

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

CHILD EVANGELISM FELLOWSHIP
OF HAWAII, INC.,

Plaintiff,

vs.

HAWAI‘I STATE DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.

Civil No. 24-00034 MWJS-WRP

PERMANENT INJUNCTION

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FINDINGS OF FACT

1. On January 3, 2024, Plaintiff filed its Verified Complaint for Preliminary and Permanent Injunctive Relief, Declaratory Relief, and Damages (ECF No. 1), and simultaneously filed its Motion for Preliminary Injunction. (ECF No. 4).

2. On June 4, 2024, the Court held a hearing on Plaintiff’s Motion for Preliminary Injunction. (ECF No. 41.)

3. On June 27, 2024, the Court entered its Order Granting Plaintiff’s Motion for Preliminary Injunction. (ECF No. 41, PageID.494-498.)

4. On October 16, 2024, the Parties participated in the Early Settlement Conference, as ordered by the Court. (ECF No. 52, PageID.521.)

5. On November 19, 2024, the Parties again participated in a further Early Settlement Conference (ECF No. 54, PageID.522), at which conference the Parties entered a settlement into the record.

6. This Permanent Injunction encompasses the agreement reached between the Parties in the settlement and binds all Parties as hereinafter set forth.

CONCLUSIONS OF LAW

1. The terms of this Permanent Injunction are fair, reasonable, equitable, and in furtherance of the public interest.

2. The terms of this Permanent Injunction comport with the United States Constitution, including the First and Fourteenth Amendments thereto. *See, e.g., Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001).

3. The Parties agree that Defendant, Hawaii Department of Education is required, under the First Amendment, to provide Child Evangelism Fellowship access to Defendants' facilities that is equal to and on the same terms as other similarly situated nonreligious organizations offering programs to students in Hawaii.

4. Plaintiff, Child Evangelism Fellowship, is entitled to prevailing party status within the meaning of 42 U.S.C. §1988 and entitled to recover its reasonable

attorney's fees and costs incurred in obtaining this Permanent Injunction in the amount set forth below.

PERMANENT INJUNCTION

Therefore, for good cause shown and in accordance with the Settlement Agreement reached by the Parties to this action, it is hereby ORDERED, ADJUDGED, and DECREED as follows: Defendant, Hawaii Department of Education; the officers, agents, servants, and employees of the Hawaii Department of Education; and other persons state-wide who are in active concert or participation with the Department of Education, are hereby permanently enjoined and directed as follows:

1. CEF will have access to Defendants' facilities in all area complexes statewide on an equal basis with similarly situated nonprofit organizations providing free after-school programs of interest to students in Hawaii, including but not limited to the Boy Scouts, Girl Scouts, Cub Scouts, Girls on the Run, A+ After School Programs, and YMCA;

2. CEF will have equal access to Defendants' facilities for its after-school Good News Club program in all area complexes statewide, such that

(a) CEF will have equal access to available spaces in Defendants' facilities, whether classroom, cafeteria, or other available indoor spaces, that are available to other similarly situated nonprofit

organizations providing community, educational, and recreational activities;

- (b) CEF will have equal access to available benefits in Defendants' facilities that are available to other similarly situated nonprofit organizations providing community, educational, and recreational activities;
- (c) CEF will have equal access to available spaces in Defendants' facilities at the same time periods that are made available to other similarly situated nonprofit organizations providing community, educational, and recreational activities; and
- (d) CEF will have access to Defendants' facilities on an equal basis concerning fees charged, if any, whether rental fees, service charges, utility charges, or custodial charges outlined in HAR section 8-39-5 as other similarly situated nonprofit organizations providing community, educational, and recreational activities;

3. Whenever CEF applies to use Defendants' facilities in any area complex statewide for a period of use not exceeding twelve consecutive months,

- (a) the relevant school's principal or designee shall approve or disapprove the application within a period not to exceed twenty-one (21) days from the submission of the written application;

