

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA,
Plaintiff,
and

MARGARET NESS,
Plaintiff-Intervenor,

v.

No. 4:99-CV-00113 SMR

NORTH LITTLE ROCK SCHOOL
DISTRICT,
Defendant.

CONSENT DECREE

This action was brought by plaintiff United States of America ("United States") and plaintiff-intervenor Margaret Ness against the North Little Rock School District ("Defendant" or "School District") to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"), following receipt by the United States Department of Justice from the Equal Employment Opportunity Commission ("EEOC") of EEOC Charge No. 251-97-1596 filed by Margaret Ness.

In its Complaint, the United States alleges that the School District has discriminated against Mrs. Ness, a female employed as a secretary at the School District's administrative offices, on the basis of her sex, female, in violation of Section 703(a), and retaliated against her, in violation of Section 704(a), of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2(a) and § 2000e-3(a), among other ways, by:

- (a) subjecting Mrs. Ness to a sexually hostile work environment;
- (b) increasing Mrs. Ness' work load, supervising her work more closely, and transferring to her a less desirable position after she made an internal complaint alleging sexual harassment; and
- (c) failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Mrs. Ness.

In her Complaint-in-Intervention, Mrs. Ness makes the same allegations as the United States.

The School District denies that it has discriminated in any manner against Mrs. Ness in violation of Title VII. Nevertheless, the parties, desiring that this action be settled by an appropriate Consent Decree, and

without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action, and hereby waive, for the purposes of this Consent Decree only, hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Consent Decree as final and binding among themselves as to the issues raised in the Complaints filed in this case.

This Consent Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by the School District or a finding of any wrongdoing or violation of any applicable federal or state law or regulation.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

For purposes of this Decree, "date of entry of the Decree" shall refer to the date on which the Court approves and signs this Consent Decree as an Order of the Court.

GENERAL RELIEF

1. Defendant School District, by and through its officials, agents, employees and all persons in active concert or participation with defendant School District in the performance of employment or personnel functions, shall not engage in any act or practice that has the purpose or effect of unlawfully discriminating against Margaret Ness or any employee because of that employee's sex.
2. Defendant School District shall not retaliate against or in any respect adversely affect Margaret Ness or any person because that person has opposed allegedly discriminatory employment policies or practices, filed a charge with the EEOC, or participated in or cooperated with the initiation, investigation, litigation, or administration of this case or this Consent Decree.

Issuance and Distribution of Sexual Harassment Policy Statement

3. No later than seven (7) days after the date of entry of this Decree, the School District shall issue and distribute to all current School District employees the sexual harassment policy statement attached hereto as Appendix D. The policy statement shall be signed by the Superintendent. For all future employees, the School District shall issue and distribute the policy statement attached hereto as Appendix D within seven (7) days of hire. This policy shall become effective upon issuance. The School District shall post the policy statement in a prominent, conspicuous, centrally-located place commonly used for posting notices (e.g., bulletin boards) in all School District buildings and facilities and in the administrative offices of the School District. This policy statement shall remain permanently posted. The School District shall require each current and future employee to sign an acknowledgment of receipt of the policy statement and shall permanently retain such acknowledgment in each employee's personnel file.

Designation of EEO Officer

4. No later than seven (7) days from the date of entry of this Consent Decree, and upon written consent of the United States, the School District shall designate a management level official as the School District's Equal Employment Opportunity ("EEO") Officer who shall report directly to the Superintendent. The EEO Officer's functions will be defined broadly to include principal responsibility for working towards the goal of eradicating sexual harassment and retaliation in the North Little Rock School District, heightening employee awareness to issues of sexual harassment and retaliation, and advising the Superintendent and the Board of Education on issues involving sexual harassment and retaliation. The EEO Officer shall have responsibility for receiving and promptly investigating internal

complaints of sexual harassment and retaliation, making factual findings and recommending discipline.

5. No later than thirty (30) days after the date of entry of this Decree and upon written approval of the training program by the United States, and periodically thereafter as appropriate, the School District shall provide training to the EEO Officer in the law of sexual harassment and retaliation and the conduct of investigations into these issues. The School District shall provide the United States with written confirmation of this training no later than seven (7) days after it is provided.

6. Should the EEO Officer position become vacant during the life of this Decree, the procedures for filling the position and training the EEO Officer shall be the same as those for the original filling of the position and training contained in Paragraphs 4 and 5 of this Decree.

