

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CHRISTY COLE, on her own behalf
and on behalf of her minor
daughter, K.C.

PLAINTIFF

VERSUS

WEBSTER PARISH SCHOOL BOARD,
JOHNNY ROWLAND, in his official
capacity as Superintendent of the
Webster Parish School District, and
DENNY FINLEY, in his official capacity
as Principal of Lakeside Junior/Senior
High School

DEFENDANTS

CIVIL ACTION NO.

5:17-CV-01629-SMH-MLH

CHIEF JUDGE S. MAURICE HICKS, JR.

CONSENT DECREE AND ORDER

INTRODUCTION

On December 18, 2017, Plaintiff Christy Cole, on her own behalf and on behalf of her minor daughter, K.C., filed a Complaint asserting claims pursuant to 42 U.S.C. §1983 against Defendants, WEBSTER PARISH SCHOOL BOARD (“School Board”), JOHNNY ROWLAND, in his official capacity as Superintendent of the Webster Parish School District (Superintendent”), and DENNY FINLEY, in his official capacity as Principal of Lakeside Junior/Senior High School, (collectively “Defendants”).

Plaintiffs’ Complaint alleges that the Defendants have a custom, policy, and practice of violating the Establishment Clause by, among other actions, sponsoring morning prayers over the public-address system; incorporating official prayer into myriad school events; allowing staff and guest speakers to proselytize students during school events; subjecting students to religious iconography via displays in classrooms and other locations; holding school events at religious facilities; using instructional materials, such as movies, that feature proselytizing and promotion of religion; and granting preferential treatment to the Fellowship of Christian Athletes, a religious student club.

The Defendants admit that there is a factual basis to support a finding by the Court that incidents have occurred violating the Establishment Clause of the First Amendment to the U.S. Constitution. However, Defendants continue to deny those factual allegations that were originally denied in their Answer to Plaintiffs’ Complaint and specifically deny all allegations of wrongdoing asserted against Johnny Rowland, Denny Finley, and any other employee of the Webster Parish School Board.

Religious liberty, as embodied by the Free Exercise Clause and the Establishment Clause of the First Amendment, and free speech are hallowed constitutional rights to which all are entitled. To ensure that the rights of Plaintiffs and all students, parents, and families are protected, as well as to avoid further costly and protracted disputes, the parties agree voluntarily to entry of this Consent Decree and Order (hereinafter referred to as Order”).

The Court has reviewed the claims as to which the Defendants have admitted liability and the terms of the parties’ agreement set out in this Order. Other than this Court’s rulings and findings made regarding this Order, the Court does not here decide any new legal or factual dispute concerning the matters presented herein. In adopting this Consent Decree, the Court has ensured it

comports with the U.S. Constitution. Concluding that the terms of the parties' Agreement are appropriate under the circumstances presented and that the entry of this Order comports with federal constitutional law, the Court therefore **ORDERS, ADJUDGES, and DECREES** as follows:

ORDER

1. Some of the Defendants' District-wide policies, practices, and customs alleged in the Complaint violate the Establishment Clause of the First Amendment to the U.S. Constitution. Some of the Defendants' policies, practices, and customs (a) endorse and promote religion, (b) have the purpose or effect of advancing religion, and/or (c) coerce religious exercise either directly or indirectly. The Clerk shall, therefore, enter judgment in favor of the Plaintiffs.

Definitions

2. The following definitions shall apply to this Order. In construing these definitions the singular shall include the plural and the plural shall include the singular:

(a) "Club" means a noncurricular student group recognized by the School District and that qualifies through the five, safe-haven provisions (20 U.S.C. §4071 (c)) for protection under the Equal Access Act.

(b) "Prayer" means a communication (written or audible) with a deity, including, but not limited to, a benediction, an invocation, the Lord's Prayer, or otherwise calling upon a deity to offer guidance, assistance, or a blessing. Accordingly, "Prayer" does not include customary, polite expressions and greetings, including "God Bless You" or "Thank Heavens," or a student's religious expression responsive to a legitimate academic class assignment.

(c) "Religious Service" means a convocation for a religious purpose, including, but not limited to, baccalaureates, religious youth group meetings or events, worship services, Bible study, and religious rallies, festivals, and concerts.

