

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

GREGRY I. WALDON, ET AL.	:	Case No. 1:12 CV 677
	:	
Plaintiffs,	:	Judge S. Arthur Spiegel
	:	
vs.	:	Magistrate Stephanie Bowman
	:	
CINCINNATI PUBLIC SCHOOLS	:	
	:	
Defendant.	:	

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FIRST AMENDED COMPLAINT  
WITH JURY DEMAND ENDORSED HEREON

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Now come the Plaintiffs, Gregory I. Waldon and Eartha Britton, and for their complaint against the Defendant, Cincinnati Public Schools, state the following:

**PARTIES**

1. Plaintiff Gregory I. Waldon (“Waldon”) is an African-American resident of Hamilton County, Ohio, who provided excellent services for nearly thirty years as an employee of Defendant Cincinnati Public Schools (“CPS”).
2. Plaintiff Eartha Britton (“Britton”) is an African-American resident of Hamilton County, Ohio, who provided excellent services for eighteen years as an employee of CPS.
3. Defendant Cincinnati Public Schools (“CPS”) is the Ohio public school district providing public education to school children in the City of Cincinnati.
4. CPS unlawfully terminated Plaintiffs Waldon and Britton late in 2008 in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. §§ 2000e – 2000e-17, and in violation of Ohio Revised Code §§ 4112.02 and 4112.99.

### JURISDICTION AND VENUE

5. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., which provides for relief from discrimination in employment on the basis of race. It also arises under the laws of the state of Ohio.

6. Jurisdiction over Count I of this action is conferred on this Court by 28 U.S.C. § 1331 because this claim arises under the laws of the United States. This Court has pendent jurisdiction over Count II because this claim arises from the same facts and circumstances as Count I.

7. Venue is properly laid in the Southern District of Ohio, Western Division under 28 U.S.C. § 1391(b) because Defendant Cincinnati Public Schools is located in this district and division and because a substantial part of the events giving rise to the Plaintiffs' claims occurred in this district and division.

### FACTUAL ALLEGATIONS

#### **Cincinnati Public Schools' New Criminal Background Check Policy for Employees and Applicants Has an Unlawful Disparate Impact on African Americans.**

8. In 2007, the State of Ohio enacted legislation, House Bill 190, which amended Ohio Revised Code § 3319.39. House Bill 190 also added a new statutory provision, Ohio Revised Code § 3319.391. Both Revised Code §§ 3319.39 and 3319.391 regulate the use of criminal background checks for public school districts.

9. Under these statutory changes, criminal background checks were required of both current and prospective school employees, even for positions that do not involve the care, custody, and control of children. Revised Code § 3319.391 specifically required background checks for current and prospective school employees for positions that do not require a license issued by the Ohio State Board of Education ("non-licensed positions"). House Bill 190 provides that if an individual has been convicted of any of a number of enumerated crimes—

including certain drug, violence, and theft offenses—he or she will not be permitted to work for a school district, **no matter how far in the past the criminal conduct may have occurred, and no matter how little the criminal conduct relates to the present readiness of the particular individual to provide services safely and with excellence.**

10. House Bill 190 permits an individual convicted of one or more of the enumerated disqualifying offenses to work for a school district if he or she can satisfy certain rehabilitation standards, which were promulgated by the Ohio Department of Education. However, at the time that the legislation became effective, most of the disqualifying offenses listed in Ohio Revised Code §§ 3319.39 and 3319.391 were listed as “non-rehabilitative.”

11. Pursuant to the terms of Ohio Revised Code § 3319.391, school districts were tasked with implementing the new criminal background check requirements for non-licensed positions. Since 2008, CPS has required its non-licensed employees (as well as applicants for those positions) to undergo criminal background checks. CPS has then reviewed those criminal background reports to determine whether the individual has been convicted of any disqualifying offenses, and if so, whether the individual was nevertheless eligible for employment under the rehabilitation standards.

12. CPS’ criminal background check policy for non-licensed positions has an adverse impact on African-American school employees, including Plaintiffs Waldon and Britton. The policy, as implemented and applied by CPS, is neither job related nor consistent with business necessity.

13. In 2009, after both Plaintiff Waldon and Britton had been terminated by CPS pursuant

to its criminal background check policy, the Ohio Department of Education amended the rehabilitation standards. Under the revised standards, the list of “non-rehabilitative” offenses for non-licensed positions was narrowed.

14. As revised, neither Mr. Waldon nor Ms. Britton would have been automatically disqualified from continuing with their respective positions at CPS. Despite the changes to the rehabilitation standard, CPS did not offer either Mr. Waldon or Ms. Britton the opportunity to resume their employment.

15. Even under the new rehabilitation standards, CPS’ criminal background check policy for non-licensed positions is neither job related nor consistent with business necessity.

#### **Plaintiff Gregory Waldon**

16. Plaintiff Waldon was employed by Defendant CPS for nearly thirty uninterrupted years of service beginning in 1980. This uninterrupted service was preceded by a four month period of employment beginning in the fall of 1977.

