

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. _____

DWAYNE COFFER,)	
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	JURY TRIAL
WARREN COUNTY BOARD OF EDUCATION)	DEMANDED
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff, Dwayne Coffe (“Coffe”), by the undersigned attorneys, alleges:

1. This civil action is brought under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, et seq. (“USERRA”).

PARTIES

2. Warren County Board of Education (“Warren County”) is a county board of education of Warren County schools that is organized and conducts its business in Warrenton, North Carolina. It has general control and supervision of all matters pertaining to the public schools in Warren County, North Carolina. N.C.G.S. §§ 115C-35, 36. It is an “employer” within the meaning of 38 U.S.C. § 4303(4)(A), and is subject to suit under USERRA, 38 U.S.C. § 4323(a).

3. Coffe was hired by Warren County in August 2006 as an Assistant Principal at Warren County High School.

4. Coffe has been an educator since 1997.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this civil action under 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b).

6. Venue is proper in this judicial district under 38 U.S.C. § 4323(c)(2) because Defendant Warren County maintains a place of business in this judicial district and is considered a “private employer.” Venue is also proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

FACTUAL ALLEGATIONS

7. Coffey repeats the factual allegations set forth in paragraphs 1-6.

8. Coffey is a Command Sergeant Major in the United States Army Reserves (“the Army Reserves”). Coffey currently serves in the 2nd Battalion, 317th Regiment, based in Lynchburg, Virginia. Coffey has served in the Army Reserves for over 26 years.

9. During the relevant times in the complaint and through present day, Coffey held and still holds a *North Carolina Professional Educator’s School Administrator: Principal* license.

10. Coffey has served in administrator positions since his employment began with Warren County in 2006 as an Assistant Principal.

11. During the 2016-2017 school year, Coffey was employed by Warren County as the Dean of Students at Warren County Middle School. As the Dean of Students, Coffey had high-level administrator responsibilities that he exercised interchangeably with the Assistant Principal and Principal, including making decisions regarding in-school suspensions of students; serving as the administrator representative at the decision-making meeting regarding moving students to the Alternative Program at the Hawkins Campus; responding to requests for an

administrator to address a fight; serving as an administrator representative in conversations with parents; representing the school at sporting events as an administrator; and attending the school accreditation meetings. He also had additional high-level responsibilities as Dean of Students that included reporting all of the in-school suspensions to the North Carolina state system, managing school disciplinary problems, monitoring issues that occurred on school buses, and serving on the school improvement team.

12. In the summer of 2017, Coffey received orders for military service that was to be performed between July 10, 2017 and August 21, 2017.

13. Coffey left for military duty on July 10, 2017. Prior to the commencement of the school year, Coffey gave notice of his military service via email to his supervisor, Principal Noland Hicks, Assistant Principal at Warren County Middle School, Jennifer Wilker, and Secretary Tammie Harmon.

14. On August 8, 2017, during the first day of school for students at Warren County Middle School, and while Coffey was still away on military orders, Coffey received a telephone call from Jamar Perry (“Perry”), the Director of Human Resources for Warren County. During the telephone conversation, Perry informed Coffey that Warren County had eliminated his position as Dean of Students at Warren County Middle School. Perry further informed Coffey that he would be offered reemployment as a Physical Education (“PE”) Teacher at Northside K-8 Elementary School when he returned from military service. Coffey did not receive any prior notice that his position was to be eliminated before his telephone call with Perry. He expressed his shock and disappointment with Warren County’s offer of a PE Teacher position and asked about other, administrator positions to which he could be assigned. Perry told Coffey that,

although there were vacant administrator positions at Warren County schools, it was too late for Coffey to apply for any of them.

15. Coffey has not been a PE Teacher for fifteen years and began his employment with Warren County as an Assistant Principal thirteen years ago. He has never worked as a PE Teacher for Warren County.

16. A PE Teacher position is not equivalent to an administrator position. A PE Teacher position does not have the authority to make in-school suspensions, respond to parent calls for an administrator, represent the school at an accreditation meeting, or engage in decision-making about moving students to the Alternative Program at the Hawkins Campus.

17. Based on Warren County's elimination of his Dean of Students position and offer of reemployment as a PE Teacher, Coffey filed a USERRA claim with the Department of Labor's Veterans' Employment and Training Service ("DOL VETS") which investigated his claim.

18. Human Resources Director Perry told the DOL VETS investigator that he has no knowledge of any other employee at Warren County schools being moved from an administrator role to a schoolteacher role.

