

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

**ASHFORD UNIVERSITY, LLC, and )  
MICHAEL BLACKWELL, )**

**Case No. 05771 EQCE080188**

**Plaintiffs, )**

**v. )**

**AMENDED PETITION FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF  
PURSUANT TO IOWA CODE § 17A**

**IOWA DEPARTMENT OF )  
EDUCATION and the IOWA STATE )  
APPROVING AUTHORITY, )**

**Defendants. )**

Pursuant to Iowa Code § 17A, Plaintiffs Ashford University, LLC (the “University”), and Michael Blackwell, by their attorneys, upon personal knowledge with respect to themselves and their actions and otherwise on information and belief, allege as follows:

**INTRODUCTION**

1. On June 14, 2016, Plaintiffs filed this action because Defendants Iowa Department of Education and Iowa State Approving Authority (“ISAA”) (together, “IDOE”) had announced that IDOE would withdraw approval of the University as a GI Bill eligible institution after June 30, 2016, which would have resulted in immediate, substantial and irreparable harm to Plaintiffs and approximately 6,250 military service members, military veterans and other eligible individuals (“Veteran Students”) who are currently enrolled at the University and are entitled to GI Bill benefits. IDOE’s withdrawal of approval at any time would be improper and unlawful, because such a withdrawal would not comply with, and would in fact contradict, the legal requirements that control the suspension and withdrawal of prior approvals.

2. IDOE’s announced plan of action was the result, *inter alia*, of a misunderstanding by IDOE that the University would be leaving Iowa and would no longer be operating in the

state after June 30, 2016. In fact, as IDOE was timely informed by the University, the University is currently conducting and will continue to conduct in-person coursework in Iowa through *at least* June 1, 2017. The University's current, continuing activities in Iowa involve both students and faculty members, as well as administrative and support staff, all located in Clinton, Iowa. And, after June 1, 2017, the University will continue to operate an online center ("Online Center") with approximately 150 employees of the University or an affiliate in Clinton, Iowa. These employees support all of the University's faculty and students, including its Veteran Students, and their functions specifically include the administration of financial and advisory programs for Veteran Students.

3. Since the filing of the original Complaint on June 14, 2016, clear evidence has come to light demonstrating that IDOE's withdrawal decision was also based on improper interference in IDOE's performance of its responsibilities by the federal Department of Veterans Affairs ("VA"), and certain California governmental entities, including the California State Approving Agency for Veterans Education ("CSAAVE") and the California Attorney General's Office ("CA AG") (together, "California"), which have no lawful role whatsoever in Iowa's regulatory affairs. Important evidence of that interference was actually placed in the record of this action by IDOE itself,<sup>1</sup> while substantial additional, corroborating, evidence was subsequently obtained via an Iowa Open Records Law ("FOIA") request.<sup>2</sup> Neither the VA nor

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<sup>1</sup> At the June 16, 2016 hearing in this matter, IDOE informed this Court that the VA had taken a controlling role (which is entirely improper) in the IDOE's operations. *See* June 16, 2016 Hearing Rough Transcript at 27 ("those are VA decisions as to which [IDOE] does not have control"). IDOE also submitted documentation to the Court showing that "California informed [IDOE] they would NEVER approve Ashford [University] in their state." (Emphasis in original). *See infra* at ¶ 45 (discussing similar statements from California).

<sup>2</sup> Iowa's version of the federal Freedom of Information Act ("FOIA") is its Open Records Law, Iowa Code § 22.1 *et seq.* Because "FOIA" has become common usage, the Iowa Open Records Law will herein be called "Iowa FOIA."

California are entitled to exercise the authority *that is vested by both Iowa and federal law with Iowa state officials, and specifically with IDOE*. The result of the VA and California's unlawful pressure and interference was IDOE's announcement of its intention to withdraw its prior approval of the University's programs.

4. However, for the reasons set forth herein, there is no basis to withdraw the University's existing approval at all, or in any event not until June 1, 2017, at the earliest, and declaratory and injunctive relief is necessary to avoid irreparable harm to the University and its Veteran Students, including Plaintiff Michael Blackwell. IDOE's improper withdrawal would create substantial doubt about whether the 6,250 Veteran Students, including Mr. Blackwell, who are currently enrolled at the University, will be able to use GI Bill funds to pay for their educations; it may in fact prevent many of those Veteran Students from using federal dollars to complete their University coursework; it would certainly disrupt Veteran Students' enrollment, educational advancement and ability to graduate; it could interfere with Veteran Students' receipt of their Monthly Housing Allowance ("MHA"), which is often critical for such students to pay for living expenses such as housing, food, and other fundamental services for themselves and their families; and it may force students who are happy with the University's programs to leave for competitor institutions, which in turn could extend the time before they can complete their programs, in order to make sure that they do not get stuck with an educational bill and living expenses that the federal government has promised to pay and that they could not afford to pay on their own, even in the short-term. Maintaining the status quo through *at least* June 1, 2017, would protect these Veteran Students, including Plaintiffs Michael Blackwell, from harms that *no one* seeks and that these Veteran Students should *not have to face*. In addition, maintaining the *status quo* through June 1, 2017, would permit sufficient time for the regulatory process

applicable to the University's operations to be completed in an orderly fashion, based on a complete and accurate factual record, and without further improper interference by the VA and California in Iowa's regulatory process and without jeopardizing the GI Bill benefits to which the University's Veteran Students, including Plaintiff Michael Blackwell, are entitled.

5. As set forth in detail herein, for over a year, IDOE has been subject to improper interference and pressure by the VA and California, as they have pushed IDOE, for reasons of their own that are, at best, opaque, and that have nothing whatsoever to do with the interests of our country's veterans, to withdraw IDOE's approval of the University. Unaware until recently of the behind-the-scenes communications between these various entities and the improper pressure being applied by the VA and California on IDOE, the University has attempted for months to resolve this matter with IDOE, repeatedly presenting evidence that is incontrovertible and that clearly supports maintaining the University's approval status in Iowa. The University also followed the recommendation by the VA that the University seek approval in California by CSAAVE, so that Plaintiff Michael Blackwell and other Veteran Students would be certain to be able to continue their educations uninterrupted, even though, as has now come to light, *California had already secretly informed IDOE that, no matter what the University said or demonstrated, it did not intend to approve the University's nationwide online programs providing educational benefits to Veteran Students.* Based on IDOE's recommendation, unaware of the VA and California's true intentions, and out of concern for its Veteran Students, including Plaintiff Michael Blackwell, but without conceding that IDOE lacks authority to continue to approve the University's programs, the University formally submitted an application to CSAAVE on June 1, 2016.

6. It soon became clear that California would not act in time on the University's application, given IDOE's announced intention to withdraw approval on June 30, 2016. Accordingly, the University was forced, on June 14, 2016, to file this action. On June 16, 2016, the University appeared before this Court on its original Motion for Order Staying and/or Temporarily Enjoining Agency Action. On June 20, 2016, in response to this lawsuit and a request from the University, IDOE granted a "stay of Iowa's withdrawal of approval effective immediately for a maximum of ninety days from the date of this letter [*i.e.* to September 18, 2016] or until the California State Approving Agency completes its review and issues a decision regarding the approval of Ashford [University] in California—whichever is soonest." However, because the University soon came to learn that the CSAAVE process left the University's Iowa operations without any possibility of approval, and because CSAAVE repeatedly refused to engage the University substantively in response to questions concerning its pending application, the University ultimately had no choice but to withdraw its CSAAVE application.<sup>3</sup>

7. The University has worked diligently to resolve this matter prior to the September 18, 2016 expiration of IDOE's stay. After the stay was entered, the University promptly requested a meeting, on the earliest possible date, with representatives from IDOE and the Iowa Attorney General's office. Due to the schedules of the representatives from IDOE and the Iowa Attorney General's office, that meeting did not take place until July 27, 2016. At that meeting,

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<sup>3</sup> As discussed herein, CSAAVE insisted that all operations be in California and that it could only approve California operations. And while CSAAVE informed the University that its application for approval was deemed "complete" on June 8, 2016, nine days later, on June 17, 2016, CSAAVE informed the University that it needed additional information before the University's application "can be considered for CSAAVE approval." But when the University repeatedly attempted to meet with CSAAVE to address CSAAVE's alleged concerns, CSAAVE repeatedly ignored the University's requests. *See infra* at ¶¶ 65-70. As has become more and more apparent as more information has become available, the best that can be said of California's actions is that California is antagonistic to online education in general and the University in particular and/or is not very conversant with how online education actually works.

the University provided information on its many continuing activities in Iowa. IDOE had no additional information to provide to support its position, but it indicated that, if the University wanted to submit additional information, it would be considered. The University did so and offered to meet with IDOE again, at the earliest possible date, to respond to any further questions IDOE might have. Unfortunately, IDOE did not take the University up on these offers. On August 10, 2016, due to the slow progress being made, the University requested that IDOE extend the stay, which is due to expire on September 18, 2016, at least through December 2016, and preferably through June 2017. As of the date hereof, IDOE has not responded, thus necessitating the filing of this Amended Petition, the accompanying Amended Motion for Order Staying and/or Temporarily Enjoining Agency Action Pursuant to Iowa Code § 17A, and related filings in support thereof.

