

Minutes
Anson County Board of Education
Called Meeting
Tuesday, December 4, 2018, 2:30 p.m.
Anson County Schools' Science Center

The Anson County Board of Education met in closed session on Tuesday, December 4, 2018. All members were present. Others in attendance were Michael Freeman (Superintendent), Howard McLean (Associate Superintendent), Marty Godwin (Assistant Superintendent), Holly Berry (Finance Officer), Mike Flake (Board Attorney) and Anne Hyatt (Board Clerk).

I. Call to Order

Chair George Truman opened the meeting and welcomed those in attendance.

II. Invocation

George Truman gave the Invocation.

III. Conflict of Interest Statement

In compliance with the requirements of Chapter 138A-15(e) of the State Government Ethics Act, Chair George Truman reminded Board Members of their duty to avoid conflicts of interest and appearances of conflicts of interest under Chapter 138A. There were no conflicts of interest communicated by the members. Chair Truman then requested that if, during the course of the meeting, members became aware of an actual or apparent conflict of interest that they bring the matter to his attention. He further explained it would then be the member's duty to abstain from participating in discussion and from voting on the matter.

IV. Adopt Agenda

Marilynn Bennett made a motion to approve the agenda. Mike Turner seconded the motion and the agenda was unanimously adopted by the Board. Motion carried.

V. Closed Session

- Matters Related to Personnel

Chair Truman entertained a motion that the Board go into closed session for the purpose of considering a personnel action that involves an officer or employee of this Board pursuant to North Carolina General Statute 143.318.11(a) (6). This motion was made by Carol Gibson, seconded by Lisa Davis and approved by the board. The Board went into closed session at 2:34 p.m.

There was no action taken in closed session.

VI. Reconvene Open Session

The Board returned to open session at 3:24 p.m. upon a motion by Lisa Davis seconded by Marilyn Bennett and approved by the board. Motion passed.

Upon a motion by Lisa Davis, seconded by Carol Gibson, the board unanimously approved the Settlement Agreement and General Release as presented by legal counsel with 9-0 vote to accept the resolution. Motion passed.

VII. **Adjourn**

A motion to adjourn was made at 3:26 p.m. by Lisa Davis, seconded by Carol Gibson and approved by the board. There was no discussion. The motion passed.

Dr. George Truman, Chairperson

Mr. Michael Freeman, Secretary

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is made and entered into this the 27th day of November, 2018 by and between Dannie Montgomery, for herself, her heirs, executors, administrators, assigns, representatives, and agents (hereafter collectively "Employee"), and the Anson County Board of Education ("the BOE"). The BOE and Employee shall hereinafter each be a "Party" and collectively the "Parties." This Agreement is intended to and does resolve all claims and disputes of any nature whatsoever by and between the Parties as of the date of this Agreement.

WITNESSETH:

WHEREAS, Employee was previously employed by the BOE as a teacher;

WHEREAS, Employee filed an action against the BOE in the United States District Court for the Western District of North Carolina styled *Dannie Montgomery v. The Anson County Board of Education*, 3:16-cv-309 ("*Montgomery I*"); and

WHEREAS, *Montgomery I* has been dismissed with prejudice by the Court; and

WHEREAS, Employee filed a second lawsuit against the BOE in the United States District Court for the Western District of North Carolina styled *Dannie Montgomery v. The Anson County Board of Education*, 3:17-cv-657 ("*Montgomery II*");

WHEREAS, the Parties desire to resolve all matters and issues between them, including but not limited to the above-referenced lawsuits.

NOW THEREFORE, for and in consideration of the premises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Covenant Not to Sue and Release.

- a. In consideration of the promises and covenants set forth in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Employee, for herself and on behalf of her heirs, representatives, administrators, executors, successors, and assigns, hereby irrevocably and unconditionally releases, acquits, and forever discharges the BOE as well as each of the BOE's present and former agents, officers, Board members, Superintendents, employees, representatives, administrators, insurers, re-insurers, the North Carolina School Boards Trust, the North Carolina School Boards Association, and attorneys in their individual and representative capacities, and all persons acting by, through, under, or in concert with any of them (hereinafter collectively referred to as the "Released Parties"), from any and all demands, complaints, claims, lawsuits, causes of action, arbitrations, proceedings, promises, liabilities,

