) Ms. [Doe] has been regularly taking all medications prescribed for her disability, and (3) in the professional judgment of the therapist, Ms. [Doe] does not pose a threat of harming herself in the aforementioned environment.

46. On December 1, 2004, Jane Doe completed a Hunter College 2004-2005 Housing Application and submitted it to Hunter College Office of Residence Life.

47. On December 2, 2004, Dr. _____ wrote to Defendant Ayravainen the following:

I am a board certified psychiatrist and have treated Jane Doe since November of 2001. I presently meet with Jane Doe once a month. She also sees a clinical social worker once per week.

It is my opinion that Jane Doe is capable of living in a structured college residence hall environment with limited psychological and mental health support.

She has been regularly taking all of the medications that she has been prescribed for her Major Depressive Disorder.

It is my opinion that Jane Doe does not pose a threat of harming herself in the Hunter College dormitory environment.

48. On January 13, 2005, Counsel for Hunter requested as an additional condition for Plaintiff's readmission that Dr. _____ agree to notify them if Ms. Doe stopped regular visits; if he had reason to believe that she was not taking her medications; and if he became aware of any increased risk that she might attempt suicide.

49. Dr. _____ declined to agree to the request from Hunter College, because he felt that even if Jane Doe agreed, it would affect the integrity of his treatment of her, that Jane Doe would worry that what she said to Dr. _____ would be held against her, and that it would interfere with his ability to monitor her mental health status.

50. On January 28, 2005, Kathryn Spann, counsel for Defendants, stated that the College would readmit Ms. Doe, and she "may move back into the dormitory the day after she agrees to the following conditions:"

Ms. [Doe] will need to provide documentation prepared by Dr. _____ / _____ to Dr. Su Ping Ma, LCSW, at Hunter ... reflecting her regular (at least once monthly per therapist) sessions with Dr. _____ and _____ (not the content of those sessions), such documentation to be provided within 3 days after each session.

Ms. [Doe] will need to see Dr. Ma once every four weeks for an assessment by Dr. Ma of Ms. [Doe]'s potential for self-harm, all such sessions, to be scheduled within the week following acceptance by Ms. [Doe] of this letter:

Ms. [Doe] agrees to take all medication prescribed by Dr. _____ as 'directed.

Ms. [Doe] authorizes Dr. Ma to speak with Dr. _____ in the event (and only in the event) that Dr. Ma concludes in her professional judgment that: there is an increased risk of self-harm.

If Ms. [Doe] misses one of these sessions with Dr. _____, Ms. _____ or Dr. Ma, she shall make the session up within seven days.

If Dr. Ma concludes that there is an imminent risk of self-harm, she will admit Ms. [Doe] to the E.R.

Ms. [Doe] agrees to contact Dr. _____ immediately if she experiences any recurrence of self-harm ideation.

If Ms. [Doe] fails to meet these conditions at any time, she will be provided with two weeks notice to vacate the dormitory room.

51. Doe's readmission was conditioned upon her compliance with the conditions in the agreement. These conditions are not imposed upon students that are not disabled, that do not have a history of disability, or who are not perceived as disabled. Students that are not disabled or have a history of disability and students who are not perceived as disabled are not required to provide documentation of continued participation in mental health treatment on a monthly basis, or to allow a Hunter college licensed clinical social worker conduct monthly mental health assessments. Unlike students that do not have a disability or a record of disability, or are not regarded as having a disability, Doe is subject to eviction upon two weeks notice for failure to comply with these conditions.

52. Although the imposition of these conditions constitutes further discrimination in violation of the Fair Housing Act, the Americans with Disabilities Act and the Rehab Act, in order to obtain readmission to the dormitory, Plaintiff signed the

agreement on January 28, 2005. Plaintiff Doe was allowed to move back into the Dormitory on January 29th, 2005.

53. The parties agreed that by signing the agreement, Doe did not waive any rights under the Fair Housing Act, the Rehabilitation Act or the Americans with Disabilities Act.