19. On August 23, 2017, the DOL VETS investigator spoke with Dr. Ray Spain, the Superintendent of Warren County at the time, and reiterated Coffey's request to be reemployed as Dean of Students with a school or an equivalent position.

20. On or around August 24, 2017, the DOL VETS investigator sent a letter to Dr. Spain reiterating Coffey's request that Warren County "restor[e] him to his past position or a position equivalent to that of the Dean of Students at the Warren County Public School System."

21. On or around April 23, 2018, the DOL VETS investigator sent a letter to Lewis A. Thompson III, the attorney representing Warren County, once more confirming that Coffey sought reemployment in the form of a position as a Dean of Students or an equivalent position.

22. Warren County has never offered to reemploy Coffey as a Dean of Students or an equivalent position.

23. Upon information and belief, there were at least three administrator positions available for the 2017-2018 school year while Coffey was on military leave in 2017 and that Warren County filled in the summer of 2017; two Principal positions and one Assistant Principal position. One of the individuals Warren County hired as a Principal had less seniority, experience, and education than Coffey.

24. Coffey has not received retirement credit from Warren County for the purposes of determining his retirement benefit since July 10, 2017.

25. In order to mitigate his damages, Coffey served in the military from March 24, 2018 to August 22, 2018 and from October 1, 2018 through the present time. Coffey's current orders ended on March 30, 2019.

26. This is the second time that Coffey has filed a USERRA complaint with DOL VETS to enforce his reemployment rights after a return to his employment with Warren County after military service.

27. In March 2008, while employed with Warren County, Coffey left to perform active duty military service as a Sergeant First Class in the Army Reserves. Upon his return in April 2008, Warren County told Coffey his contract was not being renewed.

28. The Department of Justice undertook representation in his USERRA complaint for discriminatory non-retention of employment and retaliation for asserting his USERRA rights

and filed a complaint in the Eastern District of North Carolina on October 19, 2012. Complaint, *Coffer v. Warren County Bd. of Educ.*, No. 5:12-CV-00685-D (E.D.N.C. Oct. 19, 2012), ECF No. 1.

29. One year later, on October 30, 2013, Coffer and Warren County signed a consent agreement that required Warren County to reemploy Coffer as a Lead Teacher/Site Supervisor under an administrator contract and restore his lost pay and benefits. Consent Agreement, *Coffer v. Warren County Bd. of Educ.*, No. 5:12-CV-00685-D (E.D.N.C. Oct. 30, 2013), ECF No. 22.

30. The consent agreement also stated, “Warren County shall comply with all of the provisions of USERRA and shall not take any action against any person, including but not limited to Coffer, that constitutes retaliation or interference with the exercise of such person’s rights under USERRA.” *Id.* ¶8. Pursuant to the consent agreement, in November 2013, Warren County reinstated Coffer as a lead teacher/site supervisor at the Warren County Alternative School.

31. At all relevant times, Coffer had performed less than five years of non-exempt military service during his employment with Warren County.

CLAIMS FOR RELIEF

32. Coffer re-alleges and incorporates by reference all of the foregoing allegations.

33. Coffer meets the requirements for coverage under USERRA. *See* 38 U.S.C. §§ 4303 & 4304.

COUNT I

USERRA, 38 U.S.C. § 4313

Failure to Properly Reemploy in Violation of USERRA

34. USERRA provides that “any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the

reemployment rights and benefits and other employment benefits of this chapter” if that person satisfies USERRA’s notice, service length, and application requirements. 38 U.S.C. § 4312(a).

35. USERRA requires employers to promptly reemploy any person returning from a period of military service, which was for less than 91 days, “in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, the duties of which the person is qualified to perform.” 38 U.S.C. § 4313(a)(1).

36. Warren County violated USERRA Section 4313 by failing to promptly and properly reemploy Coffey when he returned from active duty. A proper reemployment position would have been a Dean of Students position or equivalent administrator position.

37. Coffey satisfied the notice, service length, and application requirements in USERRA, 38 U.S.C. § 4312.

38. Warren County’s violation of USERRA Section 4313 was willful under 38 U.S.C. § 4323(d)(1)(c) in that Warren County showed a reckless disregard for whether its conduct was prohibited by the provisions of USERRA.

39. Coffey has suffered a substantial loss of earnings and other benefits, including retirement benefits, in an amount to be proven at trial as a result of Warren County’s violations of USERRA.