8. During the last several weeks, the University also learned, via an Iowa FOIA request, that the VA and California had been pressuring IDOE for some time to withdraw approval and to require the University to submit to California jurisdiction, the result of which would be that the VA could stop paying education benefits to Veteran Students enrolled at the University.<sup>4</sup> As the University has now learned, IDOE had reached the following conclusion *prior* to the institution of this lawsuit:

It seems only *VA wants to interrupt veterans and military students enrolled*. Title IV has no concerns about what is operating in Iowa now or after the residential campus closes. Need based online students will not be interrupted because of the closure of the residential campus.

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<sup>4</sup> Not only does the VA's conduct violate federal law and its own regulations (*see* 38 U.S.C. § 3682 and 38 C.F.R. § 21.4250), it is an unconscionable breach of trust in the process upon which our country's veterans and the University rely. While the VA's violations of law and improper activities are not directly before this Court, their impact upon IDOE is – *i.e.*, forcing an improper withdrawal. It is this IDOE action for which Court intervention is required at this time.

...It is a **power grab** on VA's part that will do little more than produce a lawsuit and student/veterans "suddenly" interrupted probably dependent on the housing allowance, the education, or the delivery/program enrolled in.

(Emphasis added.) Indeed, what the hundreds of emails disclosed by IDOE reveal is that, while both the IDOE official who was tasked with approving the University for GI Bill benefit purposes and the University were (and are) extremely concerned with the effect of any IDOE withdrawal of approval on the University's Veteran Students, such as Plaintiff Michael Blackwell, neither the VA nor California expressed **any** such concern for our country's veterans – their only concerns are, quite clearly, with their own political agendas.

9. In sum, for the past several months, the University has been stuck on a regulatory whipsaw, while the VA and California have improperly interfered with IDOE's authority and placed unlawful roadblocks to the University's continuing provision of educational services to its Veteran Students, such as Plaintiff Michael Blackwell, pursuant to the University's longstanding approval by IDOE. But there is no denying that, as a matter of law, the VA is legally required to pay veterans benefits based upon IDOE's actions. And despite the VA and California's efforts to manufacture a reason why the University's approval should be withdrawn, the facts do not support such a withdrawal. Indeed, in conversations with the University and congressional staffers, the VA has been forced to admit that, if the IDOE does not withdraw its approval of the University's programs, then the VA "absolutely" will continue to pay GI Bill benefits to the approximately 6,250 Veteran Students currently enrolled at the University, thus permitting the University's Veteran Students to continue their studies uninterrupted. While the VA has been inconsistent in its statements, depending upon its audience—advocating the withdrawal of approval for the University to IDOE, as set forth in detail below, while telling the University that it will continue to fund if approval by IDOE remains in place—on the latter point the law is clear

that the VA has no choice.<sup>5</sup> If IDOE's withdrawal decision is stayed or enjoined by this Court, the University's Veteran Students, including Plaintiff Michael Blackwell, will continue to receive the GI Bill benefits they have so clearly earned, without any undue disruption.

### **PARTIES, JURISDICTION AND VENUE**

10. The facts concerning the University's long history and continued presence in Iowa are well established. For almost 100 years, the University has been offering a variety of academic programs to students in Iowa. Currently, the University is a regionally accredited university offering degree programs, primarily online, across many industries and fields, including business, education, health and liberal arts.

11. The University was originally named Mount St. Clare College when it was founded, in 1918, in Clinton, Iowa, by the Sisters of St. Francis. In 2005, Mount St. Clare College was renamed Ashford University. While a majority of the University's current students are enrolled in online courses, the University currently maintains facilities in Clinton, Iowa, including facilities where classes are taught, and San Diego, California, where many of the University's administrative functions are housed, but where no classes are taught. The University's operations in Iowa employ approximately 150 individuals who provide consolidated oversight and support for the University's programs, including those who support the Veteran Students. In addition, the University's residential Iowa students will continue to participate in programs on site in Clinton, Iowa, that will last through at least June 1, 2017.

12. Plaintiff Michael Blackwell is a military veteran who served in the U.S. Navy, including for approximately 11 months after the attacks of September 11, 2001, as well as in the Army National Guard. He enrolled at the University in 2010 and holds a 3.58 GPA. Michael

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<sup>5</sup> IDOE, not the VA, decides whether a particular institution is approved, and the VA is responsible for disbursing student benefits based on that approval. *See* 38 C.F.R. § 21.4151(b).



Blackwell currently expects to graduate in 2018 and looks forward to starting a career in information security management. His GI Bill benefits currently cover 50% of his educational costs at the University, without which he could not afford to continue his education.

13. IDOE is responsible for approving the participation of educational institutions in veterans education benefits programs, as set forth in detail below, and is located in Des Moines, Iowa. The University's programs have been approved by IDOE continually since 2006. The approval of the University's programs as GI Bill eligible is critical to the University and its Veteran Students, including Michael Blackwell. Absent such approval, Veteran Students would not be able to receive GI Bill benefits to pay for their University educations.

14. Pursuant to Iowa Rule of Civil Procedure 1.1504, Plaintiffs state that no petition for the relief requested on behalf of Plaintiffs herein, or any portion thereof, has previously been presented to and refused by any court or judge.

## **FACTS**

### **IDOE's Approval of University Programs for GI Bill Benefits**

15. The GI Bill provides a range of benefits to eligible individuals. One category of benefits is designed to help Veteran Students cover the costs associated with getting an education. In this respect, the GI Bill required that each state create a "state approval agency" ("SAA") that is responsible for providing to the VA a list of programs that could lead to civilian employment and smooth the transition of our nation's military service members back into the civilian world. These SAAs – *not* the VA – have the authority to approve or to disapprove such programs.

16. The state agencies that bestow approved status on educational institutions are designated by each respective state's chief executive as the SAA for purposes of veterans' educational benefits program eligibility. The Governor of Iowa has designated the IDOE, via its

designated SAA, the ISAA, as the Iowa state approving agency for veteran student benefits under the GI Bill.

17. Because the SAA in the place where the educational institution is located has the authority to approve programs, IDOE has been responsible for approving the University's programs for Veteran Students for the past 10 years. The approval by IDOE is necessary so that Veteran Students, such as Plaintiff Michael Blackwell, may receive the benefits to which they are entitled under the GI Bill, including both educational costs and certain MHA benefits that help Veteran Students and their families meet their living expenses while the Veteran Student is in school.

18. Notably, the University's student body is much more diverse, in terms of age and background, as well as demographic categories, than the typical college. Many of the University's students are veterans and their spouses, single parents, full-time employees and seniors. There are two main reasons for this diversity: (1) the majority of students take classes online, and (2) the University offers low tuition costs and is approved for military tuition assistance and veterans' GI Bill benefits. For many military members deployed overseas, both aspects are attractive, as they can take online courses while they continue to serve our country, then they can complete any remaining portion of their academic programs after they leave active duty.

19. Because of the University's approval as a GI Bill eligible institution, Veteran Students are particularly attracted to it, and the University has a long history of serving veterans in Iowa and throughout the country. The University participates in the GI Bill's Yellow Ribbon Education Enhancement Program, has signed and operates under the Department of Defense Memorandum of Understanding, and has affirmed its commitment to the 8 Keys to Veterans

Success. The University has also received recognition reflecting both its popularity with and value for Veteran Students. For instance, in 2014, *Military Times* published a report listing the University in the top 3 most popular colleges among troops using tuition assistance, right behind the University System of Maryland (<http://www.militarytimes.com/story/military/benefits/education/2014/08/28/top-50-ta-schools-by-service/14736989/>); and in 2015, *Military Times* named the University as a “Best for Vets” college (<http://www.ashford.edu/community/news/military-times-list-of-best-colleges.htm>). Copies of those publications are attached as **Exhibits A and B** to the Appendix in Support of Amended Complaint and Amended Brief in Support of Plaintiffs’ Motion for Order Staying and/or Temporarily Enjoining Agency Action (“Amended Appendix”).<sup>6</sup>

20. Since at least 2005, the University has been offering on-line academic programs. On July 9, 2015, the University announced that it would be transitioning to an entirely on-line educational model. In addition, in May 2016, the University changed its address from its prior Clinton, Iowa campus location to its current Online Center location, which is also in Clinton, Iowa. This online location, which is also being used in connection with the continuing education of the University’s residential Iowa students through at least June 1, 2017, is a physical facility that employs 150 people and occupies approximately 18,000 square feet of University space. The staff in Clinton, Iowa, includes personnel who assist Veteran Students in a variety of ways, including with regard to GI Bill benefits. The University intends to continue the administration of veterans’ benefits in Iowa, unless it is forced to relocate.