17. Mr. Waldon’s services were excellent and of value to CPS and the public. His most recent assignment was as a systems monitor in the central monitoring office of CPS where he had no contact with school children. Mr. Waldon’s position at CPS was a non-licensed position.

18. In November 1977, when he was only eighteen years of age, Mr. Waldon was charged with felonious assault. Determined to prove his innocence, Mr. Waldon rejected his attorney’s recommendation that Mr. Waldon take the opportunity extended to him to plea to a misdemeanor charge. Instead, after a jury trial, Mr. Waldon was found guilty of felonious assault and incarcerated for nearly two years.

19. In connection with subsequent proceedings of the Ohio Parole Board, the civil service

office of CPS wrote in support of Mr. Waldon's parole: "I would be happy to offer Mr. Waldon employment in the near future."

20. Mr. Waldon rejoined CPS in early 1980 and began his nearly thirty years of uninterrupted service.

21. In November 2008, Mr. Waldon was informed by CPS that he was going to be terminated because of his **thirty-year-old assault conviction** pursuant to its criminal background check policy for non-licensed positions. Instead of being terminated, Mr. Waldon chose instead, for economic reasons, to retire, even though he had not yet reached his planned date of retirement. The pension benefits he currently receives are far less each month than the compensation he was receiving while employed at CPS, and far less than what he would have received had he been able, as he preferred, to continue working and accrue more service time under the School Employees Retirements System of Ohio.

#### **Plaintiff Eartha Britton**

22. Plaintiff Britton was employed by Defendant CPS for eighteen years. For her entire tenure at CPS, which started in 1990, Ms. Britton was employed as an instructional assistant. She received positive reviews, and was highly valued at the school in which she worked. Ms. Britton's position at CPS was a non-licensed position.

23. In 1983, before her employment by CPS, Ms. Britton was convicted of acting as a go-between in the purchase and sale of \$5.00 of marijuana. This conviction was expunged in 2000 pursuant to Ohio Revised Code § 2953.32. She has no other criminal convictions or arrests.

24. In November 2008, Ms. Britton was informed by CPS that she was going to be

terminated because of her **twenty-five-year-old drug conviction** pursuant to its criminal background check policy for non-licensed positions. Ms. Britton was told that no exception would be made, even though the conviction had been expunged. Ms. Britton was subsequently terminated by CPS.

#### **Events Since Plaintiffs' Terminations**

25. In April 2009, the Plaintiffs filed charges of race discrimination against defendant CPS with the Ohio Civil Rights Commission and the U.S. Equal Employment Opportunity Commission ("EEOC").

26. The EEOC determined in September 2009 that both Mr. Waldon and Ms. Britton were unlawfully terminated in violation of Title VII of the Civil Rights Act of 1964. A Notice of Right to Sue was mailed to Ms. Britton on June 11, 2012; a Notice of Right to Sue was mailed to Mr. Waldon on August 31, 2012. Both Notices were sent less than ninety days before the filing date of the initial complaint (i.e., September 6, 2012).

### **COUNT I**

#### **DISCRIMINATION TITLE VII, 42 U.S.C. § 2000e et seq.**

27. The allegations of the preceding paragraphs are incorporated by reference.

28. CPS' decision to terminate both Plaintiffs violates Title VII's disparate impact provision since CPS' criminal background check policy for non-licensed positions has an adverse impact on African Americans and is neither job related nor consistent with business necessity.

29. CPS' criminal background check policy for non-licensed positions also violates Title VII because there are less discriminatory alternatives available to CPS. .

30. The Plaintiffs are entitled to damages and other appropriate relief from the Defendant.

**COUNT II**

**RACE DISCRIMINATION  
OHIO REVISED CODE §§ 4112.02 and 4112.99**

31. The allegations of the preceding paragraphs are incorporated by reference.

32. CPS' decision to terminate both Plaintiffs violates Ohio Revised Code §§ 4112.02 and 4112.99 since CPS' criminal background check policy for non-licensed positions has an adverse impact on African Americans and is neither job related nor consistent with business necessity

33. CPS' criminal background check policy for non-licensed positions also violates Ohio Revised Code §§ 4112.02 and 4112.99 because there are less discriminatory alternatives available to CPS.

34. The Plaintiffs are entitled to damages and other appropriate relief from the Defendant.

**WHEREFORE**, Plaintiffs demand judgment against the Defendant as follows:

- A. Finding in favor of Plaintiffs on all counts set forth in this complaint;
- B. Awarding Plaintiffs compensatory damages in an amount to be proven at trial;
- C. Awarding Plaintiffs costs, interests and attorney's fees;
- D. Awarding Plaintiffs such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ David S. Mann

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**JURY DEMAND**

Plaintiffs hereby demand a trial by jury on all issues raised in their complaint.

/s/ David S. Mann  
David S. Mann, Trial Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on Thursday, November 14, 2013, I electronically filed with the Clerk of Courts using the CM/ECF system, which will send our notification of such filing to the following:

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