- (b) CEF shall have ten (10) days from receipt of a denial to submit an appeal;
- (c) if any of CEF's facilities use applications are denied and CEF appeals the denial decision, the relevant district superintendent shall consider the appeal and issue a decision on the appeal within a period not to exceed fourteen (14) days from receipt of the appeal;
- (d) if the school principal, designee, or district superintendent determines that exigent circumstances require an extension of the timeframes set forth in (a) and (c), the school principal, designee, or district superintendent may extend the timeframes by a reasonable amount of time with written notice to CEF that explains the length of the extension and why the extension is necessary;
- (e) if any of CEF's facilities use applications are denied, whether initially by the school principal or designee or by the district superintendent on appeal, the relevant decisionmaker will provide CEF a written denial outlining the specific reasons why the application was denied, with sufficient particularity to allow scrutiny of whether those reasons are valid;

4. The permanent injunction governs the Defendants' treatment of CEF so long as HAR sections 8-39-3 and 8-39-5 are in their current form. CEF will be similarly classified in any future revisions or modifications to those provisions;

5. All complex area superintendents will be provided with a copy of this Permanent Injunction.

It is hereby further ORDERED, ADJUDGED, and DECREED as follows:

1. Child Evangelism Fellowship of Hawaii is hereby declared a prevailing party under 42 U.S.C. §1988.

2. The Parties have hereby agreed that Plaintiff is entitled to the amount of \$100,000.00, as and for reasonable attorney's fees and costs under 42 U.S.C. §1988 (hereinafter the "Fee Award"). The Court hereby finds such agreement reasonable, just, and appropriate, and awards Plaintiff the same.

3. To obtain funds in the amount of the Fee Award to pay same, Defendants shall take all necessary and reasonable measures to ensure that the Fee Award is listed on the next bill or necessary legislation ("Claims Bill"), requesting appropriation of funds for Hawaii Department of the Attorney General claims, settlements, and judgments, submitted in the Hawaii State Legislature as soon as is possible in the Hawaii State Legislature's next legislative session beginning January 15, 2025, but in no event shall the Claims Bill be submitted later than the last day on which bills or claims may be introduced into the Hawaii Legislature's 2025 Session.

4. Defendant shall keep Plaintiff apprised of the Claims Bill's progress, and to act in good faith to facilitate the Claim Bill's enactment as soon as practicable.

5. Defendants shall further take all necessary and appropriate measures to ensure that the Fee Award and Claims Bill are facilitated with all deliberate speed.

6. As soon after the adoption, enactment, or issuance of the Claims Bill as reasonably possible and after the Hawaii Department of the Attorney General receives the payment from the Hawaii Department of Accounting and General Services, which the Parties hereby understand to occur after the Hawaii fiscal year begins on July 1, 2025, the Fee Award shall be sent to the Florida office of the undersigned counsel for Plaintiff, at Liberty Counsel, P.O. Box 540774, Orlando, FL 32854, via a trackable mail service, such as U.S. Postal Service Priority Mail. Promptly upon dispatch, Defendants shall confirm the mailing of the Fee Award in writing to Plaintiff's counsel, and shall provide the tracking information to Plaintiff's counsel.

7. If for any reason the Claims Bill fails, Plaintiff shall be entitled to move this Court for appropriate Judgment concerning the Fee Award, and Defendants shall not oppose Plaintiff's entitlement to the Fee Award.

8. If any additional litigation becomes necessary to enforce the terms of this settlement agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs, and interest.

9. This Permanent Injunction resolves all issues raised by Plaintiff in this action, and the Clerk is hereby directed to enter this Permanent Injunction on the record in this action and to dismiss Plaintiff’s Complaint with prejudice, as contemplated by the Joint Motion for Permanent Injunction and Stipulation of Dismissal entered in the record by the Parties.

10. The Court shall retain jurisdiction to the extent necessary to enforce the terms of this Permanent Injunction.

SO ORDERED this twenty-sixth day of December 2024.



/s/ Micah W.J. Smith

Micah W.J. Smith
United States District Judge