(d) "Religious Title" means *Benediction, Invocation, Prayer, Blessing, Inspirational Message, Sermon, Devotional Pledge, Bible Reading, Devotion* or any other title that in any way relates to Prayer.

(e) “Religious Venue” means a property, facility, building, or place that is maintained and controlled by or for a religious body that is organized, in whole or in part, to sustain public worship.

(f) “School District” means the Webster Parish School District.

(g) “School Event” means any activity or happening (i) at a School Board facility or (ii) sponsored, conducted, or supervised by a School Official acting in his or her Official Capacity. It includes, but is not limited to, graduation or grade-promotion ceremonies; awards programs and induction ceremonies; assemblies or other school-day programs; pep rallies, athletic practices, and athletic competitions; practices, rehearsals, and performances; class instructional time; and Club meetings or events. However, each of the following activities is not a School Event:

(1) A student religious Club meeting or event, if all School Board employees and agents are present at the meeting or event only in a “nonparticipatory capacity,” as used in the Equal Access Act;

(2) An activity at a School Board facility, if (i) it is outside the presence of School District students and (ii) no School Official acts in his or her Official Capacity; and

(3) An activity at a School Board facility that is used by a third-party (i) pursuant to a standard facility use agreement or (ii) the principal’s advance written permission in accordance with School Board policy which indicates the name of the responsible third-party user, the use period, the facility to be used, the purpose of use, and the conditions of use. The foregoing third-party uses must (I) occur during the agreed use period, (II) be on terms of usage (including rent) that are consistent with the terms applicable to other third-party users, (III) not involve any School Official acting in his or her Official Capacity, and (IV) not take place during school hours. This exception does not apply and an activity will be deemed a School Event if the activity takes place (A) during instructional time; (B) during the approximately 30-minute transitional period before or after school when students are embarking or disembarking from school buses or private transportation; or (C) when the majority of school employees assigned to the subject school facility are contractually obligated to be present. School officials may supervise students between instructional time and the third-party use period if the supervision is neutral with

respect to religion. School Officials shall not permit third-parties to use a school facility pursuant to a standard facility use agreement or principal's permission (A) during instructional time, or (B) during the 30-minute transitional period before or after school when students are embarking or disembarking from school buses or private transportation. School Officials may supervise students between instructional time and the third-party use period if the supervision is neutral with respect to religion.

(h) "School Official" means the Defendants and their officers, agents, affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert or privity or participation with them, but only to the extent such a person acts in his or her Official Capacity or is in active concert or privity or participation with the Defendants. Outside organizations that receive no support from the Defendants, do not receive remuneration of any kind from the Defendants, are not controlled by the Defendants, and are not given preferential treatment or access (e.g., to sell wares) by the Defendants are not School Officials, for example booster clubs when they satisfy these requirements.

(i) "Official Capacity": A person acts in his or her "Official Capacity" when (1) performing official duties or furthering the work of the District or School Board or (2) acting under or with a power or authority granted by virtue of employment by or association with the District or School Board. However, where the only power or authority the School Official exercises is the authority to be present at a School Board facility and the School Official is not interacting with or in the presence of a student, then the School Official is not in his or her Official Capacity by virtue of subsection (i)(2). This consent decree does not address the conduct of school employees in any context other than in their Official Capacity.

Equal Access Act

3. No provision in this Order is intended to supplant or alter the rights afforded student clubs by the Equal Access Act. School Officials shall comply with the Equal Access Act, 20 U.S.C. §4071 et seq.

Permanent Injunction

4. **Prayer at School Events:** School Officials are permanently enjoined from promoting, advancing, endorsing, participating in, or causing Prayers during or in conjunction with School Events for any school within the School District:

(a) School Officials shall neither offer nor participate in a Prayer during or in conjunction with a School Event.

(b) School Officials shall prohibit non-student third-parties (including but not limited to clergy or other religious leaders) during or in conjunction with a School Event from offering a Prayer addressed to an audience as part of the event or program, soliciting a Prayer from anyone as part of the event or program, or promoting a religious belief to anyone as part of the event or program.