54. Since January 29, 2005, although Ms. Doe has been in the dormitory and has complied with the conditions, she continues to suffer negative effects from her previous eviction.

55. As a result of defendants' unlawful, intentional, and willful actions described above, Ms. Doe has suffered, continues to suffer, and will in the future suffer, great and irreparable loss and injury, including but not limited to humiliation, embarrassment, emotional distress, and discrimination in participation in the services, programs, and activities at Hunter College, and the deprivation of her right to equal housing opportunities due to handicap or perceived handicap. In evicting Doe from the dormitory residence, excluding her from the residence for the summer and Fall semesters, and conditioning her re-admission on unlawful terms, Defendants intentionally discriminated against Doe based on her disability, her record of disability or perceived disability. Defendants' policies and actions also have a disparate impact on persons who suffer from mental illness. Defendants' policies do not further, in theory or practice, a legitimate bona fide governmental interest and no alternative would serve the interest with less discriminatory effect. Finally, Defendants' refusal to provide an accommodation in its rules, policies, practices or services constitutes a separate violation of Ms. Doe's rights.

**FIRST CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 3604(f):
DISCRIMINATION OR MAKE UNAVAILABLE A DWELLING**

56. Plaintiff repeats the allegations of all of the above paragraphs as if fully set forth herein.

57. The Defendants' actions and practices described above violate the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 et seq. and in particular have violated the Plaintiffs rights under 42 U.S.C. § 3604(f) by discriminating in the rental or otherwise making unavailable or denying a room in the dormitory to Plaintiff Doe because of her handicapped status; and by discriminating in the terms, conditions or privileges of rental of a dwelling and in the provision of services or facilities in connection with such dwelling because of Plaintiff Doe's handicapped status. Defendants' actions - evicting Doe from the dormitory residence, excluding her from the residence for the summer and Fall semesters, and conditioning her re-admission on unlawful terms - constitute intentional discriminatory treatment based on Plaintiff Doe's disability. The disparate impact of Defendants' actions violate the Fair Housing Act in that Defendants' policies do not further, in theory or practice, a legitimate bona fide governmental interest and no alternative would serve the interest with less discriminatory effect.

58. As a result of Defendants' violations of the Fair Housing Amendments Act, Plaintiff has been injured, as detailed above.

**SECOND CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 3604(f): FAILURE TO PROVIDE
REASONABLE ACCOMMODATION**

59. Plaintiffs repeat the allegations of the above paragraphs as if fully set forth herein.

60. Plaintiff Doe's request for a reasonable accommodation with regard to Defendants' rules, policies, practices and services constituted a request for a reasonable accommodation under the Fair Housing Amendments Act, 42 U.S.C. § 3604(f)(3)(B). Plaintiff Doe's request to return to the dormitory for the Fall 2004 semester constituted a request for a reasonable accommodation under the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B).

61. Defendants' failure to consider Plaintiff's application for readmission to the dormitory for Fall 2004 and their decision to deny her readmission amount to a failure to accommodate Plaintiff's disability.

62. Defendants' decision to conditionally readmit Plaintiff to the dormitory for the Spring 2005 Semester does not constitute an effective accommodation of Plaintiff's disability. Rather, the conditions imposed on her constitute further discrimination on the basis of disability. Plaintiff agreed to the conditions, without prejudice to her right to contest their legality, because readmission to the dormitory was an essential component of improving her mental health and ensuring her continued high academic standing.

63. The accommodations Plaintiff requested, through counsel, in July 2004 were reasonable and were necessary to afford Ms. Doe equal opportunity to housing at Hunter College.

64. The accommodations proposed would not have imposed an undue financial or administrative burden on the Defendants and did not require a fundamental alteration in the nature of their programs.

65. Defendants, individually, and/or through the actions of their agents, have violated the Plaintiff's rights under 42 U.S.C. § 3604(f)(3)(B) by denying Ms. Doe's request for a reasonable accommodation and as a result, have excluded her based upon fear, speculation and stereotype about her disability.

