

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE PUERTO RICO DEPARTMENT OF EDUCATION

A. INTRODUCTION & PARTIES

This SETTLEMENT AGREEMENT is made and entered into between the United States of America (“United States”) and the Puerto Rico Department of Education (“PRDOE”), their current, former and future agents, employees, officials, designees and successors in interest. (collectively, “the Parties”), who agree and stipulate as follows:

1. Following the referral and investigation of a claim filed by U.S. Army veteran and Puerto Rico National Guardsman Daniel Nazario (“Nazario”) with the United States Department of Labor, Veterans’ Employment and Training Service (“VETS”) (PR-2017-00008-20-G-R), the United States informed the PRDOE that it intends to file a lawsuit in federal court against the Commonwealth of Puerto Rico and the Puerto Rico Department of Education for failing to properly reemploy Nazario after his return from military active duty, in violation of Sections 4311, 4312 and 4313 of the Uniformed Services Employment and Reemployment Rights Act (hereinafter “USERRA”), 38, U.S.C. § 4301, *et seq.*
2. The United States alleges claims against the PRDOE seeking lost wages and a promotion for Nazario.
3. The Parties, desiring to avoid protracted and unnecessary litigation, accept this Settlement Agreement (“Settlement Agreement” or “Agreement”) as final on the issues resolved, without conceding or denying liability, negligence or error by either party.

B. RELIEF

In consideration of the mutual covenants hereinafter contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

4. Without admitting the USERRA violations proffered by the United States or Daniel Nazario and in full settlement of their claims, no later than June 30, 2023, the PRDOE shall pay two thousand, eight hundred and forty dollars (\$2,840.00) to Nazario in back wages (via direct deposit into the bank account used by the PRDOE to pay his salary). Within five (5) business days thereafter, the PRDOE shall send (via email) proof of said payment to counsel for the United States.
5. The monetary amount specified in paragraph 4 above constitutes the Parties' determination of the difference in compensation that Nazario would have received if reemployed as a permanent school director upon his return from active duty in June 2017.
6. Within fourteen (14) calendar days of the execution of this Agreement by the Parties and Nazario's execution of the release noted in paragraph 7, the PRDOE shall promote Nazario from transitory school director to permanent school director with an effective date of June 1, 2017, the date he would have been promoted absent his military service (with a probationary status of two years from the date Nazario is promoted) assigned to Ramon T. Rivera School in Barranquitas, PR, and shall provide Nazario and the United States with a notice stating the effective promotion date of June 1, 2017.
7. By his signature on the accompanying Individual Relief and Release of Claims Form, at Appendix A, Nazario agrees that the relief provided under this Agreement is a satisfactory resolution of any and all claims described in such release. Within seven (7)

calendar days of the execution of this Agreement, Nazario shall submit the signed release via email to both counsel for the PRDOE and counsel for the United States.

8. Within sixty (60) calendar days of the execution of this Agreement by the Parties, the PRDOE shall cause all necessary employment records and accounts to be adjusted to reflect the retroactive promotion date of June 1, 2017. The PRDOE shall use Nazario's retroactive promotion date for all purposes for which seniority is used, including, but not limited to, pay, benefits, pension, assignments, and other job prerequisites. The PRDOE shall also issue a notice to the United States and Nazario stating that Nazario's pension has been altered to reflect the updated salary and the amount and date of the credit.
9. For all payments made pursuant to this Settlement Agreement, the PRDOE shall assume responsibility for all tax liabilities applicable to payors (including issuing appropriate tax forms) incurred as a result of the payment made pursuant to this Agreement, and Nazario shall assume responsibility for all tax liabilities incurred as a result of acceptance of said payment. The PRDOE shall deduct from the gross amount of the back wages all applicable employee contributions to pension and retirement accounts and withholding taxes and other payroll deductions that the PRDOE is required by law to make from wage payments to employees. The PRDOE shall be responsible for separately paying the employer's contribution to Social Security and Medicare due on the award of back wages, and the employer's contribution shall not be deducted from the overall settlement amount. At the conclusion of the tax year in which the payment is made, the PRDOE shall issue to Nazario a W-2 reflecting the payment.