(c) School Officials shall not include Prayer, whether or not it is noted in a printed program, during or in conjunction with a School Event. School Officials shall not give authorization to a group of students, a student body (e.g., through an election), or third-parties to include Prayer, whether or not it is noted in a printed program, during or in conjunction with a School Event.

(d) School Officials shall not encourage, solicit, or invite any person, either implicitly or explicitly, to deliver or offer a Prayer during or in conjunction with a School Event. School Officials shall not set aside a time for Prayer during or in conjunction with a School Event.

(e) School Officials shall prohibit any segment of a School Event from having a Religious Title. School Officials shall not give any segment of a School Event a Religious Title. School Officials shall not permit students, student groups, or third-parties to give a segment of a School Event a Religious Title.

(f) If School Officials select persons to make an address during or in conjunction with School Event, they shall do so by a selection process that is neutral with respect to religion and in compliance with a written policy that is consistent with this Consent Decree. To the extent that any School Board policy is inconsistent with this Consent Decree, the Consent Decree controls. Plaintiffs reserve the right to challenge the implementation of any School Board policy when it is inconsistent with this Consent Decree or otherwise unconstitutional.

(g) To the extent that School Officials permit a person during or in conjunction with School Events to give an address that a School Official can or does shape, review, or edit for content, substance, message, style, or theme, then School Officials shall ensure the person's address excludes Prayer. Nothing in this provision shall relieve School Officials of their obligation to prohibit efforts by third-parties to introduce Prayer during a School Event or otherwise comply with Section 4 of this Order.

5. **Religious Services (Baccalaureate):** School Officials are permanently enjoined from planning, organizing, financing, promoting, or otherwise sponsoring in whole or in part a Religious Service, including baccalaureate, for any school or any group of students within the School District:

(a) School funds shall not be used to plan, organize, finance, promote or otherwise sponsor a Religious Service, including, but not limited to (1) printing programs for a Religious Service, (2) compensating or reimbursing expenses for a speaker at a Religious Service, or (3) paying for overhead costs (lighting, heating, cooling, janitorial, etc.) for a Religious Service. Subsection (a)(3) shall not apply when School Board facilities are used for a Religious Service by a third-party pursuant to a standard facility use agreement, on terms and schedules (including rental rates) that are applicable to all applicants.

(b) School Officials in their Official Capacity shall not attend any Religious Service, including baccalaureate. School Officials in their Official Capacity shall not be tasked with official responsibilities at any Religious Service, except serving as a nonparticipatory faculty advisor to supervise a Club meeting or event. School Officials shall not monitor behavior of students or require them to conform to any standards at any Religious Service, including delineating proper dress at baccalaureate, except to supervise (in a nonparticipatory manner) a Club meeting or event. School Officials shall not plan or organize any Religious Service on school time or do so by using School District equipment or supplies.

(c) School Officials during or in conjunction with a School Event shall not require or encourage students to attend any Religious Service, including baccalaureate, church services, and student religious Club meetings. School Officials shall prohibit a school band, choir, or military guard from performing at a Religious Service, including baccalaureate. Provided however, that individual students, in their personal capacities, may not be prohibited from such performance.

(d) No Religious Service commemorating the graduation or grade-promotion of a class of students shall be comprised, led, or directed by School Officials in their Official Capacity. Nothing herein restricts a School Board employee or agent's voluntary participation in, or speech or conduct during, a private religious service, including baccalaureate, when not acting in their Official Capacity.

6. **School Events at Religious Venues:** School Officials are permanently enjoined from holding School Events for any school within the School District at a Religious Venue when an alternative venue is reasonably suitable that is not a Religious Venue. The cost of using a non-religious venue may not serve as the sole justification for holding a School Event at a Religious Venue. When it is reasonably necessary for a School Event to be held at a Religious Venue, the secular justification for the use of the Religious venue shall be documented pursuant to subparagraph 6(a).