obligations, losses, expenses (including attorneys' fees), sums of money, damages of any kind, or actions, of any nature whatsoever, whether arising in tort, contract, by statute, or otherwise, whether known or unknown (hereinafter "Claim" or "Claims"), which Employee now has, has had, or may hereafter claim to have had against each or any of the Released Parties resulting from or arising out of any matter, act, omission, cause, or event whatsoever that occurred prior to Employee's execution of this Agreement, including, without limitation, Claims arising out of Employee's employment or separation from employment with the BOE. Employee understands that by signing this Agreement and accepting the consideration described herein, she is waiving any right to pursue any Claim against or seek any relief from any of the Released Parties for sums of money, back pay, front pay, severance pay, reinstatement, equitable relief, liquidated damages, compensatory damages, punitive damages, attorneys' fees, or any other losses or other damages to Employee or her property resulting from any claimed violation of state or federal law, including, but not limited to, wrongful discharge, tortious interference with contract or other right or anticipated benefit or opportunity, breach of contract, intentional or negligent infliction of emotional distress, assault and battery, Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act, the Civil Rights Act of 1991, Sections 1981 and 1981a of the Civil Rights Act of 1866, the Americans With Disabilities Act, the Genetic Information Nondiscrimination Act, the Employee Retirement Income Security Act of 1974, as amended, the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, the Family and Medical Leave Act of 1993, the Age Discrimination In Employment Act of 1967, as amended, the Lilly Ledbetter Fair Pay Act of 2009, the Occupational Safety and Health Act, the Sarbanes-Oxley Act, the Dodd-Frank Act, the Employee Polygraph Protection Act, North Carolina Equal Employment Practices Act, North Carolina Persons with Disabilities Protection Act, North Carolina Wage and Hour Act, North Carolina Retaliatory Employment Discrimination Act, N.C. Gen State 143-422.2, and claims under any other federal, state and local statute, regulation, ordinance and/or laws. This Agreement does not, however, waive rights or claims that may arise after the date Employee signs below, claims for breach of this Agreement, or rights or claims which cannot be released under applicable law.

- b. Employee acknowledges that this release applies both to known and unknown Claims that may exist between Employee and the Released Parties, even though there may be facts and consequences of facts which are unknown to Employee and/or the BOE.
- c. Employee agrees that, except to the extent such right may not be waived by law, she will not commence any lawsuit seeking relief for any claim(s) released or waived as set forth in this Agreement. This Agreement, however, does not prohibit or prevent Employee from seeking a judicial

determination of the validity of her release of Claims under the Age Discrimination in Employment Act ("ADEA"). In addition, this Agreement does not prohibit or prevent Employee from (1) filing a charge with or reporting possible violations of federal/state law to any federal, state or local governmental agency or entity, including but not limited to the Equal Employment Opportunity Commission, National Labor Relations Board, Occupational Safety and Health Administration or the Securities and Exchange Commission ("Government Agency"); or (2) communicating with any Government Agency or otherwise participating in any investigation or proceeding conducted by any Government Agency.

- d. Employee understands and agrees by signing this Agreement, Employee is agreeing to waive her right to recover any monetary damages or to obtain individual relief of any kind with respect to claims released or waived by this Agreement. Employee further agrees that, if any of the claims released by this Agreement are brought on Employee's behalf or for Employee's benefit, Employee will waive and agree not to accept any award of money or other damages as a result of such claim or claims. Notwithstanding the above, nothing in this Agreement prohibits or limits Employee's right to receive an award for information provided to any Government Agency.

2. Release by BOE. The BOE hereby releases all claims, actions, causes of action, fees, damages, and costs against and as to Employee, including but not limited to all Orders awarding fees and costs to the BOE in *Montgomery I* and *Montgomery II*. To the extent that any such Orders awarding fees and costs to the BOE require cancellation, the BOE will cause them to be cancelled.

3. Representations. Employee represents that, as of the date of execution of this Agreement, she has not filed with any agency or court any charges, complaints, or lawsuits against any of the Released Parties except for the Complaints in *Montgomery I* and *Montgomery II* and the EEOC complaints filed as preconditions to the filing of *Montgomery I* and *Montgomery II*. Employee further represents that she has not assigned or transferred, or purported to assign or transfer to any other person or entity, any claim arising out of or related to the matters being released herein. Employee represents that the Released Parties have not made any representations to her to induce this Agreement, except as set forth in this Agreement.

Employee acknowledges and agrees that, except as expressly provided herein, each Party shall bear its own costs and attorneys' fees, and that neither Party shall be deemed a "prevailing party" for purposes of any fee-shifting statute or agreement.

4. Dismissal of *Montgomery II*. Within fourteen (14) days after the Effective Date of this Agreement, the Parties shall execute and file a voluntary dismissal with prejudice of all claims and issues *Montgomery II*.

5. Board Resolution. The Board shall adopt a Resolution at a Board meeting no later than sixty (60) days from the date of this Agreement declaring that, "Had Ms. Montgomery

submitted a letter of resignation prior to July 10, 2017, such resignation would have been accepted by the Board without further consequences."

6. Neutral Reference. If inquiry is made by future potential employers of Montgomery, the Board shall provide a neutral reference, limited only to confirming Montgomery's positions held and dates of service with the Board.

7. Letter to ~~Department of Public Instruction~~ ^{STATE BOARD OF EDUCATION m.H.3.} Within ten (10) days of the BOE's approval of this Agreement, the BOE shall send a letter to the ~~North Carolina Department of Public Instruction~~ ^{STATE BOARD OF EDUCATION} stating only "The Anson County Board of Education hereby requests that Dannie Montgomery be removed from any "Do Not Hire" list and "List of Dismissed Teachers," The BOE makes no guarantees as to the effect of such letter.

