

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**R.H., by and through his parent and
next friend, CHANTELL HOSIER,**

Plaintiff,

Civil Action No. _____

DEMAND FOR JURY TRIAL

v.

**SCHENECTADY CITY SCHOOL
DISTRICT; ERIC ELY, Superintendent;
WILLIAM ROBERTS, Assistant Superintendent;
MARK BROOKS, Dean of Oneida Middle School;
KARMEN MCEVOY, Principal of Oneida Middle
School; and LEE SATTERLEE, Assistant Principal
of Oneida Middle School,**

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

Plaintiff R.H., by and through his undersigned counsel, brings this complaint against the above-named defendants, their employees, agents, servants, officers, and successors in office and all those persons in active concert or participation with them, and in support thereof alleges the following on information and belief:

INTRODUCTION

1. This is a civil rights action to redress the deprivation by defendants of rights secured to R.H. by the First and Fourteenth Amendments to the United States Constitution.

2. R.H., a thirteen year old student at Oneida Middle School in the Schenectady City School District, was suspended, and is currently under suspension, by defendants for wearing a rosary to school.

3. Defendants' actions in this regard violate the First and Fourteenth Amendments to the United States Constitution, specifically the free speech, free exercise, and due process clauses.

4. Defendants' student dress code policy, which provides that "A student's dress, grooming and appearance, including hair, jewelry, make-up and nails, shall . . . [n]ot denote, represent or be deemed to be gang related, included but not limited to bandanas, colors, flags or beads," is impermissibly vague and unconstitutional on its face and as applied to R.H. by defendants.

JURISDICTION AND VENUE

5. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as it arises under the Constitution and laws of the United States and presents a federal question, and pursuant to 28 U.S.C. § 1343(a)(4), in that it seeks to secure equitable, monetary, and other relief under an Act of Congress, specifically 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights.

6. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201-2202, by Federal Rules of Civil Procedure 57 and 65, and by the general legal and equitable powers of this court, which empower this court to grant the requested relief.

7. This court has the authority to award plaintiff's attorneys' fees and costs associated with this action pursuant to 42 U.S.C. § 1988 and other applicable laws.

8. Venue is proper within this judicial district and division, pursuant to 28 U.S.C. § 1391(b)-(c), because the events giving rise to plaintiff's claims occurred in this judicial district and division.

PARTIES

9. Plaintiff R.H., a minor, is a citizen of the United States and currently resides in the City of Schenectady, Schenectady County, New York. Chantell Hosier is a citizen of the United States and currently resides in the City of Schenectady, Schenectady County, New York. Chantell Hosier is the mother and legal guardian of R.H.

10. Defendant Schenectady City School District (the "School District") is a duly incorporated School District in the State of New York, with its principal place of business being 108 Education Drive, Schenectady, New York 12303. Oneida Middle School is part of the Schenectady City School District.

11. Defendant Eric Ely is and was at times relevant to this complaint the Superintendent of the Schenectady City School District, with his principal place of business being 108 Education Drive, Schenectady, New York 12303. Ely is sued in his individual and official capacities.

12. Defendant William Roberts is and was at times relevant to this complaint the Assistant Superintendent of the Schenectady City School District, with his principal place of business being 108 Education Drive, Schenectady, New York 12303. Roberts is sued in his individual and official capacities.

13. Defendant Mark Brooks is and was at times relevant to this complaint Dean of Oneida Middle School, with his principal place of business being 1629 Oneida Street, Schenectady, New York 12308. Brooks is sued in his individual and official capacities.

14. Defendant Karmen McEvoy is and was at times relevant to this complaint the Principal of Oneida Middle School, with her principal place of business being 1629 Oneida Street, Schenectady, New York 12308. McEvoy is sued in her individual and official capacities.

15. Defendant Lee Satterlee is and was at times relevant to this complaint the Assistant Principal of Oneida Middle School, with his principal place of business being 1629 Oneida Street, Schenectady, New York 12308. Satterlee is sued in his individual and official capacities.

ALLEGATIONS OF FACT

16. R.H. is a seventh grader at Oneida Middle School.

17. R.H. and his family are Christian.

18. Since September 2009, R.H. has worn each day to school a plastic rosary made of light-colored purple beads and a white crucifix. A rosary is a commonly understood religious symbol.

