

SETTLEMENT AGREEMENT

1. On April 10, 2019, Plaintiff Dwayne Coffey ("Coffey" or "Plaintiff") commenced a civil action in the United States District Court for the Eastern District of North Carolina, by filing a Complaint alleging that Defendant Warren County Board of Education ("Warren County" or "Defendant") violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by failing to properly reemploy him in violation of 38 U.S.C. § 4312 & 4313. The covered conduct alleged in violation of USERRA is set out in the Complaint filed on April 10, 2019.

2. The United States Department of Justice ("DOJ") represents Coffey in this matter pursuant to 38 U.S.C. § 4323.

3. Warren County denies that it has violated USERRA.

4. Nevertheless, Coffey and Warren County (collectively referred to as the "Parties"), have agreed that this action should be resolved by the execution of this Settlement Agreement and the Complaint shall be dismissed. It is the intent of the Parties that this Settlement Agreement be a final and binding resolution in full disposition of all claims arising out of the facts as alleged in the Complaint. By all Parties' signatures to this Settlement Agreement, the Parties agree to the terms of this Settlement Agreement.

STIPULATIONS

5. The Parties acknowledge the jurisdiction of the United States District Court for the Eastern District of North Carolina over the subject matter of this action and of the Parties to this case for the purpose of entering this Settlement Agreement and, if necessary, enforcing this Settlement Agreement.

6. Venue is proper in the United States District Court for the Eastern District of North Carolina only for purposes of consummation of this Settlement Agreement and any proceedings related to it. The Parties agree that all statutory conditions precedent to the filing of the complaint in this lawsuit have been fulfilled.

NON-ADMISSION

7. This Settlement Agreement is being entered with the assent of the Parties and shall not constitute an adjudication or finding on the merits of the case or be construed as an admission by Warren County of any violation of USERRA, or any other law, rule, or regulation dealing with, or in connection with, equal employment opportunities for Coffey.

COMPLIANCE WITH USERRA

8. 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 Coffey, which constitutes discrimination, retaliation, or interference with the exercise of such person's rights under USERRA. Warren County also shall not take any action against any person because such person gave testimony or assistance or

participated in any manner in any investigation or proceeding in connection under USERRA and/or in connection with this case.

REMEDIAL AND INJUNCTIVE REQUIREMENTS

9. Without admitting the allegations set forth in the Complaint, and in resolution of all claims raised in this case, Warren County agrees, within ten calendar days of the execution of this Settlement Agreement to the following:

- a. Warren County shall reinstate Coffey as the Dean of Students at the Warren County Middle School ("Middle School") effective on the day Warren County employees are to report to work for the 2019-2020 school year under a two-year administrator contract at the rate of pay he would have earned had he been continuously employed with Warren County as measured by Coffey's last year of employment as an administrator and any state or local raises Coffey would have earned last year had he been employed as an administrator.
- b. Coffey's duties and responsibilities as Dean of Students at the Middle School will continue to consist of the duties he performed and the responsibilities he held in the year 2016-2017.

- c. Warren County will make every reasonable attempt to ensure Coffey can occupy the Dean of Students position through the entirety of the two-year contract.
- d. Warren County shall employ Coffey under a two-year Administrator contract governed by N.C.G.S. 115C-287.1. Under this contract, Coffey will work for ten months each year. The provisions and protections of N.C.G.S. § 115C-287.1 shall apply to Coffey's contract. This contract may be renewed for a four-year term upon its completion. See N.C.G.S. § 115C-287.1(b). Warren County shall not consider his USERRA complaint, this lawsuit, or his military status or obligations in determining whether to renew his contract.
- e. Warren County shall work expeditiously to fully restore Coffey's pension benefits with no break in service between when he last worked for Warren County as Dean of Students up until the present date. Warren County shall restore these benefits no later than 30 days
- f. Warren County shall work expeditiously to fully restore Coffey's sick, annual, and personal leave day benefits with no break in service between when he last worked for Warren County as Dean of Students up until the present date.

- g. Coffey will enjoy the same benefits, including the rate of accrual of annual leave, sick leave, and personal leave, otherwise associated with his salary while employed as a Dean of Students.
- h. Warren County shall cooperate with Coffey's application to the state of North Carolina to renew Coffey's North Carolina Professional Educator's School Administrator: Principal License.
- i. Warren County shall evaluate Coffey's qualifications for, and eligibility for hiring as, a Principal should he apply for such a position, without considering his USERRA complaint, this lawsuit, or his military status or obligations.
- j. In addition to the pension relief restored to Coffey pursuant to Paragraph 13(e), within ten days of the execution of this agreement, Warren County shall pay the gross sum of \$25,000.00 as back-pay to Coffey by overnight delivery service to the below address, provided Warren County shall withhold from this amount the employee's share of all appropriate income taxes, costs, expenses and other statutory deductions associated with this amount:

Dwayne Coffey
c/o Mike James
Assistant United States Attorney
United States Attorney's Office
Eastern District of North Carolina
310 New Bern Ave.

