

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:12-cv-00685-D

DWAYNE COFFER,)
)
 Plaintiff,)
)
 v.) **CONSENT AGREEMENT**
)
 WARREN COUNTY BOARD)
 OF EDUCATION,)
)
 Defendant.)

1. Plaintiff Dwayne Coffey (“Coffey” or “Plaintiff”) commenced the above entitled action in the United States District Court for the Eastern District of North Carolina, 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 not renewing Coffey as an Assistant Principal in 2008 and by retaliating against Coffey based on his invocation of his rights under USERRA.

2. Warren County denies that it has violated USERRA.

3. Nevertheless, Coffey and Warren County (collectively referred to as the “Parties”), have resolved their differences and have agreed that this action should be resolved by entry of this Consent Agreement. It is the intent of the Parties that this Consent 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 Agreement, the Parties agree to the terms of this Agreement.

STIPULATIONS

4. 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 Agreement and, if necessary, enforcing this Agreement.

5. Venue is proper in this District for purposes of this Agreement and any proceedings related to this Agreement only. The Parties agree that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

6. Having examined the terms and provisions of the Agreement, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.
- b. The terms and provisions of this Agreement are fair, reasonable, and just. The rights of the Parties are protected adequately by this Agreement.
- c. This Agreement conforms with the Federal Rules of Civil Procedure and is not in derogation of the rights and privileges of any person. The entry of this Agreement will be in the best interests of the Parties.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

NON-ADMISSION

7. This Agreement is being entered with the consent 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.

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, that constitutes 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 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 days of entry of this order, to the following:

- a. Warren County shall immediately employ Coffey as a Lead Teacher/Site Supervisor at the alternative program at the Hawkins Campus.
- b. Warren County shall pay Coffey the same annual wage in 2013-14 and thereafter as he would have received had Warren County retained him in 2008 and had he been continually employed since that time. This annual salary shall be no less than \$52,109.90 for the 2013-14 school year and will increase annually based on (1) any generally applicable rules regarding pay and service; and/or (2) Coffey's performance.
- c. Coffey will enjoy the same benefits, including the rate of accrual of vacation, otherwise associated with his salary.
- 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. § 115-C-287.1

shall apply to Coffey's contract. This contract shall be renewable for a four year term upon its completion. Nothing herein shall be construed to limit Warren County's ability to nonrenew Coffey's contract pursuant to the law governing administrator contracts. Further, nothing herein shall be construed to limit Warren County's ability to terminate Coffey's contract under one or more of the reasons specified by state law. *See* N.C.G.S. § 115-C-287.1 & N.C.G.S. § 115-C-325(e)(1).

- e. The Board will pay into the Retirement System Division of the North Carolina Department of State Treasurer a total amount of Thirteen Thousand Seven Hundred Two Dollars and Sixty-Three Cents (\$13,702.63). This amount includes both employer and employee contributions to provide Plaintiff with fifteen (15) months of additional retirement system credit for the period of time during which he was erroneously omitted from years of service.
- f. In addition to the amount specified in Paragraph 9(b), Warren County shall pay the gross sum of \$10,000 as back-pay to Coffey by overnight delivery service to the address provided to Warren County by counsel for Coffey, 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.
- g. 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 9(f).

- h. At the time Warren County tenders payment to Coffey and his retirement savings account (referenced in Paragraph 9(e)), 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 (“IRS”) 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.
- i. Coffey shall not be barred from consideration for any employment opportunity with Warren County Schools based on consecutive years of service.

10. Warren County shall provide documentary evidence of its payments to Coffey and his retirement savings account referenced in Paragraph 9(e) and 9(f), 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 9(f), proof of payment via electronic mail to Seth Wood at seth.wood@usdoj.gov.

11. Warren County shall remove from Coffey’s personnel file any reference to his non-renewal as an Assistant Principal in 2008.

