

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CHILD EVANGELISM FELLOWSHIP)	Case No. 1:13-CV-01765
OF OHIO, INC.,)	
)	Judge Christopher A. Boyko
Plaintiff,)	
)	
vs.)	
)	
CLEVELAND METROPOLITAN SCHOOL)	
DISTRICT, ET AL.,)	
)	
Defendants.)	

CONSENT ORDER

On August 13, 2013, Plaintiff Child Evangelism Fellowship of Ohio, Inc. (“CEF”) filed this action against Defendants Cleveland Metropolitan School District and Principal Roy James (“CMSD”) (collectively, the “Parties”), alleging that CMSD violated CEF’s rights under the First and Fourteenth Amendments to the United States Constitution, by, among other things, failing to treat CEF equally with respect to facility fees charged by CMSD for afterschool use of CMSD facilities. The Parties have advised the Court that they wish to resolve all matters and claims in this action, based upon the following stipulated facts and remedies:

1) The Parties stipulate, and the Court finds, that CMSD violated CEF’s First and Fourteenth Amendment rights by denying CEF the opportunity to use CMSD facilities for CEF’s afterschool character education programs on the same fee basis as other similarly situated community organizations.

2) The Parties stipulate, and the Court finds, that, insofar as CMSD’s practice with respect to the waiver or payment of facility fees through in-kind provision of goods and services

permitted CMSD to treat CEF differently from other similarly situated community organizations, such practice is unconstitutional.

3) With the consent of the Parties, the Court hereby ADJUDGES and ORDERS the following remedies:

a) Within sixty (60) days of the entry of this Consent Order, CMSD shall amend and replace its Community Use of District Facilities Policy KG with the Revised Policy attached hereto as Exhibit A (the "Revised Policy"). The Parties stipulate, and the Court finds, that the Revised Policy is facially constitutional. The Parties intend and expect that, going forward, CMSD will accept the services provided by CEF to CMSD students as payment for facility fees, to the same extent that CMSD accepts the services of similarly situated facility users.

b) Within sixty (60) days of the entry of this Consent Order, CMSD shall pay CEF the sum of one hundred dollars (\$100.00), as and for nominal damages. Said payment shall be made by check or bank draft payable to "Child Evangelism Fellowship of Ohio, Inc.," and delivered to CEF's counsel of record.

c) Within sixty (60) days of the entry of this Consent Order, CMSD shall pay CEF the sum of one hundred forty-nine thousand, nine hundred dollars (\$149,900.00), as and for reasonable attorneys' fees and costs expended on CEF's behalf in this litigation. Said payment shall be made by check or bank draft payable to "Liberty Counsel," and delivered to CEF's counsel of record.

4) The Clerk shall enter Final Judgment in favor of CEF and against CMSD consistent with this Consent Order.

5) The Court shall retain jurisdiction of this action to the extent necessary to enforce the terms of this Consent Order.

DONE and ORDERED this 28th day of June, 2016 at Cleveland, Ohio.

s/ Christopher A. Boyko

Christopher A. Boyko, U.S. District Judge

EXHIBIT A

KG

COMMUNITY USE OF DISTRICT FACILITIES (Equal Access)

The use of buildings and grounds for non-District activities shall be governed by the following principles:

1. The use of facilities for non-District activities shall be by permit only;
2. The use of facilities for non-District activities may take place:
 - a. outside of regular school/instructional hours or
 - b. during the school day if approved by the building principal.
3. The use of facilities for large functions where large attendance is anticipated shall require prior approval by the CEO/designee;
4. The facilities and parking shall be suitable for the purpose;
5. The use of facilities shall not disrupt regular operations or District activities;
6. Schedules of activities shall be established and maintained to avoid any conflict in scheduling;
7. Any group using District school facilities must provide evidence of liability and/or property damage insurance;
8. All District school buildings are smoke-free. Citizens entering school buildings must adhere to the District's smoke-free policy;
9. Policies and rules applicable to any persons entering upon school grounds or premise shall be posted at or near all entrances to the school grounds, premises, and/or buildings;
10. The use of facilities shall be subject to assessment of a reasonable fee according to a fee schedule which reflects actual costs to the District for janitorial, light, and heat expenses, as well as other costs and expenses ("Permit Fee");
11. Priority of use of school facilities will be based on the following categories:

