

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

EYVINE HEARN and NASHALA)
HEARN, a minor, suing through her)
next friend, EYVINE HEARN,)
)
Plaintiffs,)
)
UNITED STATES OF AMERICA,)
)
Plaintiff-Intervenor,)
)
v.)
)
MUSKOGEE PUBLIC SCHOOL)
DISTRICT 020; et al.,)
)
Defendants.)
_____)

C.A. No.: CIV 03-598-S

UNITED STATES’ CROSS MOTION FOR SUMMARY JUDGMENT

The United States hereby moves for summary judgment pursuant to Rule 56(c) of the Federal Rules of Civil Procedure. In support of this motion and as more fully set forth in the accompanying memorandum in support, the United States submits:

1. Defendants’ dress code policy prohibits Plaintiff Nashala Hearn from wearing her headscarf, called a “hijab,” pursuant to her Islamic practice.
2. Defendants permitted Nashala to wear her hijab to school from August 18, 2003 until September 10, 2003. On September 11, the second anniversary of the 9/11 terrorist attacks, Defendants first informed Nashala that wearing a hijab violated the district’s dress code.
3. Non-Muslim students are permitted to wear religious clothing and accessories.
4. Defendants’ dress code is not a generally applicable policy, and the district has reserved for itself the right to make exceptions to the dress code on a case-by-case basis, and in fact has permitted other students to wear head coverings for various non-religious reasons.

5. The undisputed material facts demonstrate that Defendants have violated the Equal Protection Clause of the Fourteenth Amendment by impinging on Plaintiff's free exercise and free speech rights, and by intentionally discriminating against her because of her Islamic faith.

6. Accordingly, the United States is entitled to summary judgment as a matter of law.

WHEREFORE, the United States requests that this Court grant summary judgment in its favor.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2004, I served copies of the foregoing pleading to the following counsel by Federal Express delivery.

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