

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

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CIVIL RIGHTS DIVISION EDUCATION OPP. LIT. SEC.

EYVINE HEARN, et al. )  
 )  
 Plaintiffs, )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Plaintiff-Intervenor, )  
 )  
 v. )  
 )  
 MUSKOGEE PUBLIC SCHOOL )  
 DISTRICT 020; et al., )  
 )  
 Defendants. )

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

FILED

MAY 20 2004

William B. Guthrie  
Clerk, U.S. District Court

By

Deputy Clerk

CONSENT ORDER

Plaintiff Nashala Hearn is of the Islamic faith and brought this lawsuit, through her father, Eyvine Hearn, challenging the validity of that portion of the Defendant Muskogee Public School District's ("School District") dress code, which prohibited her from wearing her holy scarf, or hijab, within the School District's buildings. The United States intervened pursuant to Title IX of the Civil Rights Act of 1964, 42 U.S.C. § 2000h-2. Plaintiffs and the United States contend that Nashala's constitutional rights have been violated. Plaintiffs also contend that Nashala's rights under Oklahoma law have been violated.

Defendants deny Plaintiffs' claims and the United States' claims and contend that the dress code is consistent with the guidelines on "Religious Expression in Public Schools," which were published by the United States Department of Education ("DOE") in 1998, and published comments by the DOE regarding the guidelines.

169-60-72

The parties desire to avoid costly and protracted litigation and have voluntarily agreed, as indicated by the signatures of counsel below, to resolve Plaintiffs' and United States' claims against Defendants, and Defendants' counterclaim against the United States. After reviewing the terms of the Consent Order, the Court concludes that the entry of this Consent Order comports with federal law and is appropriate under all the circumstances.

Without any party admitting any liability or fault in this matter, the parties agree as follows:

**I. Scope and Duration of Consent Order**

A. This Consent Order is effective immediately upon its entry by the Court and shall remain in effect for six (6) years from the date of entry absent an extension as set forth in Section I.D. The reporting provisions set forth in Section IV shall remain in effect for four (4) years.

B. The Court shall retain jurisdiction over this action during the six-year period specified above, absent an extension as set forth in Section I.D., to ensure compliance with all provisions of this Consent Order.

C. The parties to this Consent Order shall endeavor in good faith to resolve informally any differences regarding the interpretation of, and compliance with, this Order prior to bringing such matters to the Court for resolution.

D. The parties agree that the time limits set forth throughout this Consent Order may be expanded upon mutual consent of the parties. Where Defendants, despite their reasonable efforts, cannot satisfy any time limit or deadline set forth in this Consent Order, the parties shall endeavor in good faith to agree upon a reasonable extension of the particular deadline in question. If the parties are unable to agree upon an extension, any party may move the Court for an extension, which may be granted upon good cause shown.

## II. Plan for Amending the Dress Code Policy

The School District shall amend the applicable portion of all of its dress codes effective at the beginning of the 2004-05 school year to provide as follows:

### Head Coverings

Head coverings of any sort whatsoever will not be worn by students to class or within school buildings unless: (1) prescribed by a physician licensed by the State of Oklahoma; (2) previously approved by the School Board upon written application for a bona fide religious reason; or (3) approved by the School's Administration for a special school activity.

### Procedures for Requesting a Religious Exception to the Dress Code

1. Any student who requests permission to wear any head covering for religious reasons will submit a written application on the form provided by the School District for such purpose.
2. The School Superintendent will submit the application to the School Board for consideration at the next regularly scheduled School Board meeting.
3. The School Board will review the application and will approve it unless the School Board finds the religious reasons are not sincerely held beliefs, or that the exception would be likely to cause a material danger to safety and security.
4. Until such time as the School Board approves the application, the student will conform to the dress codes as published. The Superintendent has the authority to approve such application on a temporary basis until the next regular School Board meeting.
5. If the application is approved by the School Board for an exception to the dress codes, there will be no change in the approved head covering without a further

application and approval by the School Board.

6. Any deviation by the student from the head covering previously approved by the School Board will result in disciplinary action as provided by the disciplinary guidelines.