(a) If a School Event is held at a Religious Venue, School Officials shall document in writing before the event takes place the following: (1) the Religious Venue's physical address, (2) the Religious Venue's owner and contact information, (3) the owner's affiliation with a house of worship or congregation, if any, (4) the nature of the School Event, the expected number and category (students, School Officials, and others) of attendees, and the available parking, (5) the venue for the last three years for past school events of this nature for this school, (6) the compensation that will be paid to use this Religious Venue, (7) the compensation typically paid to use this Religious Venue, if known, (8) the distance from the applicable school, whose event this is, and the Religious Venue, (9) the identity of the School Officials involved in selecting the Religious Venue, (10) a certification that no other venue that is not a Religious Venue would be reasonably suitable for this School Event, and (11) a certification that (a) all religious iconography or messages that would be otherwise visible to students during the School Event will be covered or removed for the duration of the event, when reasonably possible, and (b) when not reasonably possible to remove or cover certain religious iconography, a certification that a disclaimer of religious endorsement will be stated at the beginning of the event and written in any printed program for the event. The written documentation shall be verified by the signature of at least one School Official. School Officials shall transmit a copy of this written documentation to the Superintendent's office or his or her delegatee for maintenance and review

by the public. The use of a Religious Venue for a School Event may only be done with the approval of the Superintendent or his or her delegatee.

(b) Notwithstanding the foregoing and without complying with this procedure, School Officials may hold School Events at a venue, facility, or property owned or maintained by (1) another School Board (e.g., an opposing team in a football game); (2) a state or any political subdivision or agency thereof; or (3) any Non-Religious Venue.

7. **Promotion of Personal Religious Beliefs:** School Officials are permanently enjoined from permitting School Officials at any school within the School District to promote their personal religious beliefs to students in class or during or in conjunction with a School Event.

(a) School Officials shall not participate in any way in a Prayer with students during or in conjunction with instructional periods or a School Event. During or in conjunction with a School Event, School Officials shall not offer a Prayer, recite a Prayer alongside or with students, bow their heads or otherwise posture in a manner that is likely to be perceived as an endorsement of the Prayer, or kneel or join hands with students. A School Official's remaining still and silent with hands folded, as a sign of respect, during a Prayer shall not alone constitute an endorsement.

(b) School Officials shall be present at meetings or events of student religious Clubs only in a nonparticipatory capacity. School Officials shall not lecture, proselytize, pray, or preach at meetings or events of student religious Clubs.

(c) School Officials shall not read or assign readings from a sacred text or a sermon absent a legitimate non-religious, educational objective. School Officials shall not cite the Bible or any sacred text as authority for historical or scientific fact to students during or in conjunction with a School Event.

(d) School Officials, during or in conjunction with a School Event, shall not solicit, discourage, or encourage students to engage in religious activity or attend a Religious Service. School officials, during or in conjunction with a School Event, shall not permit non-student third-parties—who have been invited to address students—to solicit, discourage, or encourage students to engage in religious activity or attend any Religious

Service, or to distribute religious materials to students immediately before, after, or during the School Event.

(e) School Officials shall not orally express personal religious beliefs or affiliations to students during or in conjunction with instructional time or a School Event. School Officials shall not express personal religious beliefs or affiliations to students through written or symbolic means (whether placed on a classroom wall, a hallway wall, erected on a classroom floor, or attached or placed on the District's tangible property or the District's website), except that religious holiday decorations may be displayed along with secular symbols associated with that holiday, provided no one decoration predominates the holiday display and that no group of religious decorations predominates the holiday display. However, jewelry on the School Official's person or clothing or religious articles worn by the School Official (*e.g.* a yarmulke and/or a cross necklace) are permissible. Nothing herein shall prohibit a teacher from using religious symbols, articles, or books for a non-religious educational reason.

8. **Retaliation**: School Officials are permanently enjoined from taking retaliatory action against Plaintiffs or any member of their family for bringing this lawsuit or otherwise objecting to unconstitutional practices.

Other Orders

9. **Provision of Order to School Officials**: The Defendants shall provide a copy of this Order to all current School Officials throughout the School District by electronic mail, in a handbook, or during training. The Defendants shall provide a copy of this Order to all persons who later become School Officials. This Order shall be included in the District's "Code of Student Conduct" or substantially equivalent publication.