21. Moreover, as part of the University’s approved teach-out plan (*see infra* at ¶¶ 26, 31), all residential students at the Clinton campus who need to do so will be scheduled to

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<sup>6</sup> As necessary, documents in the Amended Appendix have been authenticated by Brian Tanner and Vickie Schray as set forth in their declarations.

complete their student teaching by the end of December 2016, and the University will ensure that all remaining Iowa residential students will be able to complete their programs or transition to other programs by June 1, 2017, including required testing and supplemental recommendations for Iowa licensure. Iowa residential students will be enrolled in their programs through June 1, 2017, and those eligible to do so will graduate no sooner than that date.

22. Iowa will continue to be the *only* state where the University will have residential students. The University does not have any residential students in California or any other state, and after June 1, 2017, it will not conduct in-person instruction in any state. While most of the University's online programs are managed from San Diego, California, the University does not offer residential courses in California, and the VA program is administered through the University's Online Center in Iowa. Moreover, none of its online courses are taught exclusively in California or by faculty exclusively in California. Instead, reflecting the geographic flexibility made possible by the online teaching model, University students and faculty are located throughout the United States and, in the case of some active-duty military students, abroad. The University's multi-state model is similar to that of many other educational institutions that conduct a substantial amount of their programs online.

23. The University's programs have been approved by IDOE continuously since 2006. The University and IDOE have enjoyed a good working relationship throughout that time. IDOE has not reported *any* substantive issues with the University during this time, and the University has *never* been denied approval by IDOE as a GI Bill eligible institution.

24. Continuity of the University's provision of academic programs is vital to the Veteran Students' completion of their academic programs and graduation. Approximately 6,250 Veteran Students are currently enrolled in the University, substantially all of whom finance their

education at the University using funding provided by the GI Bill. The University's long-standing approval by IDOE as a GI Bill eligible institution permits Veteran Students such as Michael Blackwell to use their GI Bill benefits to continue their educations and to receive a MHA to cover living expenses while they are in school.

25. IDOE has routinely approved, on an annual basis, the University's external and online programs. Programs remain approved until the University discontinues the program or there is a specific reason to remove a program as approved, such as loss of accreditation or a school name change. For instance, approval for the programs in the University's 2015-2016 catalog was given by IDOE in July 2015, and approval for the programs in the University's 2016 catalog supplement was given by IDOE in early 2016. Via these approved catalogs, the University's programs have been approved for 20-week terms for undergraduate students and 18-week terms for graduate students. Each undergraduate term consists of four consecutive five-week classes, and each graduate term consist of three consecutive six-week classes. IDOE did not identify *any* issues with the University's approved programs during this process.

26. Currently, the University is in the process of "teaching out" its residential location in Clinton, Iowa, and transitioning to an educational model of offering coursework solely online; it already offers online programs to students in every state in the country. The teach-out involves the Clinton, Iowa facility continuing to offer classes through at least June 1, 2017, so as not to interrupt the educations of the University's students in general and its residential Iowa students in particular. After the University completes its teach-out plan, the University will continue to maintain an approved physical presence in Iowa through its Iowa Online Center, which will continue to provide a variety of financial and other student education services to all of the University's online students, including its Veteran Students. Over the years, the University has

assembled a highly qualified team in Iowa with excellent experience and ability to assist with its programs for Veteran Students. Indeed, since 2006, all of the University's certifying officials for Veteran Students have been located in Clinton, Iowa.

**IDOE Approves the University's Programs – Including Iowa On Site Programs-  
Following Closure Announcement**

27. On July 9, 2015, the University announced plans to stop offering classes at its Clinton, Iowa facility after the 2015-2016 academic year. Prior to this announcement, the University coordinated closely with IDOE to ensure the seamless continuation of the University's existing programs for Veteran Students in Iowa and to plan for the University's continued presence in Iowa to assist Veteran Students and to perform certain other functions with respect to its many academic programs. Following the announcement, the University continued to collaborate with IDOE on this transition; that collaborative process continues to this day.

28. As set forth above, to help facilitate the transition, the University announced the implementation of a teach-out plan for students who attend classes in Clinton and developed plans to keep support functions and activities in Clinton to assist students who will be taking classes in Clinton through June 1, 2017. This teach-out plan was submitted to various Iowa governmental and regulatory institutions for approval, including IDOE.

29. In July 2015, IDOE approved the University's 2015-2016 catalog, which approved the University's programs for 20-week terms for undergraduate students (18-week terms for graduate students). A copy of that approval letter is attached to the Amended Appendix as **Exhibit C**. As set forth in the catalog, online terms start every Monday, thus the 20-week term starting on Monday, June 27, 2016 (the last Monday before IDOE's initially planned withdrawal of approval on June 30, 2016), will not end until November 11, 2016. An

undergraduate term consists of four consecutive five-week courses, while a graduate term consist of three consecutive six-week courses.

30. In August 2015, the University was informed that IDOE had recently completed a Compliance Survey of the University at the direction of the VA. IDOE's letter stated:

I am pleased to inform you that we found no discrepancies in the records reviewed. Your records were in good order and up to date for VA reporting purposes. On behalf of the US Department of Veterans Affairs (VA) and the Iowa Department of Education, we want to extend our gratitude for the efforts you and your staff make on behalf of veterans using VA education benefits at your institution.

This review was consistent with prior IDOE reviews of the University, none of which identified any concerns about the University's conduct or programs. A copy of that approval letter is attached to the Amended Appendix as **Exhibit D**.

31. In December 2015, IDOE, as well as the Iowa Teacher Practitioner Board and the Iowa Student Aid Commission, approved the University's teach-out plan. A copy of those approval letters are attached to the Amended Appendix as **Exhibit E**. The teach-out plan permits current students the opportunity to finish their studies in Iowa uninterrupted. As part of this plan, all student teaching by University students in Clinton, Iowa, will be completed by the end of December 2016, and the University will do its best to ensure that all candidates at least have an opportunity to complete their respective academic programs by June 1, 2017, inclusive of required testing and supplemental recommendations for Iowa licensure. Residential students in Clinton will be enrolled in their programs through June 1, 2017, and will graduate no sooner than this date. Pursuant to this teach-out plan, Iowa students remain at the University's Clinton, Iowa facility, and they will be able to continue their studies in Iowa through at least June 1, 2017.

32. In early 2016, and as recently as March 2016, IDOE approved the programs offered by the University in its 2015-2016 catalog and its supplement thereto, which are offered in 20-week terms for undergraduate students (18 weeks for graduate students). A copy of this approval letter is attached to the Amended Appendix as **Exhibit E**. Thus, the University has continued its longstanding and long-approved practice of offering courses to Veteran Students who are entitled to GI Bill benefits. These most recent approvals occurred despite the VA and California's improper interference in IDOE's performance of its responsibilities, as detailed herein.

### **The VA and California Improperly Interfere in the IDOE Process**

33. As the University recently discovered by reviewing the results of an Iowa FOIA request, in the first half of 2015, IDOE was contacted by a CSAAVE representative who claimed that the University was a California institution. However, IDOE was well aware that the University's only residential campus, its Online Center, and a wide range of administrative operations were all located in Iowa. Accordingly, IDOE continued to believe that the University was an Iowa school for GI Bill purposes and approved the University's programs after this time.

34. In August 2015, the CA AG also contacted IDOE to discuss supposed "concerns" regarding the University. A copy of the email confirming that contact is attached to the Amended Appendix as **Exhibit G**. Upon information and belief, in response to this contact from California and at California's behest, IDOE prepared a draft letter to the University claiming that its Online Center is not an academic institution in Iowa for which approval could be granted by IDOE. More than one draft of this letter was prepared over the next three months, and IDOE appeared to be awaiting instruction from a third party as to when the letter would be sent. Ultimately, IDOE did not send a letter to the University—or inform it of any concerns with



the University's programs or approval—until *nine months later*, in May 2016, as set forth below.

35. While the University remained in the dark as to California and IDOE's discussions, a new player became directly involved in the discussions: the VA.<sup>7</sup> In March 2016, just days after IDOE appropriately approved the University's programs, the VA contacted IDOE with respect to the University, informing IDOE that it found contact information for the University for a California address online. A copy of the email string between the VA and IDOE is attached to the Amended Appendix as **Exhibit H**. IDOE responded that it had been in discussions with California, and it believed the University remained an Iowa institution for GI Bill purposes because it has a residential campus, which is scheduled to teach-out, as well as an online processing center in Clinton, Iowa. *See* Ex. H. The VA told IDOE that it would let the situation

wither on the vine until the brick and mortar closure which is eminent, but *I would suggest that in EVERY sense, legal and otherwise, their online operation moved to California and you should have conceded jurisdiction*. It is not the case, that just because a brick and mortar location exists, that the school's online operations exist there as well.

*Id.* (Capitalized "EVERY" in original; other emphasis added.) IDOE said the VA representative was "the first person to give ... such clear guidance on the matter," and further stated that it was "a complicated issue" because the University was a "major employer in the community it is housed in." *Id.*

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<sup>7</sup> Based on the information currently known to the University via an Iowa FOIA request, it appears that the VA began discussions with IDOE concerning the University after California contacted IDOE, and that the VA's improper involvement may in fact have been at the instigation of California. However, the full history of what happened likely will not be known until discovery in this action.