19. R.H. wears the rosary outside his shirt for religious reasons and in memory of his deceased brother and deceased uncle. The same rosary hung around his brother's hand as he lay dying in the intensive care unit in 2005. His uncle died within the past month from brain cancer. His uncle prayed the rosary during his life and taught R.H. about the rosary.

20. In addition, R.H. wears the rosary as a public expression of his Christian beliefs.

21. Defendant's student dress code policy provides, in pertinent part: "A student's dress, grooming and appearance, including hair, jewelry, make-up and nails, shall . . . [n]ot denote, represent or be deemed to be gang related, included but not limited to bandanas, colors, flags or beads."

22. R.H. is not a member of any criminal gang. R.H. does not wear his rosary to advocate or promote gang membership or violence. During this past school year, R.H. has not caused any disruption to the school environment while he has passively worn his rosary on the outside of his shirt.

23. On Monday, May 17, 2010, R.H. was told by Assistant Principal Lee Satterlee and Dean Mark Brooks that it was against the student dress code policy for R.H. to wear the rosary on the outside of his shirt because the rosary is made of beads and is gang related. Principal McEvoy explained to Chantell Hosier that R.H. was violating the student school dress code policy by wearing his rosary because it is made of beads and therefore is a gang related item. Principal McEvoy sent R.H. home from school with his mother.

24. On Tuesday, May 18, 2010, R.H. returned to school and wore his rosary on the outside of his shirt. No school official prevented him from wearing his rosary that day.

25. On Wednesday, May 19, 2010, R.H. went to school and again wore his rosary on the outside of his shirt. He was suspended by Principal Karmen McEvoy from that Wednesday through Friday, May 21, 2010, for violating the school's dress code policy by wearing his rosary. Principal McEvoy explained to Chantell Hosier that the rosary is considered a gang related symbol and R.H. is not allowed to wear it to school outside his shirt. Principal McEvoy warned Chantell Hosier and R.H. that he would receive further punishment if he wore his rosary to school on Monday, May 24, 2010, or thereafter.

26. On Thursday, May 20, 2010, Chantell Hosier and R.H. met with Assistant Superintendent William Roberts. Assistant Superintendent Roberts gave Chantell Hosier a copy of the school's dress code policy and said that R.H. cannot wear the rosary to school because it is made of beads. Assistant Superintendent Roberts informed Chantell Hosier that the Superintendent's office was not going to interfere with the decision of Principal McEvoy and was leaving the matter in the hands of Principal Karmen McEvoy whether to discipline R.H. further.

27. On the morning of Monday, May 24, 2010, R.H. arrived at school wearing his rosary and was suspended by Defendant McEvoy.

28. Superintendent Eric Ely supports the application of the student dress code to R.H. Even though R.H. wears a rosary for religious reasons, defendant Ely has stated publicly that “beads are beads” and cannot be displayed in school.

29. R.H. wants to attend the Oneida Middle School as soon as possible while wearing his rosary on the outside of his shirt without further interference from school officials and without further violation of his constitutional rights.

ALLEGATIONS OF LAW

30. Defendants are “persons” for purposes of the claims set forth in this complaint, as that term is used in 42 U.S.C. § 1983.

31. All of the conduct of defendants as set forth in this complaint constitutes conduct “under color of state law” as that phrase is used in 42 U.S.C. § 1983.

32. All of the actions of defendants as set forth in this complaint were done pursuant to a policy, practice, and/or custom, which was a moving force behind the violation of R.H.’s clearly established constitutional rights.

33. Defendants’ conduct was done with malice and with reckless indifference to the federally protected rights of plaintiff.

CAUSES OF ACTION

COUNT ONE

(Violation of the Federal Rights of Speech and Expression)

34. Plaintiff repeats and realleges the allegations in paragraphs 1 through 33 above and incorporates those allegations herein by reference.

35. Defendants' actions in suspending R.H. for wearing, and preventing him from wearing, his rosary on the outside of his shirt to Oneida Middle School was a violation of the freedoms of speech and expression guaranteed by the First Amendment to the United States Constitution, as applied to the States and their political subdivisions through the Fourteenth Amendment to the United States Constitution, as protected by 42 U.S.C. § 1983.