10. Following the execution of this Settlement Agreement by the Parties, the U.S. Department of Labor and United States Department of Justice will close VETS Case No. PR-2017-00008-20-G-R.
11. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with Nazario's USERRA complaint.

C. COMPLIANCE WITH AGREEMENT AND USERRA

12. The United States may review compliance with this Settlement Agreement until final compliance with its terms and conditions.
13. The PRDOE shall, upon written request (via email), provide to the United States the pertinent documents related to compliance with this Agreement within thirty calendar (30) days of the request.
14. If the PRDOE fails to make the payment in this Settlement Agreement within the timeframe set out herein, any payment will be increased by interest due on the payment. The interest rate will be the underpayment interest rate of the United States Internal Revenue Service in effect at the time.
15. The PRDOE shall not take any adverse employment action against Nazario, based in whole or in part on the filing of this USERRA complaint, his past or present military service or obligations or his assertion of related rights, that violates USERRA.

D. NOTIFICATION OF THE PARTIES

16. All notices and documents required to be provided to counsel for the United States shall be delivered electronically to:

ALICIA D. JOHNSON
Senior Trial Attorney
Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW, 4CON – 9th Floor
Washington, DC 20530
202.532.5872
alicia.johnson@usdoj.gov

AGREED AND CONSENTED TO this 30th day of November, 2022.

On Behalf of the United States of America

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

KAREN D. WOODARD
Chief

ANDREW G. BRANIFF
Deputy Chief

/s/ Alicia D. Johnson
ALICIA D. JOHNSON
(DC Bar Number 494032)
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
150 M. Street, NE
4CON – 9th Floor
Washington, DC 20530
Telephone: 202-532-5872
E-mail: alicia.johnson@usdoj.gov

AGREED AND CONSENTED TO this 30 day of November, 2022.

On behalf of the Puerto Rico Department of Education

ELIEZER RAMOS PARÉS

Secretary

Puerto Rico Department of Education

/s/ Nathalia V. Ramos Martínez

NATHALIA V. RAMOS MARTÍNEZ

PR Bar Number 16854

Interim Chief of Legal Affairs and Public Policy

Puerto Rico Department of Education

PO Box 190759

San Juan, Puerto Rico 00919

Telephone: (787) 773.3675

Email: ramosmn@de.pr.gov

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND
THE PUERTO RICO DEPARTMENT OF EDUCATION**

**APPENDIX A: RELEASE OF CLAIMS AS TO THE PUERTO RICO
DEPARTMENT OF EDUCATION**

1. I, Daniel Nazario, for and in consideration of accepting the relief to be provided to me pursuant to the provisions of the Settlement Agreement between the United States of America and the Puerto Rico Department of Education, hereby forever release and discharge the Puerto Rico Department of Education and their current, former and future officials, employees, agents, representatives, successors, and/or assigns of any and all claims, liabilities, demands, damages, and/or causes of action, arising from or related to the allegations raised in my claim to the United States Department of Labor Veterans' Employment and Training Service ("VETS"), PR-2017-00008-20-G-R.

2. I hereby withdraw the referral of my USERRA claim (PR-2017-00008-20-G-R) to the U.S. Department of Justice and understand that the Department of Justice will close its investigation of this matter.

3. I understand that the relief to be given to me under the Settlement Agreement between the United States of America and the Puerto Rico Department of Education relating to my claim (VETS PR-2017-00008-20-G-R) does not constitute an admission by the Puerto Rico Department of Education of the validity of any claim raised by me or on my behalf. I further understand that the terms and conditions of the Settlement Agreement or this release do not constitute a finding of wrongdoing or liability by the Puerto Rico Department of Education under any provision of law.

4. Nothing in this Release of Claims shall prevent me from filing a subsequent USERRA or any other claim regarding future employment actions.

5. I acknowledge that a copy of the Settlement Agreement has been made available to me.

6. I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF, AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Daniel Nazario

Signed this ____ day of _____, 2022.

Subscribed and sworn to before me this
____ day of _____, 2022.

Notary Public