36. IDOE also told the VA that “when [the] Ashford University move [to the WASC] was announced I did receive word from the California SAA [CSAAVE] they would not approve Ashford [University] as a GI Bill approved school. No reason was given why.” *Id.*<sup>8</sup> Notwithstanding, when that move was announced in 2013, IDOE had correctly concluded that it would properly maintain supervisory responsibilities over the University’s Iowa facilities and provided the approval authority over the University’s catalogs and programs offered online or in residence for three more years. *See id.* at Report ¶ 10.

37. Around the same time the VA reached out to IDOE in March 2016, the CA AG resumed its behind-the-scenes discussions with IDOE about the University. In April 2016, a draft letter from IDOE to the University concerning the University’s approval as a GI Bill eligible institution in Iowa was circulated to the VA and California. A copy of the emails to the VA and California are attached to the Amended Appendix as **Exhibits I** and **J**. The VA complained that the letter implied that the approval was IDOE’s to make in the first place, and that if the University kept the campus open in Iowa that “all would still be well with their online approval... *but I do not think that should be the case.*” Ex. I (Emphasis added.) IDOE concluded that the VA’s proposed changes – which were wrong as a matter of law – did not make sense and did not incorporate them into the letter. California repeatedly checked with IDOE to see if the letter had been sent to the University. A copy of the IDOE’s email is attached to the Amended Appendix as **Exhibit K**. As a result of extensive pressure exerted by the VA and California, IDOE ultimately sent the letter, as set forth in detail below.

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<sup>8</sup> As discussed below, the 2013 move to WASC involved the University’s academic certification and is not at issue here, though both California and the VA, in 2016, briefly floated a trial balloon about somehow making that an issue as well.

38. Also in April 2016, IDOE summarized its discussions with the VA and California internally as follows:

*Absent any guidance from VA*, it has been our position that Ashford University academic center was its residential campus in Clinton. Ashford's announcement to closing the campus in July has raised a question in our mind as to which state would then have the GI Bill approval authority. Senior Leadership from Ashford report the online center will have academic leadership and academic capability and will continue to serve as the university's academic center.

(Emphasis added.) It should be noted that IDOE's internal summary contains one indisputably incorrect factual statement – the Clinton residential campus was not scheduled to close (and did not close) in July 2016; rather, it will remain in operation through at least June 1, 2017. A copy this summary is attached to the Amended Appendix as **Exhibit L**.

39. Notwithstanding the pressure brought to bear by the VA and California, IDOE remains legally responsible for approving the University and for IDOE's improper withdrawal decision. No matter how much pressure they exert, the VA and California's "view" of that decision is not binding on IDOE as a matter of law, as the GI Bill makes clear that SAAs are responsible for providing the VA with a list of approved programs. Specifically, while the VA is ultimately responsible for disbursing student benefits, it is the SAA (here, IDOE) that decides whether a particular institution is approved. *See* 38 C.F.R. § 21.4151(b). California, of course, has no proper role whatsoever in Iowa's affairs.

**After the VA and California Interfere, IDOE Withdraws Approval for University Programs and Sends Inconsistent Messages**

40. Notwithstanding IDOE's repeated and continuous approval of the University's programs over the past decade, a process that IDOE followed even after the announcement in July 2015 of the planned move to an entirely on-line educational model and, indeed, well into 2016, and notwithstanding the uniformly positive reviews that the University had received from IDOE over the years, IDOE finally succumbed to the pressure from the VA and California and

incorrectly determined that its should withdraw its approval of the University's programs for GI Bill benefits effective June 30, 2016, thereby making Veteran Students such as Michael Blackwell no longer eligible for GI Bill benefits for their University educations.<sup>9</sup> As set forth in detail herein, this determination was based on a misunderstanding that the University would be leaving Iowa on June 30, 2016, and would no longer be operating in the state after that date, as well as on the improper influence exerted on IDOE by the VA and California.

41. Specifically, on May 2, 2016, IDOE sent the University a letter *that had been reviewed and approved in advance by the VA and California*, which advised the University that the closure of the University's Clinton, Iowa campus necessitated an interagency review and evaluation of which state would have approval jurisdiction for online GI Bill-approved programs. IDOE stated that the approval of the University's GI Bill programs would be suspended so as to coincide with the University's teach-out plan, and that, after June 30, 2016, IDOE would no longer approve the University's academic programs for GI Bill benefits for the University's online students. This decision was based on clear and unambiguous factual mistakes, as IDOE's letter incorrectly stated that the University would "no longer have a physical campus in Iowa" after June 30, 2016, and that its planned suspension of approval coincided with the conclusion of teach-out plan, which it plainly did not. These statements are inconsistent with the University's Iowa-approved teach-out plan, which runs through June 1, 2017, and which the University is following faithfully. A copy of this letter is attached to the Amended Appendix as **Exhibit M**.

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<sup>9</sup> The full scope of this interference will not be known until a full disclosure is made by the agencies involved of the documents and other information in their possession regarding the events in question. The documents provided in response to the Iowa FOIA request appear to be only the tip of the iceberg.

42. Indeed, in an email to the University on May 2, 2016, IDOE acknowledged that the guidance *contradicted* what IDOE and the University discussed. The reason for that contradiction was clear – the email went on to admit that the letter had been “vetted” by the VA and by IDOE’s legal counsel, who was in frequent contact with California. A copy of this email is attached to the Amended Appendix as **Exhibit N**.

43. When the May 2, 2016 letter to the University was forwarded by IDOE to CSAAVE, there was *no acknowledgment of the effect this action would have on Veteran Students* or the need to maintain approval for such students’ benefit. CSAAVE simply, and coldly, stated: “Thank you. It’ll be interesting to see what happens next.” A copy of this email is attached to the Amended Appendix as **Exhibit O**.

44. Nor did the VA express any concern about the impact its improper meddling in Iowa’s affairs would have on the Veteran Students, *whose interests are supposed to be the focus of all VA efforts*. Two days *after* IDOE’s letter to the University, the VA emailed IDOE with its “view that the [IDOE] does not have the authority to approve Ashford University Online effective June 30, 2016” and “absent an approval from the California State Approving Agency (CSAAVE), it will be VA’s intention to cease paying for veterans enrolled at Ashford University for terms that begin on or after July 1, 2016.”<sup>10</sup> A copy of this email is attached to the Amended Appendix as **Exhibit P**.

45. The next day, May 5, 2016, IDOE assessed the VA’s email, with IDOE concluding that “[t]his news seems years late” from the perspective of Iowa officials. (*Id.*)

IDOE further stated:

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<sup>10</sup> IDOE submitted this correspondence, and the subsequent May 5, 2016 correspondence cited in Paragraph 45 (together in Exhibit P), to the Court at the June 15, 2016 hearing in this matter. IDOE’s purpose in so doing was to try to place responsibility for the events at issue on the VA, even though, as a matter of law, the decisions at issue are supposed to be made by IDOE.

I am fine with withdrawing Iowa's approval. In doing so I feel I am blind to information VA used and the information I was supplied was provided to me by officials from the [U]niversity. Moreover, VA has long operated that its own regulations, policies, code supersedes other federal agencies to include the US Department of Education. Finally, *I find it hard to believe that Ashford University is operating any differently than is Kaplan University (online university in Florida), the University of Phoenix, or the other big "online" universities.*

I will be communicating this to Ashford later this morning. When Ashford University first discussed moving their accreditation to the Western Region I informed VA and the [CSAAVE] about the move. *VA informed me it was a "state" issue. California informed me they would NEVER approve Ashford in their state.* No other reason was given and it seems after all this time the [CSAAVE] has never developed or even informed the school of their necessary approval requirements.

Ex. P (Capitalized "NEVER" in original; other emphasis added.) Two things were, thus, very clear to IDOE, though not (yet) to the University: (a) the University was being treated differently from its peers; and (b) California, for whatever reason, is entirely antagonistic to the University.

46. That same day, as IDOE indicated three days earlier, IDOE informed the University that IDOE intended to send a letter withdrawing approval of the University's GI Bill approved programs, effective June 30, 2016. IDOE's legal counsel was copied on this transmission, as was the VA. A copy of this email is attached to the Amended Appendix as **Exhibit Q**. IDOE expressly stated that this withdrawal would *not* impact Veteran Students, such as Michael Blackwell, who are currently admitted to the University and are receiving GI Bill benefits:

Our withdrawal will *not impact* veterans or military students currently admitted to Ashford University and in receipt of VA education assistance benefits.

Ex. Q (Emphasis added.) Because of its concern for its Veteran Students, the University quickly sought confirmation that withdrawal would not impact current students. The University was, in

fact, given assurances by IDOE that withdrawal indeed would not impact current students.