66. As a result of Defendants' failure to provide reasonable accommodation in violation of the Fair Housing Amendments Act, Plaintiff has been injured, as detailed above.

THIRD CAUSE OF ACTION
Violation of the Americans with Disabilities Act of 1990

67. Plaintiff repeats the allegations of all of the above paragraphs as if fully set forth herein.

68. The Defendants' actions and practices described above violate Title II of the Americans With Disabilities Act of 1990, as amended, 42 U.S.C. § 12132 et seq. In particular, the Defendants' actions and practices described above constitute unlawful discrimination under 42 U.S.C. § 12131 and 42 U.S.C. § 12132, in that Defendant Hunter College is a public entity subject to Title II of the ADA, and Defendants Raab and Ayravainen are responsible for administering a public entity subject to Title II of the ADA. Defendants have discriminated against Plaintiff Doe by excluding her from participation in and denying her the opportunity to participate in or benefit from their programs, services and activities. Defendants have treated Plaintiff Doe unequally to

students that are not disabled, do not have a history of or are not regarded as disabled. They have also used criteria and methods of administration that have the effect of subjecting her to discrimination on the basis of disability or perceived disability, and that have the purpose or effect of defeating or substantially impairing the accomplishment of the objective of its program with respect to individuals with disabilities and in particular with respect to Plaintiff Doe. Additionally, Defendants have failed to provide a reasonable accommodation under the Americans With Disabilities Act that would enable Plaintiff meaningful access to Defendants' services.

69. As a result of Defendants' violations of the Americans With Disabilities Act, Plaintiff has been injured, as detailed above.

FOURTH CAUSE OF ACTION
Violation of Section 504 of the Rehabilitation Act of 1973

70. Plaintiff repeats the allegations of all of the above paragraphs as if fully set forth herein.

71. The Defendants' actions and practices described above violate Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. § 794 et seq. In particular, the Defendant Hunter College is a college or university receiving Federal financial assistance; Defendants Raab and Ayravainen are responsible for administering a public entity which operates programs and activities receiving federal funds for purposes of Section 504 of the Rehabilitation Act; and their actions and practices described above have excluded Plaintiff from participation in and denied her the benefits of their programs, services, and activities because of her disability or perceived disability. Defendants have subjected Plaintiff to discrimination on the basis of her disability or perceived disability. They have also failed to provide Plaintiff Doe reasonable

accommodation and have treated her unequally to students that do not have a history of or are not perceived as disabled. Defendants have also used criteria and methods of administration that have the effect of subjecting Plaintiff Doe to discrimination on the basis of disability or perceived disability, and that have the purpose or effect of defeating or substantially impairing the accomplishment of the objective of its program with respect to individuals with disabilities and in particular with respect to Plaintiff Doe.

72. As a result of Defendants' violations of Section 504 of the Rehabilitation Act of 1973, Plaintiff has been injured, as detailed above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

(a) That the Court declare the actions of the Defendants complained of herein to be in violation of the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 et seq.; and Title II of the Americans With Disabilities Act of 1990, as amended, 42 U.S.C. § 12131 et seq.; Section 504 of the Rehabilitation Act of 1973.

(b) That the Defendants, their agents, employees, and successors be permanently enjoined from discriminating on the basis of handicapped status against Plaintiff or any persons in violation of the Fair Housing Amendments Act of 1988, or Title II of the Americans With Disabilities Act of 1990, as amended; or Section 504 of the Rehabilitation Act of 1973.

(c) That Defendants be ordered to restore Plaintiff to a dormitory room in the Brookdale Residence Hall immediately, without discriminatory conditions.

(d) That the Defendants be ordered to take appropriate affirmative actions to ensure that the activities complained of above are not engaged in again by them;

- (e) That appropriate compensatory and punitive damages be awarded to Plaintiff and against the Defendants;
- (f) That Plaintiffs be awarded their costs and reasonable attorneys' fees in this action; and
- (g) That Plaintiff be awarded such other further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), trial by jury is demanded on all issues.

Dated: September , 2005

Respectfully submitted,

S/_____

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