

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

EYVINE HEARN, et al.)	
Plaintiffs,)	
)	
and)	
)	
UNITED STATES OF AMERICA,)	C.A. No. CIV 03 598-S
Plaintiff Intervenor,)	
)	
v.)	
)	
MUSKOGEE PUBLIC SCHOOL)	
DISTRICT 020, et al.,)	
Defendants.)	

COMPLAINT-IN-INTERVENTION

The United States of America, Plaintiff-Intervenor, alleges as follows:

1.1 This complaint-in-intervention is filed pursuant to the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and Title IX of the Civil Rights Act of 1964, 42 U.S.C. § 2000h-2.

1.2 This Court has jurisdiction under 28 U.S.C. § 1345 and 42 U.S.C. § 2000h-2.

1.3 Defendants Muskogee Public School District 020 (hereinafter “Muskogee” or “the District”), Dr. Eldon Gleichman, Cheryll Hallum and Gary P. Bivin are responsible for the administration of educational services for all students enrolled in the Muskogee public school system, including Benjamin Franklin Science Academy (hereinafter “Franklin”).

1.4 The original complaint in Hearne, et al. v. Muskogee Public School District 020, et al., No. CIV 03-598-S, was filed on October 28, 2003, and was amended on March 15, 2004. In the amended complaint, Plaintiffs allege that Defendants violated, inter alia, the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, by discriminating on the basis of religion.

1.5 Plaintiffs are citizens of Oklahoma, and seek compensatory damages as a result of the District's discriminatory conduct.

1.6 The District is organized under, and exists pursuant to, the laws of the State of Oklahoma and, as such, is subject to the prohibitions of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Individual Defendants are sued in their official capacities, and, as such, are likewise subject to the Fourteenth Amendment's prohibitions.

1.7 Plaintiff Nashala Hearn is a student enrolled as a sixth grade student at Franklin. Plaintiff Eyvine Hearn is her father.

1.8 This case stems from Defendants' discriminatory application of its dress code policy at Franklin, specifically, a provision that prohibits students from wearing "hats, caps, bandannas, plastic caps or hoods on jackets inside the [school] building." The dress code policies for the District's other schools contain similar prohibitions.

1.9 Defendants have applied their dress code policies to prohibit Nashala, as an adherent of the Islamic faith, from wearing to Franklin a headscarf, called a "hijab."

1.10 In enforcing its dress code policies, Defendants have twice suspended Nashala from school. Presently, Defendants are permitting Nashala to attend Franklin wearing her hijab while Defendants re-evaluate their dress code policies. Defendants have not yet completed their re-evaluation, and it is unknown when that will occur.

1.11 Prior to her first suspension, Nashala had been permitted to attend Franklin wearing her hijab for approximately the first month of the 2003-04 school year.

1.12 Barring Nashala from wearing her hijab places a substantial burden on her exercise of her religious faith.

1.13 Defendants have discriminated on the basis of religion by maintaining a practice or policy under which they permit students, notwithstanding the dress code, to wear head coverings for certain non-religious reasons, but refusing to provide such permission to Nashala.

1.14 Defendants' dress code policies neither serve a compelling interest nor are they narrowly tailored to serve any compelling interest.

1.15 Unless enjoined by this Court, Defendants will continue to violate the Fourteenth Amendment.

1.16 The United States, through intervention in this lawsuit, seeks relief to ensure that Defendants will operate a school system that provides an educational environment free of religious discrimination for its students and that is in compliance with federal law.

1.17 The Assistant Attorney General, pursuant to 42 U.S.C. § 2000h-2, has certified in the attached certification that this is a case of general public importance.

WHEREFORE, the United States respectfully requests that this Court:

1. Grant the United States intervention in this case;
2. Declare that Defendants have denied Plaintiffs the equal protection of the laws in violation of the Fourteenth Amendment;
3. Permanently enjoin Defendants, their officers, agents, employees, successors, assigns, and all persons in active concert or participation with them, from all unlawful discrimination against school-age children on the basis of religion;

5. Order Defendants to revise their dress code policies to ensure that they do not discriminate on the basis of religion;
6. Order Defendants to file a report annually with the Court for three years detailing implementation of the revised dress code policies and their application to students enrolled in the District;
7. Order Defendants to provide such relief as is necessary to compensate Plaintiffs for the discrimination to which they were subjected;
8. Grant any additional relief as the needs of justice may require.

Respectfully Submitted,

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