12. All requests for an employment reference made to Warren County or its employees as to Coffey’s work between 2006 and 2008 shall be responded to with the following:

“Dwayne Coffey worked as an Assistant Principal at Warren County High School between 2006 and 2008. His work focused primarily on maintaining discipline within the High School. According to the performance evaluations written by his Principal, Mr. Coffey met or exceeded expectations.” Warren County may not provide any additional information regarding this period of employment. Neither Warren County nor its employees shall state or otherwise suggest that the non-renewal of Coffey’s employment was for performance-related reasons.

RELEASE OF CLAIMS

13. To the fullest extent permitted by law, Coffey, for himself and his representatives, heirs, successors, and assigns, does hereby forever discharge and release the Warren County Public Schools; the Warren County Board of Education, its current or former members, officials, representatives, agents, employees, independent contractors, liability coverage providers (including, but not limited to, the North Carolina School Boards Trust), successors, and assigns from claims, demands, rights, actions, or causes of action of any kind or character whatsoever, whether at law or equity, known or unknown, which they now have 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 Complaint in any way arising from the facts or incidents alleged in the Complaint (the “Released Claims”). Coffey expressly waives and assumes the risk of any and all claims for damages which exist, but of which the Coffey does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Coffey’s decision to enter into this Agreement. Coffey further agrees that he has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Coffey assumes the risk that the facts or law may be other than Coffey believes. It is understood and agreed to by the parties that this settlement is a

compromise of a disputed claim, and the payments are not to be construed as an admission of liability on the part of Warren County, by whom liability is expressly denied.

DISMISSAL, DISPUTE RESOLUTION AND COMPLIANCE

14. Within ten days of providing the notification required by Paragraph 10 of this Agreement, Coffey's Complaint will be dismissed with prejudice.

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

16. If at any time Coffey believes Warren County is in violation of this Consent Agreement, Coffey agrees to provide, through his counsel, written notice to Warren County and thirty (30) days in which to cure any alleged violation. Coffey agrees not to file a motion to reopen this action to enforce this Agreement if Warren County cures the alleged violation during the thirty (30) day period.

17. If Coffey has provided the written notice to Warren County pursuant to Paragraph 16 of this 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 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 Agreement.

18. Absent further action from this Court, nothing herein shall be construed so as to impose monitoring or reporting requirements on Warren County, except for any requirements otherwise contained in this agreement.

MISCELLANEOUS

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

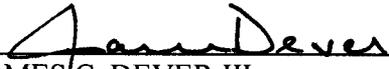
20. This Agreement constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in this action.
21. The terms of this Agreement shall be binding upon the present and future Board Members, employees, agents, administrators, successors, representatives, and assigns of Warren County, and upon the heirs, successors, and assigns of Coffey.
22. This Agreement constitutes the entire agreement and commitments of the Parties. Any modifications to this Agreement must be mutually agreed upon and memorialized in a writing signed by all Parties.

EFFECTIVE DATE AND EXPIRATION

23. The effective date of this Agreement shall be the date upon which it is entered by the Court.
24. Jurisdiction of this Court shall extinguish - without further order from this Court - either two years from the date that documentation of the monetary payments to Coffey and his retirement savings account referenced in Paragraph 9(e) and 9(f) has been submitted to the United States, or the date by which Warren County is required to provide pertinent tax documents to Coffey, whichever is later. The Parties agree, however, that the obligations of Warren County under Paragraphs 8 and 12 of the Agreement do not expire, but rather shall survive the expiration of the other terms of the Agreement.
25. Coffey may move the Court to extend the expiration date of this Agreement for good cause shown if the relief provided in Paragraphs 9 through 12 is not satisfactorily effectuated.

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It is so ORDERED, this 30 day of October, 2013.


JAMES C. DEVER III
CHIEF UNITED STATES DISTRICT JUDGE

Agreed and Consented to:

Attorneys for Plaintiff Dwayne Coffey

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

BY: /s/ Delora L. Kennebrew
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