Suite 800
Raleigh, NC 27601

- k. Warren County shall separately pay its portion of any Social Security tax and other applicable employer-side federal, state or local taxes, costs, or expenses, including Warren County's contributions to Coffey's retirement, due on the back pay, and shall not deduct its portion of such taxes, costs, or expenses from the amount paid to Coffey or his retirement savings account referenced in Paragraph 9(e) and (j).
- l. At the time Warren County tenders payment to Coffey and his retirement savings account (referenced in Paragraph 9(e) and (j)), Warren County shall also provide Coffey with an itemized statement of the specific amounts withheld from the payment(s) that are attributable to taxes, costs, expenses, and any other statutory deductions. Within the time required by law, Warren County shall issue to Coffey all appropriate Internal Revenue Service tax forms reflecting the amounts paid to Coffey or his retirement savings account and the amounts withheld by Warren County, including issuing to Coffey a W-2 wage and tax statement for the amounts attributable to back pay and front pay.

- m. Coffey shall not be barred from consideration for any employment opportunity with Warren County Schools based on consecutive years of service. For all employment actions including promotion, relocation, and assignment selection, Coffey shall be assumed to have been continuously employed without a break in service since August 26, 2006.
- n. Warren County shall provide documentary evidence of its payments to Coffey and his retirement savings account referenced in Paragraph 9(e) and (j), including the itemized statement of the specific amounts withheld from the payment(s) which are attributable to taxes and other statutory deductions, by sending, within ten calendar days of its payment to Coffey and his retirement savings account referenced in Paragraph 9(e) and (j), proof of payment via electronic mail to Assistant United States Attorney Michael G. James at mike.james@usdoj.gov.

10. Warren County shall remove from Coffey's personnel file any reference to a gap in service at Warren County during the 2017-18 and 2018-19 school years, as well as any references to the USERRA Complaint filed by Coffey.

11. All requests for an employment reference made to Warren County or its employees as to Coffey's work during 2016-17 shall be responded to with a neutral reference as reflected in attachment A. In its response, Warren County shall not

acknowledge or raise any gaps in service in Coffey's employment with Warren County.

DISMISSAL, RELEASE, DISPUTE RESOLUTION AND COMPLIANCE

12. Upon receipt of the Settlement Amount, Coffey shall withdraw his USERRA complaint against Warren County and direct the DOJ to close its investigation of Coffey's USERRA complaint, USERRA Case No. NC-2017-00020-20-R ("Investigation"), return the closed file to the Department of Labor, and take such further action as may be reasonably necessary to help secure the closure of the DOJ Investigation. Upon closure of its USERRA investigation, the DOJ shall immediately notify Warren County of the closure via electronic and U.S. Mail.

13. Within ten days of providing the notification required by Paragraph 12 of this Settlement Agreement, Coffey's Complaint will be dismissed with prejudice.

14. This Court retains jurisdiction of this action solely for the purpose of enforcing this Settlement Agreement, should the need arise.

15. The Parties agree that DOJ may act as competent counsel for Coffey in the event he seeks to enforce his rights under this agreement.

16. To the fullest extent permitted by law and in consideration of the promises made in paragraph 9, Coffey, for himself, his representatives, heirs, successors and assigns, does hereby forever discharge and release the following entities: the Warren County Board of Education, its current or former members, officials, representatives, agents, attorneys, employees, independent contractors, successors and assigns, including but not limited to the employees named in the

Complaint, the North Carolina School Boards Trust ("Released Parties"), from any and all liability, claims, demands, rights, actions or causes of action of any kind or character whatsoever, whether at law or equity, known or unknown, which Coffey now has or hereafter may have, arising out of or on account of the facts, circumstances, or claims included or that could have been included in the Action or in any way arising from the facts or incidents alleged in the Complaint (the "Released Claims"). Further Coffey agrees not to initiate any action of any kind whatsoever relating in any way to the Released Claims specified in this Agreement.

17. With respect to Paragraph 16 above, DOJ has advised Coffey to seek outside counsel with respect to the release of the Releasing Parties from all non-USERRA liability, claims, demands, rights, actions or causes of action.

18. In the event that Warren County defaults on their obligations under the terms of this Settlement Agreement, Coffey will provide written notice of the default to Warren County and Warren County shall have the opportunity to cure the default within 30 business days from the receipt of the Notice of Default. Coffey agrees not to file a motion to reopen this action to enforce this Settlement Agreement if Warren County cures the alleged violation during the 30-day period. Should Warren County fail to cure the default, Coffey may file a motion to reopen this action to enforce the relevant portion(s) of the Settlement Agreement. In the event Coffey is required to file such a motion to enforce his USERRA rights, Warren County agrees not to plead, argue, or otherwise raise any defenses under the theories of statutes of limitations, laches, estoppel or similar theories to the

allegations in the Complaint, except to the extent such defenses were available to Warren County on the date of the filing of the Complaint, April 10, 2019.