47. Though it obviously felt constrained by the pressure and actions of the VA and California, at the time this letter was sent, IDOE was concerned about the effect the VA's interference might have on Veteran Students. IDOE's internal records reflect that IDOE was particularly worried that the VA wanted it to inform the University that it has

withdrawn our Iowa approval so the 10k veterans enrolled will no longer be allowed to receive GI Bill benefits until the state of California's SAA [CSAAVE] approves Ashford's programs for GI Bill assistance. *This action is unprecedented in my opinion.* It would seem Iowa's withdrawal of our approve [sic] would impact any new admissions, but veterans admitted under an approved catalog should or would be allowed to compete. (Emphasis added.)

A copy of this email is attached to the Amended Appendix as **Exhibit R**.

48. IDOE's concern that the VA planned to interfere to the detriment of Veteran Students proved to be well founded. On May 5, 2016, *without copying IDOE*, the VA and CSAAVE communicated regarding the University's accreditation status. The VA had asked CSAAVE to contact the University to see if it planned to apply for approval in California. CSAAVE said it did not solicit institutions to submit an application for approval, and as long as the University was approved by IDOE, then it had no need to apply for approval to CSAAVE.

49. The next day, on May 6, 2016, the VA told IDOE that it

appreciate[d] that the great state of Iowa would like to help establish Ashford [University] in California but as you know, you[r] authority ends at the state line. To facility [sic] this process, please send me . . . a copy of the withdraw[al] letter, as soon as possible. We will work with Ashford [University].

A copy of this email is attached to the Amended Appendix as **Exhibit S**. This was clearly improper, as approvals or withdrawals rest with individual states, and not with the VA. But the VA did not stop there. Upon information and belief, just three days later, on May 9, 2016, the VA called IDOE to inform it that decisions made by the Secretary of the VA could not be

questioned, and to deny the propriety of IDOE's approval of a residential campus still operating in Clinton, Iowa, but scheduled to close in the future.

50. On May 10, 2016, the University explained in writing the critical factual errors in IDOE's letters. A copy of this letter is attached to the Amended Appendix as **Exhibit T**. In particular, the University's May 10, 2016 letter explained that the University would be maintaining a physical campus in Iowa, including maintaining specific functions to support activities for Veteran Students in Clinton, Iowa. These activities include:

- Continuation of the approved teach-out plan until June 1, 2017, which includes transitioning required leadership from the local Clinton campus to the Clinton Online Center to educate residential students in their programs through June 1, 2017, as approved by the IDOE.
- Maintenance of an Online Center in Clinton, Iowa. That facility will have 150 employees who occupy considerable brick-and-mortar facilities (approximately 18,000 square feet).
- Maintenance of Veteran Students' benefits administration in Clinton, Iowa. This includes 16 experienced and specialized employees who live and work in Iowa and will continue to do so after June 30, 2016.<sup>11</sup>
- Maintenance of additional online support personnel.

In total, the University still has approximately 150 employees of the University or its affiliates who provide services to the University in Clinton, Iowa, even though June 30, 2016, has come and gone. These employees will continue to support all the University's students and faculty in a variety of ways and to administer financial programs for Veteran Students after the University's teach-out plan is completed in June 2017. The approximately 150 employees remaining in Iowa will include employees who will assist students transitioning from the Clinton campus, employees at the University's Online Center, employees involved in faculty support and

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<sup>11</sup> Since the date of this letter, the number of experienced and specialized employees who serve the Veteran Students has changed to 15.



development, admission and matriculation, registrar quality assurance, and employees who serve as student advisors.

51. While the University is no longer enrolling new students at the Clinton facility, it is maintaining teaching operations in Clinton through at least June 1, 2017. This will allow currently enrolled residential students in Clinton to continue their education according to the students' prior plans and in an orderly fashion and to graduate on time—for which the University's support is necessary through at least June 1, 2017. The University also has continued to maintain administrative and support services for Veteran Students in Clinton, Iowa, even though June 30, 2016, is now past. Thus, there never was any legal or operational significance whatsoever to the date June 30, 2016.

52. The same day that the University provided its explanation concerning IDOE's factual errors, on May 10, 2016, IDOE emailed that it was "just being asked, directed, informed to withdrawal [sic] [the University's] GI Bill approval" with the impact that "VA discontinues some 10k veterans already pursuing programs." A copy of this email is attached to the Amended Appendix as **Exhibit U**. Thus, IDOE's internal records indicate that IDOE itself was very concerned with the VA's unlawful conduct and its impact on the Veteran Students, even if neither was a concern to the VA.

53. The VA's improper influence continued. The following day, on May 11, 2016, the VA asked IDOE for time to respond to the University's May 10, 2016 letter to IDOE, even though *the letter was not directed to the VA and the VA was not supposed to be interfering*. A copy of this email is attached to the Amended Appendix as **Exhibit V**. That same day, the VA told IDOE that it was "getting a lot of questions regarding the accreditation issue *from both [California] Senators' offices as well as CSAAVE*." The VA referenced materials from *three*

*years earlier*, when the University had moved its accreditation to the Western Association of Schools and Colleges (“WASC-ACSU”) to satisfy U.S. Department of Education requirements.

According to the VA, California

insists that WASC accreditation does not extend to schools in Iowa. We have explained to them that Title 38 allows the Iowa SAA to see and accept the school’s accreditation, regardless of which region it came from and that would cover your approval of the on-line students.... however, I need a confirmation of that....

A copy of this email is attached to the Amended Appendix as **Exhibit W**. Thus, California was exerting overt pressure on both the VA and Iowa. The VA, responding to such pressure from California, turned around and likewise pressured Iowa.

54. Indeed, on May 12, 2016, when CSAAVE did not follow the VA’s instructions to ask the University if it would submit an application to CSAAVE (*see infra* at ¶ 48), ***the VA itself told the University that it should begin the process of getting approved by CSAAVE***. A copy of this email is attached to the Amended Appendix as **Exhibit X**. Troubled, IDOE emailed the VA, stating:

Something that nags me is who would have provided oversight over Ashford had I pulled their approval when they changed their accreditation? ***Someone from California flat out refused they would approve the school***. At NASAA meetings, etc., I hear SSA blowhards talk about ‘special approval criteria.’ I have never once seen anyone produce anything that sounded like real. Most seemed like arbitrary standards set up because they had some special SAA/VA authority. Iowa’s always has been to treat institutions uniformly under Iowa law. To this end I’ve always been willing to explain how these laws worked although not all of them under the agency where I am stationed.

A copy of this email is attached to the Amended Appendix as **Exhibit Y**. (Emphasis added.)

Internally, IDOE’s communications were similarly strongly worded:

VA wants to purposely interrupt and displace some 10K veterans for shock value. They will try to use it to demonstrate the \$19M they pay for state SAAs a waste of money.

A copy of this email is attached to the Amended Appendix as **Exhibit Z**.

55. Given the VA's extensive interference (which was being concealed from the University), the University's attempts to make clear the actual facts concerning its operations in Iowa fell on deaf ears. IDOE's internal assessment is nothing short of shocking. On May 19, 2016, IDOE characterized the state of play as follows:

A letter will be going to Ashford University informing them Iowa is withdrawing our approval authority effective June 30, 2016. If the California SAA does not approve them before this date all veterans (even those accepted into a program when Ashford operated its "residential" campus in Iowa and Ashford reported to me and others as its "main campus"[D]) will be interrupted.

***This will impact somewhere between 6K and 10K veterans and other eligible students currently in receipt of VA education benefits.***

Ashford University is not the only "online" university who operates an online center in one state, a corporate headquarter's [sic] in another, and residential campuses in even other states. ***So I don't see how VA can apply a USDE rule to what is essentially a Title 38 issue/concern and to just one school who in my opinion operates a business model just as all the other "online" schools do.***

Some three years ago I shared this development with VA... No one had any concerns for it then. ***California informed me they would never approve Ashford to operate in their state. No reason was given as to why....***

***It seems only VA wants to interrupt veterans and military students enrolled.*** Title IV has no concerns about what is operating in Iowa now or after the residential campus closes. Need based online students will not be interrupted because of the closure of the residential campus.

***...It is a power grab on VA's part that will do little more than produce a lawsuit and student/veterans "suddenly" interrupted probably dependent on the housing allowance, the education, or the delivery/program enrolled in. (Emphasis added.)***

A copy of this email is attached to the Amended Appendix as **Exhibit AA**.

56. As explained above, that day, IDOE again succumbed to outside pressures and informed the University that its position regarding the planned withdrawal of approval of programs for GI benefits effective June 30, 2016, had not changed. A copy of this letter is

attached to the Amended Appendix as **Exhibit BB**. IDOE stated that only the SAA for the state where an educational institution's main campus is located may approve a course for GI Bill purposes, citing 38 U.S.C. § 3672 and 38 C.F.R. § 21.4250 and 21.4266. *See* Ex. BB. Because of its mistaken belief that the University was leaving Iowa on June 30, 2016, IDOE mistakenly believed these provisions deprived it of any existing or further approval authority. IDOE also failed to cite or otherwise to address the importance of 38 C.F.R. § 21.4259, which governs, and limits, the authority of an SAA to undertake a “[s]uspension or disapproval” of an institution that has an existing approval. IDOE incorrectly contended that only California may provide approval for the University's veterans programs.