COUNT II

USERRA, 38 U.S.C. § 4311

Discriminatory Demotion in Violation of USERRA

40. USERRA provides that “[a] person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied . . . any benefit of employment by an employer on the

basis of that membership, application for membership, performance of service, application for service, or obligation.” 38 U.S.C. § 4311(a). An employer violates this prohibition when “a person’s membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating favor in the employer’s action.” 38 U.S.C. § 4311(c).

41. Warren County violated Section 4311 of USERRA by demoting Coffey on the basis of his military service obligations and/or his absence from his civilian job in order to perform military service.

42. Coffey’s military service was a motivating factor in Warren County’s decision to demote Coffey from a position as Dean of Students at a middle school to a PE Teacher at an elementary school.

43. Warren County’s violation of USERRA Section 4311 was willful under 38 U.S.C. § 4323(d)(1)(c) in that Warren County showed a reckless disregard for whether its conduct was prohibited by the provisions of USERRA.

44. Coffey has suffered a substantial loss of earnings and other benefits in an amount to be proven at trial as a result of Warren County’s violations of USERRA.

PRAYER FOR RELIEF

WHEREFORE, Coffey prays that this Court enter judgment against Warren County and grant the following relief:

A. Declare that Warren County’s failure or refusal to properly reemploy Coffey was unlawful and in violation of USERRA Sections 4311 and 4313;

B. Order Warren County to comply fully with the provisions of USERRA by compensating Coffey for his lost wages and other benefits, including retirement benefits, suffered by reason of Warren County's violations of USERRA;

C. Award prejudgment interest to Coffey on the amount of lost wages and benefits due;

D. Direct Warren County to reemploy Coffey into the position he had before he left for military service, or an equivalent position;

E. Enjoin Warren County from taking any action with respect to Coffey that fails to comply with USERRA;

F. Credit Coffey with all time lost due to failure to properly reemploy pursuant to USERRA for retirement benefit purposes;

G. Direct Warren County to apply to the state of North Carolina to renew Coffey's *North Carolina Professional Educator's School Administrator: Principal* license;

H. Declare that Warren County's USERRA violation was willful, and award Coffey liquidated damages in an amount equal to his lost wages; and

I. Grant such other and further relief as may be just and proper together with the costs and disbursements of this lawsuit.

JURY DEMAND

Coffey hereby demands a jury trial under Federal Rule of Civil Procedure 38.

Respectfully submitted this 10th day of April, 2019.

ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division

ROBERT J. HIGDON, JR.
United States Attorney
Eastern District of North Carolina

BY: /s/ Michael G. James
MICHAEL G. JAMES
Assistant United States Attorney
310 New Bern Avenue, Suite 800
Raleigh, NC 27601
Tel: (919) 856-4530
Fax: (919) 845-4821
Email: Mike.James@usdoj.gov
NY Reg. No. 2481414

DELORA L. KENNEBREW (GA Bar No. 414320)
Chief

ANDREW G. BRANIFF (IN Bar No. 23430-71)
Special Litigation Counsel

DEBORAH E. BIRNBAUM
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
601 D Street, N.W.
Patrick Henry Building, Room 4031
Washington, D.C. 20530
Tel: (202) 305-3302
Fax: (202) 514-0655
Email: deborah.birnbaum@usdoj.gov
NY Reg. No. 4799359
Counsel for Plaintiff

UNITED STATES DISTRICT COURT

for the

Western District of North Carolina

DWAYNE COFFER,

Plaintiff(s)

v.

WARREN COUNTY BOARD OF EDUCATION

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) WARREN COUNTY BOARD OF EDUCATION
c/o: Adam S. Mitchell, P.O. Box 1151
Raleigh, North Carolina 27602
and
Lewis A. Thompson, III
P.O. Box 535
Warrenton, North Carolina 27589

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael G. James
Assistant United States Attorney
United States Attorney's Office
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DWAYNE COFFER

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

WARREN COUNTY BOARD OF EDUCATION

County of Residence of First Listed Defendant Warren
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, et seq.
 Brief description of cause:
 Violation of USERRA Sections 4311 and 4313

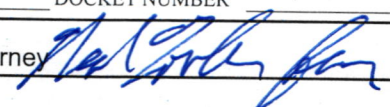
VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____
 CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 04/10/2019 SIGNATURE OF ATTORNEY OF RECORD: Michael G. James, Assistant U.S. Attorney



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____