36. On its face and as applied by defendants, defendants' student dress code policy violates the freedoms of speech and expression guaranteed by the First Amendment to the United States Constitution, as applied to the States and their political subdivisions through the Fourteenth Amendment to the United States Constitution, as protected by 42 U.S.C. § 1983.

37. Wherefore, plaintiff requests the relief set forth below in the prayer for relief.

COUNT TWO
(Violation of the Federal Right to Due Process)

38. Plaintiff repeats and realleges the allegations in paragraphs 1 through 33 above and incorporates those allegations herein by reference.

39. Defendants' student dress code policy is impermissibly vague and violates the right to due process that is guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

40. Wherefore, plaintiff requests the relief set forth below in the prayer for relief.

COUNT THREE
(Violation of the Federal Right to Free Exercise of Religion)

41. Plaintiff repeats and realleges the allegations in paragraphs 1 through 33 above and incorporates those allegations herein by reference.

42. In not permitting R.H. to wear his rosary to school, defendants have burdened the religious exercise of R.H. without a compelling reason and have thus violated his First Amendment right to the free exercise of religion.

43. Wherefore, plaintiff requests the relief set forth below in the prayer for relief.

PRAYER FOR RELIEF

44. Plaintiff R.H. repeats and realleges all allegations made above and incorporates those allegations herein by reference, and plaintiff respectfully asks that this court grant him the following relief, as set forth in this complaint, and enter final judgment against defendants:

A. Declare that defendants' actions in suspending R.H. for wearing, and preventing him from wearing, a rosary on the outside of his shirt to school is a violation of the First and Fourteenth Amendments to the United States Constitution;

B. Declare that defendants' student dress code policy is overbroad on its face and violates the freedoms of speech and expression that are protected by the First Amendment to the United States Constitution;

C. Declare that defendants' student dress code policy is vague on its face and violates the right to due process that is guaranteed by the Fourteenth Amendment to the United States Constitution;

D. Permanently enjoin defendants and their agents, servants, employees, attorneys, officers, and successors in office, and all those persons in active concert or participation with them, from enforcing the student dress code policy against R.H., and others not before this court, and preventing R.H. from wearing a rosary outside his shirt to school in the Schenectady City School District;

E. Permanently enjoin defendants and their agents, servants, employees, attorneys, officers, and successors in office, and all those persons in active concert or participation with them, from further violation of the constitutional rights of R.H. for wearing a rosary outside his shirt to school in the Schenectady City School District;

F. Award nominal, compensatory, and punitive damages against the appropriate defendants;

G. Grant reasonable attorneys' fees and costs associated with this action;

H. Retain jurisdiction over this action for the enforcement of its orders and final judgment; and

I. Grant any other and further relief as this court deems equitable and just.

Respectfully submitted,

Dated: June 1, 2010

/s/ Edward L. White III
Edward L. White III
(Pro Hac Vice Application Pending)
Attorney for Plaintiff
American Center for Law & Justice
5068 Plymouth Road
Ann Arbor, Michigan 48105
Tel. 734-662-2984; Fax. 734-302-1758
E-mail: ewhite@aclj.org

/s/ Raymond J. Dague
Raymond J. Dague
N.D. N.Y. Bar No. 505622
Local Counsel for Plaintiff
Raymond J. Dague, PLLC
620 Empire Building
472 South Salina Street
Syracuse, New York 13202
Tel. 315-422-2052; Fax. 315-474-4334
E-mail: Raymond@DagueLaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent from Syracuse, New York, by electronic mail and by U.S. Mail, first class postage prepaid, on June 1, 2010, to the following:

Shari Greenleaf
School Attorney
Schenectady City School District
108 Education Drive
Schenectady, New York 12303
E-mail: greenleafs@schenectady.k12.ny.us

Edward L. White
American Center for Law & Justice
5068 Plymouth Road
Ann Arbor, Michigan 48105
E-mail: ewhite@aclj.org

/s/ Raymond J. Dague
Raymond J. Dague
N.D. N.Y. Bar No. 505622
Local Counsel for Plaintiff
Raymond J. Dague, PLLC
620 Empire Building
472 South Salina Street
Syracuse, New York 13202
Tel. 315-422-2052; Fax. 315-474-4334
E-mail: Raymond@DagueLaw.com