57. Around this time, IDOE was, in its own words, further “betrayed” by outside regulators as it “was under the impression enrolled student veterans would be allowed to continue” and was being “forced” by the VA to withdraw the University's approval. A copy of this email is attached to the Amended Appendix as **Exhibit CC**. As explained below, the VA told IDOE that enrolled Veteran Student approval was also to be withdrawn on June 30, 2016, given IDOE's withdrawal of the University's approval on that date.

58. Unaware of the VA's insistence on withdrawal and IDOE's agreement thereto, on May 23, 2016, the University continued its dialogue with IDOE, reiterating in writing its concern about the impact that the communicated withdrawal of approval (and thus GI Bill benefits) would have on its Veteran Students, such as Michael Blackwell. The University explained:

We continue to be very concerned with the potential negative impact the communicated withdrawal of benefits would have on our veteran students. This is the reason we previously confirmed with you and your office that any decision by ISAA to withdraw its approval would only impact new students (those enrolling after July 1, 2016) while the authorization to certify current students for veterans' benefits would remain undisturbed through their program completion. By e-mail dated May 5, 2006, on which you were copied, ISAA . . . confirmed “[o]ur withdrawal will not

impact veterans or military students currently admitted to Ashford University and in receipt of VA education assistance benefits.” . . . Given this guidance, Ashford [University] is relying on this statement as accurate and therefore concludes that any reference to “withdrawal” applies only to future enrollments and not to the approximately 6,250 veterans currently enrolled in our programs. Due to the significant detrimental affect any decision impacting current students now and through their graduation date, we seek written confirmation of this point from the ISAA as soon as possible.

The University again tried to clear up IDOE’s misunderstanding regarding the University’s presence in Iowa and requested a meeting to further clarify the relevant facts. A copy of this letter is attached to the Amended Appendix as **Exhibit DD**.

59. The next day, May 24, 2016, the VA contacted IDOE to tell it that it had chosen its words very carefully regarding Veteran Students’ enrollment at the University beginning after June 30, 2016. A copy of this email is attached to the Amended Appendix as **Exhibit EE**.

The VA also instructed IDOE to direct the University to the VA to discuss payment, stating:

*SAs approve programs and VA pays benefits.* I do not want them arguing with us about the withdrawal, that’s you guys... but payment issues are our rules, not yours. So , yes. If they don’t like it, I can happily provide them a legal reference. They can ask us about it.

A copy of this email is attached to the Amended Appendix as **Exhibit FF**. (Emphasis added.)

Thus, the VA wanted to make sure IDOE remained as the “front man” for the approval process, even though the VA was pulling the strings.

60. Thus, on May 24, 2016, after getting edits and approval from the VA, IDOE sent its response to the University, stating that the decision would not be reconsidered and, effective June 30, 2016, approval of the University’s academic programs would be withdrawn. A copy of this letter is attached to the Amended Appendix as **Exhibit GG**. This correspondence from IDOE *flatly contradicted* the position IDOE took on May 5, 2016. Contrary to what it had told the University only a few weeks previously, thanks to the pressure exerted by the VA in the

intervening period, IDOE by this point would not even try to protect the interests of currently enrolled Veteran Students:

As per [VA representative's] email sent today, the "VA will pay until the completion of any "term" (enrollment period) for terms that begin June 30th or before. The VA will pay for no terms (enrollment periods) that begin July 1st or after, regardless of when the person first entered their program. Again, as of June 30th, Ashford [University] has no approval and the VA will have no legal authority to make further payments for any period of enrollment that begins after June 30th.

Ex. GG. Thus, IDOE's new position was that benefits would not be available to Veteran Students for any student term that began after July 1, 2016, regardless of when the student first entered the program. This was contrary to its May 5, 2016 communication, and, even more importantly, would directly impact Veteran Students currently enrolled at the University. This new position, if ever allowed to go into effect, would be particularly onerous for and damaging to students who are nearing graduation, but who will no longer be eligible for benefits if their final term starts after June 30, 2016 (or whatever arbitrary and unlawful future cut-off the VA might attempt to dictate to IDOE and IDOE might feel compelled to try to enforce).

61. IDOE was not comfortable with the VA's improper actions and the blatant disregard for the interests of Veteran Students. That same day, on May 24, 2016, IDOE wrote:

As far as I know it is only [VA representative] who wants to see veterans interrupted from "approved programs" and VA seems powerless to get the California SAA to reach out to VA or work with me for a smooth transition of the "approval." It is my opinion [the VA]'s position is an attempt on VA to 1) cost shift the impacted veterans to need based financial aid; 2) purposely create stress, drama, and havoc for what will no doubt be a lot of Congressional complaints; [and] 3) another attempt at VA to erode the approval function of a state or states by citing information that until this issue VA was wholly unconcerned about.

A copy of this email is attached to the Amended Appendix as **Exhibit HH**.

62. Yet still on the same day, May 24, 2016, IDOE decided to limit "correspondence with regard to Ashford University as it may pose unnecessary risk to the agency's course of

action.” A copy of this email is attached to the Amended Appendix as **Exhibit II**. After that time, IDOE stated that discussions concerning the University were “best” done “over the phone.” A copy of this email is attached to the Amended Appendix as **Exhibit JJ**. IDOE’s discomfort with what was being done to the University and its Veteran Students – and IDOE’s unease that a factual record was being created that demonstrated what was happening – was palpable by this point.

63. The last University term that was scheduled to begin prior to the IDOE cut-off started on June 27, 2016, and lasts for 20 weeks and lasts for 20 weeks for undergraduate students (18 weeks for graduate students), pursuant to the previously approved IDOE catalogs. Specifically, IDOE approved courses in these 20-week and 18-week terms. Each undergraduate term consists of four consecutive five-week classes and each graduate term consist of three consecutive six-week classes. According to the IDOE’s final correspondence, that term is the last for which University students would have been able to receive GI Bill benefits, absent further action.

64. Clearly, IDOE’s decision – the effect of which it has now voluntarily stayed through September 18, 2016 – was based on a misunderstanding of the facts and on the highly improper interference by the VA and California; that decision was also wrong as a matter of law. The University has continued to attempt to negotiate with IDOE in order to prevent an interruption of educational services and GI Bill benefits to its Veteran Students, including Michael Blackwell. However, at an August 18, 2016 meeting, the IDOE was clear that it would not extend the stay and the University’s approval would be withdrawn as of September 18, 2016.

### **The CSAAVE Application Process Is Not the Answer.**

65. Included with IDOE's May 24, 2016 letter was a recommendation by the VA that the University seek approval in California by CSAAVE. Based on this recommendation, on May 25, 2016, the University, unaware of the VA and California's real agenda regarding the University's programs and its Veteran Students, and out of concern for its Veteran Students' continued education (but without conceding that IDOE lacks authority to provide an approval under these changed circumstances), notified CSAAVE that it had begun the process of completing the CSAAVE application. A copy of this letter is attached to the Amended Appendix as **Exhibit KK**. That application was formally submitted on June 1, 2016. However, CSAAVE responded by stating that it would not issue approval for any University operation located outside of California:

... CSAAVE does not have approval authority for activities conducted by Ashford [University] outside of California's border; as such, CSAAVE's review will be based solely upon Ashford [University]'s operating status at the proposed San Diego campus. Should additional information, documentation, or clarification be necessary during our review, CSAAVE will provide Ashford [University] with a detailed letter of request.

A copy of this email is attached to the Amended Appendix as **Exhibit LL**. Thus, no option for approval of the University's Iowa programs was genuinely available in California. It would also appear that CSAAVE either has no real understanding of, or some unexplained antipathy to, online education.

66. Currently, all of the University's veterans program certification functions—and all of the employees who run them on behalf of Veteran Students—are located in Iowa. CSAAVE approval would not have been available unless many Iowa residents and their families immediately relocated to California, along with the physical infrastructure that supports the University's Veteran Students' certification functions. To the extent that these valued and high-



performing employees would choose to relinquish their positions rather than move more than halfway across the country, the University would need to hire and to train new employees to perform veterans program certification functions in California. However, there simply is no reason to do so, given that the operations at issue are the Iowa operations that were previously approved by IDOE through June 1, 2017.

67. CSAAVE's insistence on all operations being in California and its insistence that it could only approve California operations were not the only roadblocks to the University's attempt to comply with the VA's arbitrary and capricious instructions. The CSAAVE application process quickly proved a dead end *as IDOE's previous conversations with CSAAVE indicated it would be.*<sup>12</sup> While CSAAVE informed the University that its application for approval was deemed "complete" on June 8, 2016, nine days later, on June 17, 2016, CSAAVE informed the University that it needed additional information before the University's application "can be considered for CSAAVE approval." A copy of this email and letter are attached to the Amended Appendix as **Exhibits MM** and **NN**. Among other items, CSAAVE requested information relating to the University's San Diego campus and its "operational status." This is because CSAAVE said it would not review or approve an operation that is not in California.