- a. Category 1: Governmental/Non-Profit Groups — Defined as governmental agencies or non-profit groups. Issuance of permits for space and facilities for Governmental/Non-Profit Groups will be prioritized behind District activities, but ahead of Commercial Users. Community Non-Profit Groups will be assessed a Permit Fee for their use of facilities.
 - b. Category 2: Commercial Users — Defined as private, for-profit businesses, vendors, or entrepreneurs. Issuance of permits for space and facilities for Commercial Users will be prioritized behind District activities and Governmental/Non-profit Groups. Commercial Users will be assessed a Permit Fee for their use of facilities.
12. Form of payment of Permit Fees shall be by cash or check in the full amount of the Permit Fee assessed, except that the District will accept other financial contribution to the District, or the provision of services or tangible goods to the District or District students, as in-kind payment of Permit Fees, under the following circumstances:
 - a. As part of the application and approval process, a group must provide to the CEO /designee, a written proposal for the payment of the Permit Fees through the provision of services, tangible goods or some other financial contribution to the District or District students ("Alternative Payment Proposal"), which does all of the following:
 - i. Identifies and describes the specific services, tangible goods or financial contribution to the District or District students that would be provided as payment of the Permit Fees;
 - ii. States the specific amount of the financial contribution, or otherwise identifies the fair market value of the services or tangible goods and provides an explanation of the basis for how fair market value was determined; and
 - iii. Identifies the date by when such services, tangible goods or other financial contributions will be provided.
 - b. The CEO /designee shall approve the Alternative Payment Proposal if the following criteria are satisfied:
 - i. The proposed services, tangible goods or financial contribution to the District or District students is/are of equal or greater value or amount than the amount of Permit Fees assessed in the invoice; and

- ii. In the case of a proposal for the provision of tangible goods to the District or District students, the tangible goods are of the type that the District could put to lawful use for the improvement of its facilities or for the benefit of its curriculum or students.
 - iii. In the case of a proposal for the provision of services to the District or District students, the services are lawful and would benefit the District or District students.
- c. In determining whether to approve the Alternative Payment Proposal, no consideration shall be given to the purpose for the group's intended use of the District's facilities, or the nature or content of the group's activities, speech, mission, goals, purpose, or viewpoint.
- d. Upon pre-approval of the Alternative Payment Proposal, the CEO/designee will provide the group with written notice of whether the Alternative Payment Proposal has been approved. If the Alternative Payment Proposal is not approved, the written notice shall briefly state the reason why it was not approved.
- e. A group may appeal the failure by the CEO/designees to approve an Alternative Payment Proposal, to the Chief Executive Officer, in writing, within 14 days of receipt of the written notice of disapproval. The group must provide a written explanation of why it believes the disapproval was in error.
- f. The Chief Executive Officer, or his/her designee, will issue written notice of his/her decision regarding approval of the Alternative Payment Proposal within 14 days of receipt of the appeal. The Chief Executive Officer's or his/her designee's decision shall be based solely on the criteria set forth in Paragraph 12(b), shall not be based on any of the considerations described in Paragraph 12(c), and shall be final.
- g. No District teacher, staff member, or administrator, other than those specified in this Paragraph 12, shall have authority to approve or disapprove of any Alternative Payment Proposal.

[Adoption date: October 4, 2001; amended April 28, 2015; amended _____]

LEGAL REFERENCES

U.S. Constitution, Amendment I

Ohio Constitution, § 1.07

The Elementary and Secondary Education Act; 20 USC 1221 et seq.

Title VIII, Section 801

ORC 3313.75, 3313.76; 3313.77; 3313.78; 3313.79

ORC 4303.26