19. If Coffey has provided the written notice to Warren County pursuant to Paragraph 18 of this Settlement Agreement and if Warren County fails to cure the alleged violation, either Party may file a motion to reopen this action and may schedule a hearing for the purpose of reviewing compliance with this Settlement Agreement. If either party files a motion to reopen this action and if the Court grants that motion, the Court shall retain jurisdiction over this matter and will have all available equitable powers, including injunctive relief, to enforce this Settlement Agreement.

20. If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected, and the other provisions will remain in full force and effect.

21. Nothing herein shall be construed as to impose monitoring or reporting requirements on Warren County, except for any requirements otherwise contained in this agreement.

MISCELLANEOUS

22. Coffey hereby acknowledges that a copy of this Settlement Agreement, in its entirety, was provided to him before its execution and that he had the opportunity to consult with counsel.

23. All Parties shall bear their own costs and expenses of litigation, including attorneys' fees.

24. The terms of this Settlement Agreement shall be binding upon the present and future Board Members, employees, agents, administrators, successors, representatives, and assigns of Warren County, and upon the heirs, successors, and assigns of Coffey.

25. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons/entities on whose behalf they are signing to the terms of the settlement.

26. This Settlement Agreement constitutes the entire agreement and commitments of the Parties. Any modifications to this Settlement Agreement must be mutually agreed upon and memorialized in a writing signed by all Parties.

27. For the purposes of an action to enforce this Settlement Agreement, the Parties agree that each and every provision of this Agreement is material.

EFFECTIVE DATE AND EXPIRATION

28. The effective date of this Settlement Agreement shall be the date the Parties execute this Settlement Agreement.

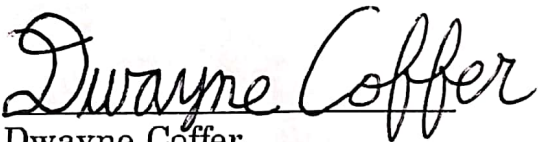
29. The Parties agree that the obligations of Warren County under Paragraphs 8 and 11 of the Agreement shall survive the expiration of the other terms of the Settlement Agreement. The remaining provisions in the Agreement will expire when the Parties meet the specific obligation(s) in the provision(s).

30. Coffey may move the Court to extend the expiration date of this Agreement for good cause shown if the relief provided in Paragraphs 8 through 11 is not satisfactorily effectuated.

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IN WITNESS WHEREOF, Plaintiff and Defendant, hereby duly authorized,
have executed this agreement on the dates hereinafter written.

FOR PLAINTIFF:


Dwayne Coffey
Plaintiff

Approved as to form:

Eric S. Dreiband
Assistant Attorney General
Civil Rights Division

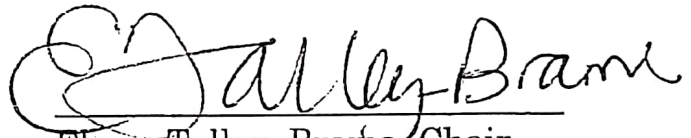
Delora L. Kennebrew
Chief

Andrew G. Braniff
Special Litigation Counsel

BY:

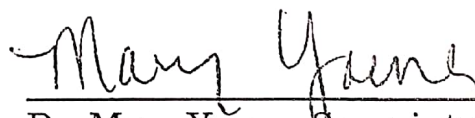
/s/ Brian G. McEntire
BRIAN G. MCENTIRE
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division

FOR DEFENDANT:


Ebony Talley- Brame, Chair
Warren County Board of Education

Date: 7/23/19

Attest:


Dr. Mary Young, Superintendent

Date: 7/23/19

Approved as to form:

BY:

/s/ Adam S. Mitchell
ADAM S. MITCHELL
Attorney for Defendant
Warren County Board of Education

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N.Y. Reg. No. 2481414

Attachment "A" – Neutral Job Reference for Dwayne Coffey

Warren County or its employees shall provide the following response to all requests for an employment reference made as to Dwayne Coffey's work during 2016-17:

"Dwayne Coffey worked as the Dean of Students at Warren County High School in 2016-17. As the Dean of Students, Coffey had administrator responsibilities 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. According to the performance evaluations written by his Principal, Mr. Coffey met or exceeded expectations.”

Warren County may not provide any additional information regarding Coffey’s gap in service at Warren County during the 2017-18 and 2018-19 school years, as well as any references to the USERRA complaints filed by Coffey.

If a question arises regarding the continuity of Coffey’s employment with the Warren County Board of Education, Warren County or its employees shall provide the following response:

“Dwayne Coffey was continuously employed by Warren County since 2006.”