68. The University repeatedly attempted to meet with CSAAVE to address CSAAVE's alleged concerns. On June 21, 2016, the University informed CSAAVE that it was compiling supplemental responses to its questions, but had some clarifying questions. A copy of this email is attached to the Amended Appendix as **Exhibit OO**. CSAAVE simply repeated that it would "not consider for approval any program or course not offered entirely by the

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<sup>12</sup> As explained above, IDOE also submitted documentation to the Court showing that "California informed [IDOE] they would NEVER approve Ashford [University] in their state" (emphasis in original); *see also infra* at 2-3, 22 (discussing similar statements from California).

proposed San Diego campus.” It further stated that the University would have to submit all required materials and documents in a single mailing to CSAAVE by June 30, 2016, and once received, CSAAVE would begin its review. A copy of this email is attached to the Amended Appendix as **Exhibit PP**. If CSAAVE subsequently determined that the information submitted with the application constituted full compliance with all applicable approval standards, then CSAAVE said it would perform an onsite visit at the San Diego campus to determine final approval. CSAAVE’s communications made two things very clear. First, it had no intention of approving the University’s programs, regardless of the impact on the Veteran Students (whose concerns were not even mentioned by CSAAVE). Second, the CSAAVE process simply does not fit with a modern on-line educational model.

69. On June 23, 2016, the University requested that CSAAVE meet with its representative in person or by phone to discuss CSAAVE’s requests. A copy of this email is attached to the Amended Appendix as **Exhibit QQ**. CSAAVE did not respond to this meeting request. The next day, Friday, June 24, 2016, the University reiterated its request for a meeting or phone call. A copy of this email is attached to the Amended Appendix as **Exhibit RR**. CSAAVE again did not respond to this request. On June 27, 2016, the University again contacted CSAAVE and asked for a meeting or phone call. A copy of this email is attached to the Amended Appendix as **Exhibit SS**. A University representative advised CSAAVE that she would be in Sacramento the following day, June 28, 2016, and would appreciate the opportunity for a meeting. While a meeting took place the next day (only because the University official made the trip to Sacramento and waited in the lobby until she was seen, despite CSAAVE’s nonresponse to repeated meeting requests), it was not productive. A copy of this email is attached to the Amended Appendix as **Exhibit TT**.

70. On June 30, 2016, the University notified CSAAVE that it had no choice but to withdraw the University's application. A copy of this email is attached to the Amended Appendix as **Exhibit UU**. Thus, as California had already secretly informed IDOE several weeks earlier would be the case, CSAAVE has made it clear that it will never approve the University's nationwide online programs, regardless of the impact on Veteran Students of CSAAVE's regressive position.

**The University and Michael Blackwell Will Suffer Immediate, Substantial and Irreparable Injury Unless The Withdrawal Date is Modified**

71. On June 3, 2016, Veteran Students were informed by the VA that IDOE intended to withdraw program approval on June 30, 2016. A copy of this email is attached to the Amended Appendix as **Exhibit VV**. The VA further informed Veteran Students that they would "be able to finish any *term* beginning before June 30, 2016," but would not "receive GI Bill benefits for terms that begin after that date" (emphasis added). This was consistent with IDOE's May 24, 2016 letter, but was inconsistent with the IDOE's May 5, 2016 letter, to the University. It is also inconsistent with the regulatory definition of "Term," which means "any regularly established division of the ordinary school year under which the school operates." 38 C.F.R. § 21.4200(b)(2). The University operates under a 20-week period of enrollment for undergraduate students (18 weeks for graduate students), as approved by its accrediting agency and as expressed in the University's catalog—which was approved by IDOE on March 8, 2016.

72. This notice to Veteran Students—issued a mere 27 days before the purported cut-off date—alarmed many students, including those who were only a few classes away from graduating from the University.

73. One week later, on June 10, 2016, the University sat down with IDOE and the VA in an effort to resolve this matter in such a way that its Veteran Students could continue to use

their GI Bill benefits without interruption, as contemplated in IDOE’s May 5, 2016 email. When the University questioned the regulators concerning this shift, they simply ignored, unfortunately, the approvals previously given by IDOE to the University for courses given in 20-week (or 18-week) *terms*, stating that GI Bill benefits for Veteran Students would now be limited to *classes* that started by June 30, 2016. There simply was no basis for this sudden shift in position, and it is clearly wrong as a matter of law.

74. Immediately following that meeting, the VA sent an email to the University’s Veteran Students informing them of this latest change in the regulators’ interpretation of the implications of IDOE’s then-plan to withdraw approval on June 30, 2016. A copy of this email is attached to the Amended Appendix as **Exhibit WW**. Veteran Students were now told that, as of June 30, 2016, they would be “able to finish any *class* you have started before that date and we will continue to process those benefits on your behalf. However, you will not be able to start any *classes* after July 1<sup>st</sup> and use your GI Bill benefits” (emphasis added). This latest email to Veteran Students—issued a mere 21 days before the purported cut-off date—had the unfortunate impact of causing a great deal of confusion and further alarmed the University’s Veteran Students.

75. These inconsistencies and abrupt reversals of course had and will continue to have a very immediate and detrimental effect on the University and Veteran Students, including Michael Blackwell. For example, the use of “classes” as opposed to “term” changes the number of classes for which Veteran Students can be certified prior to June 30, 2016. Specifically, under this latest approach, a Veteran Students could only be certified for one class prior to June 30, 2016 (or, at this point, September 18, 2016, if IDOE’s stay is not extended). Had the VA used the word “term” as was used in their June 3, 2016 communication and as “term” was approved

by IDOE, Veterans Students in undergraduate programs would be able to be certified for four classes prior to IDOE's planned withdrawal of approval on June 30, 2016 (or termination of IDOE's stay on September 18, 2016), and those in graduate programs would have been able to be certified for three classes prior thereto.

76. On June 11, 2016, the University sent an email to its Veteran Students in an effort to address the conflicting communications from IDOE and the VA. A copy of this email is attached to the Amended Appendix as **Exhibit XX**. In that email, the University did its best to explain the current situation and to respond to the many questions its Veteran Students might have regarding how IDOE's planned withdrawal of approval could impact them. The University assured the Veteran Students that it was doing and will continue to do everything it can to resolve the issues raised by IDOE's planned withdrawal of approval then-effective June 30, 2016, even helping the Veteran Students locate alternative educational institutions, if that is what is necessary for them to keep their educations on track and to protect their GI Bill benefits.

77. On June 15, 2016, the University participated in a teleconference with the VA and others to discuss the confusion caused to Veteran Students from the conflicting statements made by IDOE and the VA. The University was unaware of the VA's improper communications with IDOE at this time. During this call, the VA said that, if IDOE changed its decision to withdraw the University's approval effective June 30, 2016, then the VA would continue to pay the Veteran Students' GI Bill benefits for their University educations. When the University asked the VA to clarify this statement, the VA said it would "absolutely" continue to pay the GI Bill benefits to the University students if IDOE's withdrawal of the University's approval did not take place. This is, of course, what the VA is obligated to do as a matter of law if IDOE approves the University's programs.

78. On June 20, 2016, IDOE granted a “stay of Iowa’s withdrawal of approval effective immediately for a maximum of ninety days from the date of this letter [*i.e.* to September 18, 2016] or until the California State Approving Agency completes its review and issues a decision regarding the approval of Ashford in California—whichever is soonest.” A copy of this letter is attached to the Amended Appendix as **Exhibit YY**.

79. On June 22, 2016, the VA notified University’s Veteran Students that “[t]he current ‘dilemma’ is averted for now and our GI Bill students can continue to attend Ashford until the California State Approving Agency makes a decision between now and the middle of September.” A copy of this email is attached to the Amended Appendix as **Exhibit ZZ**.

80. However, as explained above, neither the University’s efforts with CSAAVE nor IDOE have resolved this matter. After the stay was entered, the University promptly requested a meeting, on the earliest possible date, with representatives from IDOE and the Iowa Attorney General’s office. Due to the schedules of the representatives from IDOE and the Iowa Attorney General’s office, that meeting did not take place until July 27, 2016. At that meeting, the University provided information on its many continuing activities in Iowa. IDOE had no additional information to provide to support its position, but it indicated that, if the University wanted to submit additional information, it would be considered. The University did so, and offered to meet with IDOE again, at the earliest possible date, to respond to any further questions IDOE might have. A copy of the email to IDOE regarding this meeting is attached as **Exhibit AAA** to the Amended Complaint. Unfortunately, IDOE did not take the University up on these offers.

81. On August 10, 2016, due to the slow progress being made, the University requested that IDOE extend the stay, which is due to expire on September 18, 2016, at least

through December 2016, and preferably through June 2017. A copy of the email to IDOE is attached as **Exhibit BBB** to the Amended Appendix. As of the date hereof, IDOE has not responded, thus necessitating the filing of this Amended Petition, the accompanying Amended Motion for Order Staying and/or Temporarily Enjoining Agency Action Pursuant to Iowa Code § 17A, and related filings in support thereof.