Sexual Harassment and Retaliation Complaint Procedure

7. Any School District employee with a complaint of sexual harassment or retaliation may bring such a complaint directly to the EEO Officer and need not present it to his or her immediate supervisor. School District employees may also bring a complaint of sexual harassment or retaliation to the attention of any supervisor or administrator, including the Superintendent, or any member of the Board of Education. Complaints of sexual harassment or retaliation should be in writing. If any supervisor, administrator, or Board of Education member receives such a complaint, he or she shall promptly forward it to the EEO Officer for investigation unless the complaint is against the EEO Officer, in which case the School District shall designate another appropriate person to conduct the investigation after obtaining written approval from the United States. Any supervisor or administrator who receives such a complaint but does not promptly forward it to the EEO Officer shall be subject to disciplinary action.

8. The School District shall provide the United States with a copy of any complaint of sexual harassment or retaliation filed by any School District employee within five (5) days of the receipt of such complaint by the EEO Officer.

9. The investigation of a complaint of sexual harassment or retaliation shall be completed and written findings, including recommended discipline, if any, shall be issued within thirty (30) days of receipt of the complaint by the EEO Officer. If, under exceptional circumstances, a finding cannot be issued in this time period, the United States shall be notified promptly in writing and given an explanation of the reasons therefor.

10. A copy of the written findings shall be provided to the complainant and the United States within five (5) days of issuance.

11. Where discipline is recommended as a result of a complaint of sexual harassment or retaliation, the School District shall promptly seek to impose such discipline in accordance with applicable law and School District policy. Nothing in this Consent Decree is intended to deny an employee accused of sexual harassment or retaliation of any applicable right relating to discipline.

12. The School District shall notify the complainant and the United States in writing of the resolution of any disciplinary proceeding resulting from a complaint of sexual harassment or retaliation no later than five (5) days after such resolution. Similarly, the School District shall notify the complainant and the United States in writing of the imposition of discipline no later than five (5) after the imposition.

13. A copy of the written findings of the investigation and a written record of any disciplinary action taken against an employee as a result of a complaint of sexual harassment or retaliation shall promptly

be placed in the employee's personnel file and shall remain there permanently.

Performance Evaluations

14. The performance of all School District employees concerning equal employment opportunity issues, including compliance with the provisions of this Consent Decree and the School District's policy prohibiting sexual harassment and retaliation, shall be taken into account when an employee receives a performance evaluation. Such performance shall be reflected on the employee's performance evaluation form. The School District shall modify the performance evaluation form accordingly, if necessary, within thirty (30) days of the date of entry of this Decree and shall provide a copy of the modified performance evaluation form to the United States within ten (10) days after modification. The performance evaluation of any employee who is disciplined as a result of an equal employment opportunity-related issue shall be adversely affected.

In addition, in deciding whether a School District employee shall receive any promotion, award, or other performance related benefit, the School District shall take into account the employee's performance with regard to the School District's obligations under this Decree, Title VII, other applicable equal employment opportunity laws and the School District's sexual harassment policy.

15. School District employees shall be notified of this provision through the sexual harassment policy statement referenced in Paragraph 3 of this Decree.

Sexual Harassment Training

16. No later than the beginning of the 2001-2002 school year, and annually thereafter, the School District shall provide training to all employees of the School District, supervisory and non-supervisory, regarding sexual harassment and retaliation. This training may be provided as part of the School District's annual in-service training for employees provided that it meets the other requirements of this Paragraph. This training shall at a minimum instruct employees on the what acts may constitute sexual harassment and retaliation, the procedures for reporting and investigating complaints of sexual harassment and retaliation, and the rights and responsibilities of employees under the School District's sexual harassment policy and this Decree. The training program shall include separate training for supervisory employees. Any person who is hired or promoted to a supervisory position shall receive such training within thirty (30) days of appointment to such supervisory position or assumption of supervisory duties.

The United States shall review and approve in writing the training program pursuant to this Paragraph, including the written instruction materials to be used by the trainer(s) and the handouts or other written materials to be distributed to employees pursuant to the training, prior to the provision of the training. All School District employees shall sign an acknowledgment of attendance for any and all training given pursuant to this Paragraph and such acknowledgments shall be permanently retained in each employee's personnel file.

SPECIFIC RELIEF

17. On the date of entry of the Consent Decree, the School District shall provide Mrs. Ness with a signed copy of the letter attached hereto as Appendix A.

18. No later than seven (7) days after the date of entry of this Decree, defendant School District shall offer Mrs. Ness a monetary payment of \$70,000. The parties agree that this monetary payment

represents a reasonable settlement of the United States' and Mrs. Ness's claim of compensatory damages under Title VII and Mrs. Ness's attorney's fees and is not tied to any claims for back or future wages or for punitive damages. It is therefore mutually understood to be a payment on account of personal injury for pain and suffering. No income tax will be withheld against the amount, although defendant School District shall issue a 1099-Misc form to Mrs. Ness in the amount of \$70,000 and report this payment to the Internal Revenue Service and any other applicable taxing authority. Defendant School District shall inform Mrs. Ness in its notice letter to her (attached as Appendix B) that this payment is subject to federal income tax and may be subject to Arkansas income tax.