8. Licensure Assistance. The BOE will reasonably assist Employee with submission of earned professional credits in furtherance of Employee's maintenance of her license. This assistance is limited only to assisting with such filing. ^{CONSISTENT WITH N.C. GEN. STAT. § 115C-331.1 (f) m.H.3.}

9. Claims. Any benefits accruing to the Employee in this matter, whether given directly or indirectly, are provided as a result of claims for emotional distress and mental anguish in this action for tax purposes. For clarity, the BOE does not admit that Employee was entitled to any benefit arising from a putative claim for emotional distress or mental anguish.

10. No Other Entitlements. Except for the compensation, monies, and benefits expressly set forth in this Agreement, Employee acknowledges that she is not entitled to any other compensation, monies, or benefits from the BOE. Employee also agrees (a) that she has not suffered any on-the-job injury for which she has not already filed a claim, and (b) that she has not, as of the date of this Agreement, filed with any agency or court any complaints, charges, or lawsuits against the Released Parties except as set forth above. Employee further waives all rights to reemployment or reinstatement. Employee agrees that she will not be entitled to or permitted to, nor will she apply to, be employed, hired, reemployed, rehired, or reinstated in the future by the BOE.

11. No Admission of Liability or Wrongdoing. This Agreement will not be used or construed by any person or entity as an admission of liability or finding that Employee's rights were in any way violated by the Released Parties, and this Agreement may not be offered or received in evidence in any action or proceeding as an admission of liability or wrongdoing on the part of the Released Parties.

12. Consideration Period. Employee is advised that she has twenty-one (21) days from the date she receives this Agreement to review fully and consider whether or not she wishes to agree to all the terms and conditions of this Agreement and to advise the BOE of a decision. Employee may take as much of the twenty-one (21) day period as she wishes before signing. In the event Employee executes this Agreement before that time, Employee certifies, by such execution, that she knowingly and voluntarily waived the right to the full twenty-one (21) days, for reasons personal to her, with no pressure by any representative of the BOE to do so. If Employee decides to accept the

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terms and conditions of this Agreement, Employee must sign this Agreement and return it to Robert King (counsel for the BOE) before the expiration of the twenty-one (21) days.

13. Revocation. Employee is advised that should she sign this Agreement, accepting its terms and conditions, she will have a period of seven (7) days from the date of her acceptance to change her mind and revoke this Agreement. If Employee decides to revoke this Agreement, then she should provide written notice to Robert King, counsel for the BOE in the above-referenced lawsuits, within such 7-day period. The terms and conditions contained herein will not be enforceable by the parties hereto until both the expiration of this seven (7) day period and the approval of this Agreement by the BOE (the end of the expiration of this period to be the "Effective Date").

14. Successors. The Agreement shall be binding upon and inure to the benefit of Employee, her assigns, heirs, executors, administrators, representatives, as well as the predecessors, successors, affiliates, purchasers, and assigns of the BOE. Employee may not assign any of her rights or delegate any of her duties under the Agreement.

15. Board Approval. Employee understands and agrees that this Agreement shall not be effective unless and until approved by the BOE.

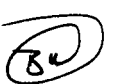
16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties, superseding all other prior oral or written agreements between the parties, and it is expressly understood that no amendment, deletion, addition modification, or waiver of any provision of this Agreement shall be binding or enforceable unless in writing and signed by all parties.

17. Governing Law. Except as preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without reference to any conflict of law provision.

18. Modifications. The Agreement is intended to be a binding contract between the Parties. No change, modification, termination, or attempted waiver of any of the provisions of this Agreement shall be binding upon any Party hereto unless it is reduced to writing and signed by the Party against whom enforcement is sought.

19. Multiple Counterparts. This Agreement may be executed and delivered in two or more counterparts, each of which when so executed and delivered shall be the original, but such counterparts together shall constitute but one and the same instrument.

20. KNOWING AND VOLUNTARY AGREEMENT. EMPLOYEE ACKNOWLEDGES THAT SHE FULLY AND COMPLETELY UNDERSTANDS THE TERMS AND CONDITIONS OF THIS AGREEMENT AND HAS VOLUNTARILY AND KNOWINGLY AGREED TO SUCH TERMS AND CONDITIONS, INCLUDING ALL RELEASES OF CLAIMS EMPLOYEE MAY HAVE AGAINST THE RELEASED PARTIES, IN EXCHANGE FOR VALUABLE CONSIDERATION THAT EMPLOYEE IS NOT OTHERWISE ENTITLED TO RECEIVE. EMPLOYEE FURTHER ACKNOWLEDGES THAT



SHE HAS HAD THE OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF HER CHOOSING BEFORE SIGNING THIS AGREEMENT.

21. The Parties hereto have executed this Agreement as of the date and year written below.

Anson County Board of Education

By: Michael H. Freeman

Its: Superintendent

Date: 11-27-2018

Dannie Montgomery

Dannie Montgomery

Date: 11/27/2018