



GENTNER DRUMMOND
ATTORNEY GENERAL

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To Whom It May Concern:

With graduation season soon approaching, I wanted to take this opportunity to discuss the religious rights of Native American students at school ceremonies. As many are aware, in the past, questions have arisen regarding whether Native American students are allowed to wear ceremonial eagle feathers at their graduations. I hope that through this correspondence any confusion concerning these matters can be avoided, and any impacted students will be proactively permitted to exercise their religious rights.

Pursuant to the Oklahoma Religious Freedom Act (“ORFA”), “[n]o governmental entity shall substantially burden a person’s free exercise of religion unless it demonstrates that application of the burden to the person is: (1) Essential to further a compelling governmental interest; and (2) The least restrictive means of furthering that compelling governmental interest.” 51 O.S. § 253(B).

The “free exercise of religion” is broadly interpreted and has been described by the United States Supreme Court as “protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through ‘the performance of (or abstention from) physical acts.’” *Kennedy v. Bremerton Sch. Dist.*, 213 L. Ed. 2d 755, 142 S. Ct. 2407, 2421 (2022) (citing *Employment Div., Dep’t of Human Res. of Oregon v. Smith*, 494 U.S. 872, 877, 110 S. Ct. 1595, 1599, 108 L. Ed. 2d 876 (1990)). To “substantially burden” a person’s free exercise of religion is also broadly defined and generally means to “inhibit or curtail religiously motivated practice[s].” 51 O.S. § 252(7). Thus, when a school disallows Native American students from wearing ceremonial feathers to their graduations as part of a religiously motivated practice, the prohibition results in a substantial burden on the students’ rights under the ORFA.

Schools may only lawfully prohibit the adornment of eagle feathers if it can demonstrate that it has a compelling interest for doing so, and the school has implemented the least restrictive means for advancing that interest. Satisfying a “compelling” interest, however, is a difficult burden to meet – it “must advance ‘interests of the highest order[.]’” *Espinoza v. Montana Dep’t of Revenue*, 207 L. Ed. 2d 679, 140 S. Ct. 2246, 2249 (2020) (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546, 113 S. Ct. 2217, 2233, 124 L. Ed. 2d 472 (1993)). A school’s mere preference or discretion will not suffice as a compelling interest that outweighs the rights afforded to students under the ORFA. Accordingly, a school’s desire for aesthetic uniformity or the prevention of a hypothetical disruption, which are both reasons that have been previously cited for the exclusion of ceremonial eagle feathers at graduations, fails to qualify as a legally sufficient compelling interest.

Additionally, even assuming that a school can articulate a compelling interest for limiting Native American students' exercise of religion at graduation ceremonies, the school is still required to advance that interest by the least restrictive means possible. For example, if a school's concern is that adornments to graduation caps may create a disruption, rather than effecting a total ban on all adornments, the school could allow exemptions for ones of significance, such as ceremonial feathers. It is evident that alternative policies exist as many schools in and out of Oklahoma permit the use of feathers without compromising the integrity of the graduations.

For the aforementioned reasons, it is my position that Native American students in Oklahoma should be permitted to wear eagle feathers to their graduation ceremonies if doing so is motivated by the students' rights to exercise their religion. This position is consistent with applicable state and federal laws, as well as Senate Bill 429, which was introduced this legislative session and, if passed, will *expressly* allow students to wear tribal regalia at school functions, thereby eliminating any doubts as to the religious rights of the students.

Upholding the rights granted to Oklahomans under the ORFA is of great importance and honoring the significance of ceremonial items is one way in which we can ensure the integrity of that law.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gentner Drummond". The signature is stylized and cursive.

Gentner Drummond
Oklahoma Attorney General