19. In order to accept the monetary relief to be offered her by defendant under this Consent Decree, Mrs. Ness must execute the Release and Election forms attached as Appendix C.

20. No later than seven (7) days after the date of entry of this Decree, defendant School District shall notify Mrs. Ness of the terms of this Consent Decree by mailing to her, in care of her counsel, by certified mail, return receipt requested, a copy of this Consent Decree, a copy of the letter set forth in Appendix B to this Consent Decree, and a copy of the Release and Election forms attached as Appendix C to this Consent Decree. The letter set forth in Appendix B will advise Mrs. Ness that to accept the relief offered to her or any part of it, she must return the executed Release and Election forms to defendant within thirty (30) days of her receipt of the letter set forth in Appendix B unless she shows good cause, to be determined exclusively by the United States, for failing to do so within a reasonable period of time thereafter.

21. Defendant shall provide the United States with a copy of Mrs. Ness's executed Appendix C Release and Election forms within five (5) days of its receipt.

22. Defendant shall pay the monetary payment to Mrs. Ness within ten (10) days of its receipt of the executed Appendix C Release and Election for Mrs. Ness.

IMPLEMENTATION

23. Copies of this Consent Decree shall be made available to all employees who so request it.

24. The parties shall attempt to resolve informally any disputes that may occur under this Decree. Any party seeking resolution of such a dispute shall provide written notice of the matter to the other parties. If the parties are unable to reach agreement within fifteen (15) days after written notice has been provided to the other parties, the issue may be submitted by either party to the Court for resolution.

25. All documents required to be delivered under this Decree to the United States shall be sent to the following address: Robert Libman, Special Litigation Counsel, Employment Litigation Section, Civil Rights Division, U. S. Department of Justice, P. O. Box 65968, Washington, D. C. 20035-5968.

26. The Court shall retain jurisdiction of this action for two (2) years from the date of entry of this Decree for the purpose of resolving disputes that may arise under, and entering any orders necessary to ensure compliance with, the Decree. After two years, this matter shall be dismissed unless the United States moves, for good cause shown, to extend the Decree. In the event that the United States moves to extend this Decree, this Decree shall remain in effect until the motion is resolved.

It is so ORDERED, this 2nd day of April, 2001.

STEPHEN M. REASONER
UNITED STATES DISTRICT JUDGE

AGREED TO:

On behalf of Plaintiff United
State of America:

WILLIAM B. FENTON
ROBERT S. LIBMAN
LISA J. D'SOUZA
United States Department of Justice
Civil Rights Division
P.O. Box 65968
Washington, D.C. 20035-65968
202-514-3842

On behalf of Plaintiff-Intervenor Margaret Ness:

MARGARET NESS

JAMES HAMILTON
Attorney for Margaret Ness
7501 Geronimo Circle
>North Little Rock, AR 72116
501-835-6638

On behalf of defendant North Little Rock School District:

JAMES SMITH, Superintendent
North Little Rock School District

W. PAUL BLUME
Attorney for Defendant North Little Rock District
808 Martin Luther King Drive
Little Rock, AR 72202
501-375-7922

APPENDIX A

April 2, 2001

Margaret Ness
5716 Woodridge
Sherwood, AR 72120

Dear Mrs. Ness:

On behalf of the North Little Rock School District, I am writing to express our heartfelt apologies for all you may have experienced while you were employed as a secretary in the Purchasing Department and supervised by Jim Pearson from July 1995 to April 1997. The School District sincerely regrets any suffering you may have endured while working for Mr. Pearson.

We value you as an employee and appreciate your long, dedicated, and quality service to the School District.

Sincerely,

James Smith
Superintendent
North Little Rock School District

APPENDIX B

NOTICE LETTER

Margaret Ness
c/o James Hamilton
7501 Geronimo Circle
North Little Rock, AR 72116

Re: United States and Margaret Ness v. North Little Rock School District

No. 4:99-CV-00113 SMR (E.D.Ark.)

Dear Mrs. Ness:

A Consent Decree has been entered settling a complaint of employment discrimination filed by the United States of America ("United States") and you against the North Little Rock School District ("School District").