10. **Faculty Training and Education**: Beginning in the Fall of 2018, the Defendants will provide training, conducted by an attorney, to all certified or professional School District employees on the subject of Defendants' legal obligations under the Consent Decree. The training initially will be provided to all certified or professional School District employees, and thereafter, to all newly hired certified or professional employees. Prior to conducting the initial training, the attorney and other experts conducting the training shall consult with the ACLU of Louisiana and the ACLU regarding the content and nature of the proposed training materials and documents.

11. **Complaint Process:** The Defendants shall establish and maintain a process for the investigation of complaints submitted by students or parents regarding School Officials' promotion of religion. This process shall allow students or parents to submit their complaints anonymously and shall prohibit School Officials from retaliating against students or parents for submitting complaints regarding School Officials' Promotion of religion. This process shall not establish any time limits that would bar students or parents from submitting or appealing complaints regarding School Officials' promotion of religion. School Officials shall not prohibit or discourage any complainant from contacting the ACLU or ACLU of Louisiana to report potential violations of the Consent Decree.

12. This Order is designed to ensure that the School District's practices and policies do not violate the First Amendment rights of students and parents in the School District. The parties to this Order shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Order before bringing such matters to the Court for resolution. On the Plaintiffs' counsel's request, the Superintendent shall provide information reasonably available to him so that Plaintiffs' counsel may ensure the School Officials' compliance with this Order and evaluate in context the Defendants' guidance and interpretation of this Order and their enforcement efforts with respect to this Order. However, in the event that Plaintiffs' counsel and the Defendants are unable to resolve the dispute, Plaintiffs' counsel may then move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance or non-performance of certain acts.

13. This Court retains jurisdiction of this case to enforce the terms of this Order.

Additional Relief

14. **Nominal Damages:** In connection with the Judgment entered in favor of the Plaintiffs and against Defendants, Defendants shall pay Plaintiffs nominal damages in the amount of \$1.00. This nominal payment recognizes the injury caused to Plaintiffs by the Defendants' custom, policy, and practice of promoting religion.

15. **Attorneys' Fees, Costs, and Litigation Expenses:** Pursuant to (a) 42 U.S.C. §1988, (b) Rule 54, Federal Rules of Civil Procedure, and (c) Local Civil Rules 54.02 and 54.03, this Court concludes that the Plaintiffs are the prevailing parties on the equitable relief claims filed in this matter. The Court concludes that the Defendants are liable for the Plaintiffs' reasonable attorneys' fees, costs, and

litigation expenses arising out of these equitable relief claims in accordance with applicable law. Such attorneys' fees, costs and litigation expenses have not been agreed to by the parties and remain in dispute. Furthermore, nothing in this order shall be deemed an adjudication of or an agreement to Plaintiffs' claims for mental and emotional distress and discomfort. As such, Plaintiffs retain the right to pursue their claim for compensatory damages.

16. Nothing in this Order will be construed to limit any party's right to enforce this Order according to its terms. If any court of competent jurisdiction determines that any provision contained in this Order, or any part thereof, cannot be enforced, the parties agree that such determination shall not affect or invalidate the remainder of the Order.

17. This Order shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

18. If this Order does not expressly prohibit conduct, then it is permitted as authorized by law.

SO ORDERED, this 11 day of May, 2018.


UNITED STATES DISTRICT COURT JUDGE

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

Plaintiff:

Christy Cole
Christy Cole, on her own behalf
and on behalf of her minor
daughter, K.C.

Defendant:
Webster Parish School Board

By: Johnnie Kennon
Johnnie Kennon, President

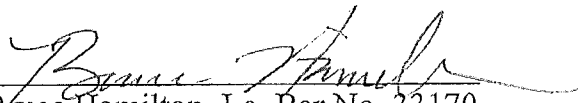
Defendant:

Johnny Rowland
Johnny Rowland, in his official
Capacity as Superintendent of the
Webster Parish School District

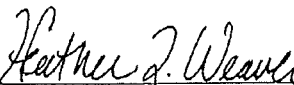
Defendant:

Denny Finley
Denny Finley, in his official
Capacity as Principal of Lakeside
Junior/Senior High School

Approved as to form:

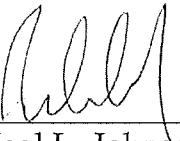
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