82. The September 18, 2016 effective date of the withdrawal of approval of the University's programs is arbitrary, capricious and unreasonable, as is IDOE's unfortunate about-faces on the effect that this withdrawal of approval will have on the Veteran Students' ability to use their hard-earned GI Bill benefits. Unless the withdrawal of approval is stayed or enjoined, the University's Veteran Students, including Michael Blackwell, along with the University and its staff, will be adversely affected and irreparably harmed.

83. With respect to the University's Veteran Students, substantially all of them finance their education at the University using funding provided by the GI Bill, including Plaintiff Michael Blackwell. Michael Blackwell's education at the University is funded in part through federal benefits that he earned under the GI Bill. Currently, the GI Bill covers 50% of his educational costs, and he could not afford those costs without GI Bill benefits. Accordingly, if Michael Blackwell loses the ability to pay for his University studies using GI Bill veterans benefits on September 18, 2016 he will have to disrupt his studies, ultimately delaying his graduation timeline. All of his scheduling – including course work, job application planning, and pertinent certifications – are planned around a 2018 graduation date. Michael Blackwell's 2018 degree would permit him to transition from his current work in construction to a career in information security management, which he expects would be much more stable and financially rewarding for himself and for his family.

84. Further, Michael Blackwell depends in part on the MHA aspect of his GI Bill benefits to meet his current expenses as he raises a family while working and going to school. Any disruption of those MHA benefits would therefore cause immediate harm to his and his family's financial and physical well-being.

85. Unfortunately, studies have shown that Veteran Students, like Michael Blackwell, whose educations are interrupted will suffer from a decreased likelihood that they will finish their educational programs, adversely impacting their ability to apply for and to obtain jobs and promotions. Likewise, any delay in a Veteran Student's University coursework or graduation date could adversely affect the Veteran Student's ability to pursue employment and promotion opportunities. Veteran Students who are inclined to transfer to other approved institutions could be adversely impacted, because the September 18, 2016 effective date will not give them enough time to make sure they can continue their educations without interruption or delay. And further, even Veteran Students who opt to transfer may not be able to transfer all of the credits they have earned at the University to another institution. If not, the transfer will extend their time to graduation and, potentially, increase the costs individually paid by the transfer students and by taxpayers under the GI bill.

86. The planned withdrawal of approval by IDOE, effective September 18, 2016, not only adversely affects Michael Blackwell and the University's other Veteran Students, but it would also adversely impact and irreparably harm the University itself, due to the loss of tuition necessary to fund the University's educational operations and the loss of GI Bill dependant applicants who would have started programs at the University. This decision also creates an incentive for Veteran Students to leave the University to attend other educational institutions. Such losses would be permanently damaging to the University—conceivably, thousands of



current or potential students could enroll at other institutions instead of the University. Indeed, the email sent to the University's Veteran Students on June 3, 2016, confirms this risk, as it advised Veteran Students of the possible loss of their veterans benefits if they stayed with the University and encouraged those students to "consider your alternatives" and "search for other programs to attend." Veteran Students who are interested in continuing their educations with the University but need GI Bill benefits to make ends meet could find they have little choice but to enroll with one of the University's competitors (or else delay or abandon their educational plans).

87. Finally, withdrawal of approval also adversely affects the University employees who have been planning to remain in Clinton, Iowa, as set forth in detail above. In short, if the properly granted approval is withdrawn, then these University employees are out of a job.

88. Conversely, there would be no harm to anyone if the withdrawal of approval does not occur on September 18, 2016 and the IDOE remains the University's approving authority through at least June 1, 2017. The University and IDOE could address the implications of the University's transition to a completely on-line institution and teach-out through June 1, 2017, in a measured and orderly fashion, during which time Michael Blackwell and the other Veteran Students would be able to continue their educations without disruption.

#### **COUNT I- DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

89. The University repeats and realleges, as if fully set forth herein, the allegations in Paragraphs 1-88 of the Petition.

90. Iowa Rule of Civil Procedure 1.1502 authorizes the granting of temporary injunctive relief where, *inter alia*, the plaintiff demonstrates an entitlement to relief "which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff," as well as "[i]n any case specially authorized by statute."

91. In addition, the Iowa Administrative Procedure Act (“IAPA”) permits “a person or party who is aggrieved or adversely affected by agency action” to seek judicial review of final agency action. *See* Iowa Code § 17A.19. This Court can review such actions based on any of the grounds in Iowa Code § 17A.19(10), including without limitation the following:

- (c) Agency action based upon an “erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.”
- (d) Agency action based upon “a procedure or decision-making process prohibited by law” or “taken without following the prescribed procedure or decision-making process.”
- (h) Agency action “other than a rule that is inconsistent with the agency’s prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.”
- (k) Agency action “[n]ot required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.”
- (n) Agency action that has is “[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion.”

The September 18, 2016 withdrawal of approval for the University’s programs is flawed in many independent respects.

92. First, the September 18, 2016 withdrawal of approval would not follow, and would be inconsistent with, applicable regulations governing approvals. *See* 38 C.F.R. §§ 21.4258, 21.4259. Withdrawal of an approval can occur only if IDOE determines that the University failed to comply with a legal requirement of the program. *See* 38 C.F.R. § 21.4259. And federal law establishes that an SAA “shall apply” the requirements of 38 C.F.R. § 21.4259 in “administering benefits payable” under veterans educational programs. *See* 38 C.F.R. § 21.5250; *see also* 38 C.F.R. § 21.7220 (same); 38 C.F.R. § 21.7720 (same). IDOE has never

suggested that the University has failed in any way to comply with its legal obligations, nor has it contended that its attempt to withdraw the approval is consistent with the requirements of 38 C.F.R. § 21.4259.

93. Second, IDOE's interpretation of 38 U.S.C. § 3672 and 38 C.F.R. § 21.4250 and 21.4266 as mandating the planned withdrawal of approval is erroneous. IDOE has jurisdiction over institutions "located" in Iowa (38 U.S.C. § 3672(a)), and no regulatory standard prevents IDOE from retaining jurisdiction over the University under the facts presented here. The current teach-out plan continues through June 1, 2017. After the teach-out is completed, the University will not have a primary teaching location. What it does and will have is administrative capability as it pertains to Veteran Students' programs- and all of those functions are in Iowa. Indeed, CSAAVE took the position that, until all of the University's operations are moved from Iowa to California, they cannot be approved by CSAAVE. There can be no dispute that the University's current operations for regulatory purposes are in Iowa.

94. Third, the determination that the University would not maintain a teaching location in Iowa after June 30, 2016, is just factually wrong. The teach-out approved by the IDOE will continue in Iowa through June 1, 2017. Furthermore, the University plans to maintain the consolidated oversight and support of the Veteran Students' programs, as well as numerous operational functions related to the support of Veteran Students, in Iowa. In addition, after that teach-out is completed, the University will provide only online educational programs, which will be available to students across the country. It will not be providing residential instruction at any physical campus in any state, including California. Thus, under applicable regulations, the University will continue to operate in Iowa, and IDOE will retain jurisdiction to approve the University's programs for purposes of GI Bill funding.

95. Finally, the decision to withdraw approval for the University's programs was otherwise arbitrary, capricious and unreasonable, improperly influenced by the VA and California, and the relevant facts require that the approval previously granted by IDOE to the University's current programs be maintained.

96. A prompt declaration of the rights of the parties and an injunction is needed. The ability of the University to operate its programs, and of Plaintiff Michael Blackwell and other Veteran Students to continue their educations and maintain their MHA benefits as applicable, will be disrupted unless this Court declares that the prior approval of the University's programs cannot be withdrawn effective September 18, 2016, and that IDOE has the authority to approve the University's programs while the University maintains operations in Iowa, certainly at least through June 1, 2017. A stay or temporary injunction through June 1, 2017, would allow for a measured and orderly discussion among the University and the regulators, during which time Plaintiff Michael Blackwell and the other Veteran Students would be able to continue their educations without disruption.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in its favor granting relief against IDOE as follows:

1. Imposing a stay, a temporary restraining order and/or preliminary and permanent injunctions barring IDOE from withdrawing the prior GI Bill approval of the University on the basis set forth in the communications dated May 10, 2016, and May 23, 2016;
2. Declaring that IDOE's withdrawal of approval of the University's previously approved programs would be invalid;

3. Declaring that IDOE has the authority to approve the University's programs while the University maintains operations in Iowa;

4. Declaring that IDOE has the authority to approve the University's programs through at least June 1, 2017; and

5. Awarding Plaintiffs such other and further relief as the Court deems just and proper.

Dated: August 19, 2016

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 19, 2016, the foregoing was served via hand-delivery and electronically via Sharefile, and was contemporaneously electronically filed with the Clerk of the Court using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel below.

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