Under the terms of the Consent Decree entered on April 2, 2001, in the case of the United States v. North Little Rock School District, No. 4:99-CV-00113 SMR (E.D.Ark.), you are being offered certain relief as settlement for any claims of sex discrimination and retaliation that you may have against the North Little Rock School District arising out of that action and EEOC Charge No. 251-97-1596 and occurring prior to April 2, 2001 (the date of entry of the Decree).

As relief, you are being offered:

- A monetary payment of \$70,000 in settlement of your claims, including attorney's fees. Although the School District will not withhold federal income tax, you should be aware that pursuant to Section 104 of the Internal Revenue Code, as amended by Section 1605 of the Federal Small Business Job Protection Act of 1996, damages related to pain and suffering or emotional distress like your monetary payment are generally taxable under Federal law. Accordingly, the School District will report your monetary payment of \$70,000 to the Internal Revenue Service and any other applicable taxing authority and you will be issued a Form 1099-Misc. Your monetary

payment may also be taxable under Arkansas law. You should consult with a tax adviser in determining the taxability of this monetary payment.

This relief is being offered to you on the following condition: if you accept the relief, the School District will require you to release it from all claims of sex discrimination or retaliation you may presently have against it arising out of this action and EEOC Charge No. 251-97-1596 and occurring prior to April 2, 2001 (the date of entry of the Decree). If you decline the relief, the School District will nevertheless have satisfied its obligation to you and the United States pursuant to the Consent Decree in the above-captioned case and the United States will not seek additional relief on your behalf.

In order to obtain the offered relief, you must complete and return the enclosed Release form to the attorney for the School District at the following address:

W. Paul Blume
808 Martin Luther King Drive
Little Rock, AR 72202

The Release form may be returned by mail or in person. If you return the Release form in person, please bring your social security card or other identification with you. If you return your Release form by mail, the Release form must be signed and dated before you mail them and the Release form must signed before a Notary Public.

If you accept the monetary payment, the School District will send you the payment within ten (10) days of the School District's receipt of your Release form.

IF YOU FAIL TO SUBMIT THE RELEASE FORM, AS DIRECTED IN THIS LETTER, WITHIN THIRTY (30) DAYS FROM YOUR RECEIPT OF THIS LETTER, YOU WILL FORFEIT YOUR RIGHTS TO ANY RELIEF UNDER THE CONSENT DECREE, UNLESS YOU CAN SHOW GOOD CAUSE, TO BE DETERMINED EXCLUSIVELY BY THE UNITED STATES, FOR YOUR FAILURE TO DO SO WITHIN A REASONABLE TIME THEREAFTER.

A copy of the Consent Decree is enclosed. If you have any questions concerning this settlement, you should contact your attorney. In addition, you may contact Robert S. Libman, attorney for the United States Department of Justice, at (202) 514-3842.

Sincerely,

W. Paul Blume
Counsel for the North Little Rock School District

Enclosures

APPENDIX C

RELEASE FORM

United States and Margaret Ness v. The North Little Rock School District

No. 4:99-CV-00113 SMR (E.D.Ark.)

STATE OF _____

COUNTY OF _____

For and in consideration of the relief provided to me by the North Little Rock School District ("School District") pursuant to the provisions of the Consent Decree entered by the Honorable Stephen M. Reasoner, United States District Judge, on April 2, 2001 in United States v. North Little Rock School District, No. 4:99-CV-00113 SMR (E.D.Ark.), I, Margaret Ness, hereby release and forever discharge the North Little Rock School District, its current and future officials, employees and agents, of and from all legal and equitable claims arising out of that action and EEOC Charge No. 251-97-1596 and occurring prior to April 2, 2001 (the date of entry of the Decree).

I understand that the relief granted to me in consideration for this Release does not constitute an admission by any of the parties released of the validity of any claim raised by me or on my behalf.

This Release constitutes the entire agreement between the North Little Rock School District and me, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in this action has been made available to me.

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

DATE: _____

Margaret Ness

Social Security Number _____ - _____ - _____

Other Identification _____

Sworn and subscribed to before me this day of , 2001.

Notary Public

My commission expires:

ELECTION FORM

Please complete by checking the appropriate response to each of the following:

A. Monetary Payment

_____ I, Margaret Ness, hereby accept the monetary payment of \$70,000 offered to me in settlement of my claims, including attorney's fees, pursuant to the Consent Decree in United States and Margaret Ness v. North Little Rock School District, No. 4:99-CV-00113 SMR (E.D.Ark.).