### **III. Training Program**

A. The School District shall provide training to all teachers and administrators regarding the amendments to the dress codes set forth in this Order at the beginning of the 2004-05 school year or more frequently if required.

B. The School District shall provide students and parents with copies of the revised dress codes at the beginning of the 2004-05 school year. It has been and shall continue to be the School District's usual practice to review the dress code with staff, students, and parents at the beginning of each school year or upon subsequent enrollment of students in the district.

### **IV. Reporting Provisions**

A. The School District shall certify in writing to the Court, with a copy to the United States, its compliance with the terms of this Order as follows within thirty (30) days after the beginning of each semester:

1. Information on the teacher and administrator training specified in Section III.A.;
2. Notice to parents and students as provided in Section III.B.; and
3. The number of applications for exceptions to head covering provisions received by the School Board, and description of the outcome.

B. All documents or reports required to be submitted to the United States pursuant to the consent order shall be addressed to:

Tamara H. Kassabian, Esq.  
United States Department of Justice  
Educational Opportunities Section  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Patrick Henry Building, Suite 4300  
Washington, DC 20530

The United States will provide copies of all such reports to Ms. Leah Farish at the following address:

Leah Waldorf Farish  
2834 East 26th Place  
Tulsa, OK 74114-4310

**V. Plaintiff Nashala Hearn**

Nashala Hearn shall be permitted to wear a hijab while a student in Muskogee Public Schools effective immediately. Such hijab shall cover the hair, neck and ears of the student, but not her face.

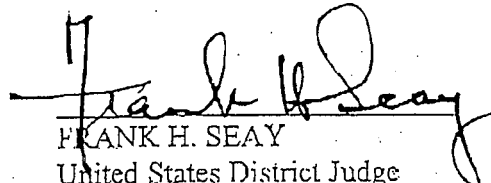
Nashala Hearn shall otherwise comply with the School District's dress codes, including the uniform requirements at the Muskogee Seventh and Eighth Grade Center, as they exist at the time of the execution of this agreement.

**VI. Release of Claims**

The parties have reached a separate, confidential written Settlement Agreement which resolves the remaining claims and issues raised by Plaintiffs. The parties agree that within 45 days from the Court's approval of this Consent Order, Magistrate Judge Kimberly West will conduct a hearing to approve those settlement terms, and the attorneys shall also file in the United States District Court for the Eastern District of Oklahoma, the Stipulation of Dismissal attached hereto as Exhibit A, which Stipulation requests that all claims, counterclaims, and third-party claims asserted in Case No. CIV 03-598-S be dismissed with prejudice, each party to bear its own costs, except to

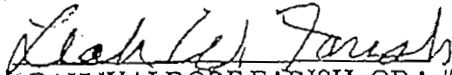
the extent set forth in the parties' confidential, written Settlement Agreement referenced above.

IT IS SO ORDERED this 20<sup>th</sup> day of May, 2004.

  
FRANK H. SEAY  
United States District Judge

By their signatures on this and the following pages, the undersigned counsel agree to, and request the entry of, this Consent Order:

Counsel for Plaintiffs, Eyvine Hearn and Nashala Hearn:

  
LEAH WALDORF FARISH, OBA #10800  
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Fax: (434) 978-1789

By their signatures on this and the following pages, the undersigned counsel agree to, and request the entry of, this Consent Order:

Counsel for Plaintiffs, Eyvine Hearn and Nashala Hearn:

LEAH WALDORF FARISH, OBA #10800  
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Fax: (918) 744-0529

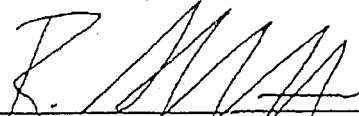
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Counsel for Defendants, Muskogee Public School District No. I-20, Dr. Eldon Gleichman,  
Cheryll Hallum, and Gary P. Bivin:



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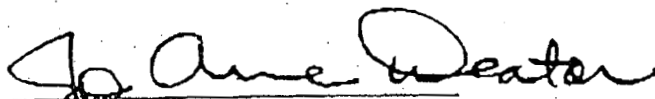
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