_____ I decline the monetary payment.

Date: _____ Signature: _____

Social Security Number: _____ - _____ - _____

FAILURE TO RETURN THE RELEASE AND THIS ELECTION FORM WITHIN THIRTY (30) DAYS WILL RESULT IN FORFEITURE OF THE MONETARY PAYMENT OFFER UNLESS GOOD CAUSE, TO BE DETERMINED EXCLUSIVELY BY THE UNITED STATES, IS SHOWN FOR YOUR FAILURE TIMELY TO RESPOND IN A REASONABLE PERIOD OF TIME THEREAFTER.

RETURN THE COMPLETED RELEASE AND ELECTION FORM TO:

W. Paul Blume
808 Martin Luther King Drive
Little Rock, AR 72202

APPENDIX D

NORTH LITTLE ROCK SCHOOL DISTRICT

STATEMENT OF POLICY REGARDING SEXUAL

HARASSMENT AND RETALIATION

DATE: April 2001

This statement of policy sets forth the policy of the North Little Rock School District ("School District") prohibiting sexual harassment and retaliation in the workplace. This policy is effective immediately and applies to all School District employees.

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- o submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- o submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- o such conduct has the purpose or effect of materially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Whether alleged conduct constitutes sexual harassment is determined on a case by case basis and depends on the totality of the circumstances including the context in which the conduct occurred and the frequency and severity of the conduct. A single incident, if sufficiently severe, may constitute harassment.

Attached to this statement of policy is an Appendix that sets forth examples of conduct or behavior that may constitute sexual harassment if it satisfies the above definition.

Sexual harassment in the workplace is illegal and will not be tolerated by the North Little Rock School District. In addition, retaliation against any person who opposes what he or she reasonably believes to be sexual harassment or who cooperates in the investigation of a complaint of sexual harassment is also illegal and will not be tolerated by the North Little Rock School District.

The Superintendent of Schools and the School District, its officials, agents and representatives, in recognition of their duty to combat sexual harassment and retaliation in the workplace, are committed to the vigorous enforcement of this policy. Employees who engage in conduct in violation of this policy shall be subject to discipline up to and including dismissal.

Employees are encouraged to bring complaints of sexual harassment and retaliation to the attention of the North Little School District. [Name] has been designated as the EEO Officer for the North Little Rock School District and is responsible for receiving and investigating such complaints. Employees may bring a complaint of sexual harassment directly to the EEO Officer. A complaint of sexual harassment or retaliation may also be brought to the attention of any supervisor or administrator, including the Superintendent. If any supervisor or administrator receives such a complaint, he or she shall promptly forward it to the EEO Officer. Any supervisor or administrator who receives such a complaint but does not promptly forward it to the EEO Officer shall be subject to disciplinary action. Complaints of sexual harassment and retaliation will be promptly investigated and decisions will be issued within thirty (30) days unless exceptional circumstances exist.

The performance evaluations of all School District employees shall take into account compliance with this policy. In addition, when deciding whether an employee should receive a promotion, award, or other performance-related benefit, the School District shall take into account the compliance of the employee with this policy.

James Smith
Superintendent of Schools
North Little Rock School District

APPENDIX TO NORTH LITTLE ROCK SCHOOL DISTRICT

STATEMENT OF POLICY REGARDING

SEXUAL HARASSMENT AND RETALIATION

DATE: April 2001

Verbal Expressions That May Constitute Sexual Harassment

propositions of a sexual nature

obscene or lewd sexual comments, jokes or suggestions

Unwelcome use of terms of endearment such as "honey," "sweetie," "doll," "babe," and "baby" that others may find offensive

whistling at someone or cat calls, making kissing sounds, howling or smacking lips

commenting on an employee's body, clothing or sexual characteristics in a sexually suggestive manner

turning work discussions to sexual topics

telling sexual jokes or stories

asking about a person's sexual behavior, sexual fantasies, preferences or history

comments filled with sexual innuendo and double meanings of a sexual nature

repeatedly asking for a date from a person who has expressed that he or she is not interested

telling lies or spreading rumors about a person's personal sex life

Conduct That May Constitute Sexual Harassment

excessive and unwanted attention in the form of love letters, memoranda, notes, telephone calls or gifts

giving an unwanted massage around the neck or shoulders

unwanted touching of a person's clothing, hair or body (i.e., hugging, kissing, patting, pinching, grabbing, fondling or stroking)

intentionally standing close to or brushing up against a person in a sexually suggestive manner

looking a person up and down in a sexually suggestive manner

making sexually suggestive facial expressions such as winking, throwing kisses, or licking lips

making sexual gestures with hands or through body movement (i.e., touching or rubbing oneself sexually around another person)

displaying nude or sexually suggestive pictures, cartoons or calendars on School District property or drawing graffiti of a sexual nature on School District property