



JOY HOFMEISTER
STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

May 3, 2021

RE: Tribal Regalia at Graduation Ceremonies

Dear Superintendent and Honorable Members of the Board of Education,

In advance of this school year's imminent graduation exercises, I am writing to reiterate my support of Native American Students' right to wear tribal regalia and items of religious or cultural significance, such as, eagle feathers during graduation ceremonies. I strongly encourage your district leadership to examine existing tribal regalia policies in your local communities. As you know, Oklahoma is officially home to 39 tribal nations – as well as individuals associated with many other tribes – that collectively represent a unique cultural foundation in all of our school communities. Our American Indian students value a number of items that pay homage to their cultural heritage.

The federal Every Student Succeeds Act (ESSA) directs the collaboration of local education agencies and tribal educational representatives “to meet the unique educational and culturally related academic needs of Indian students; to ensure that Indian students gain knowledge and understanding of Native communities... traditions, and cultures; and to ensure that teachers, principals, other school leaders, and other staff who serve Indian students have the ability to provide culturally appropriate and effective instruction and supports to such students” (20 U.S.C. § 7402).

The Oklahoma State Department of Education (OSDE) recommends that those districts required to conduct tribal consultation pursuant to ESSA (20 U.S.C. § 7918) reserve time in this year's consultation to discuss policies regarding American Indian students wearing eagle feathers and other culturally significant Native regalia to graduation ceremonies and similar events. For districts not required to conduct such consultations, a policy discussion with local tribal leaders and community members is strongly encouraged.

Thank you for your continued work and commitment to students.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joy Hofmeister".

Joy Hofmeister
State Superintendent of Public Instruction

Enclosed: May 8, 2019 letter from Oklahoma Attorney General Mike Hunter



MIKE HUNTER
ATTORNEY GENERAL

May 8, 2019

Michael W. Rogers
Secretary of Education
2300 N. Lincoln Blvd, Room 122
Oklahoma City, OK 73105

Joy Hofmeister
Superintendent of Public Instruction
2500 N. Lincoln Blvd.
Oklahoma City, OK 73105

Dear Secretary Rogers and Superintendent Hofmeister:

I have learned recently that several schools in Oklahoma are intending to prohibit Native American students from wearing ceremonial eagle feathers during upcoming high school graduation ceremonies. As this issue has arisen several times in the last few years with schools across the State, I write to you in hopes of establishing a uniform practice among school districts regarding this spiritual practice.

Pursuant to the Oklahoma Religious Freedom Act (ORFA), the law generally requires public schools to permit Native American students to engage in the spiritual practice of wearing eagle feathers to important events, such as graduations, even if this requires a religious exemption to an otherwise generally applicable rule. My office advanced this view in a 2016 case out of Caney Valley,¹ and again last year in a letter to the Vian school board, which had initially proposed prohibiting these spiritual items. After receiving my letter, the Vian school board reversed course and announced it will permit the eagle feathers at its upcoming graduation ceremony.

Unfortunately, it appears that various schools in the state are continuing to tell Native American students that they cannot wear the spiritual eagle feathers on their graduation cap. Accordingly, I seek to inform all school districts in the state on my views of what Oklahoma law requires, as I did with the Vian school district. As chief law enforcement officer of this State, it is my duty both to protect the rights of Oklahoma citizens as provided for by law and to advise other governmental entities in the State on appropriate compliance with the law. It is my hope that, in your roles as Secretary of Education and Superintendent of Public Instruction, you will inform all of the school districts in the state of their obligations under the law.

¹ Although a federal court dismissed that student's particular claim to a right to wear an eagle feather, that Court did not address claims under ORFA and instead permitted such claims to be filed at a later date in state court. *Griffith v. Caney Valley Public Schools*, No. 4:15-cv-273 (N.D.O.K. 2016).

Under ORFA, no governmental entity may “substantially burden a person’s free exercise of religion even if the burden results from a rule of general applicability” unless the government “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.2011 § 253.

The “exercise of religion” has been defined broadly, and need not form a central part of the person’s faith, so long as it is a practice motivated by religion. *See* 51 O.S.2011 § 252(7); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2762, 2770 (2014); *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 259-60 (5th Cir. 2010). Similarly, the term “substantially burden” has been broadly defined as any government regulation that will “inhibit or curtail religiously motivated practice,” regardless of whether the religion absolutely requires the practice. 51 O.S.2011 § 252(7); *see also Holt v. Hobbs*, 135 S. Ct. 853, 862 (2015); *Barr v. City of Sinton*, 295 S.W.3d 287, 302 (Tex. 2009). Prohibiting students from wearing ceremonial eagle feathers on their graduation caps, if that conduct is motivated by their religious beliefs, would substantially burden their free exercise of religion under ORFA. Of course, recognizing the ceremonial use of spiritual eagle feathers as a protected religious exercise would not require schools to permit practices that are not religious, and many courts have recognized that religious freedom protections apply only to practices motivated by beliefs that are sincerely held.

Thus, under the law, in order for a school to prohibit this use of eagle feathers, it must be to further a “compelling” governmental interest and must be the “least restrictive means” of implementing that compelling interest. While context may dictate what is compelling, as a general matter, “compelling” interests are those of the highest order, meant to prevent the gravest of outcomes and to advance paramount state concerns. This likely does not include a mere desire for aesthetic uniformity or to avoid a hypothetical “slippery slope” if a religious exemption is granted. *See, e.g., Betenbaugh*, 611 F.3d at 271.

Prohibition of a religious practice must also be the least restrictive means of advancing that compelling interest, meaning that if alternative policies are available that meet compelling school needs *and* provide greater religious freedom, the school must choose those less restrictive alternatives. For example, permitting religious exemptions for adorning graduation caps (just as adornments signifying academic honors are often permitted) may still be part of a policy that would nonetheless prohibit other adornments that are distracting or offensive to the solemnity of the graduation ceremony. Good evidence that alternative policies are available include the fact that other schools in the State and elsewhere permit the use of eagle feathers without any serious compromise to the order, seriousness, and celebration of a graduation ceremony. For these reasons, I do not view a complete ban on eagle feathers as the only means essential to meeting the school’s compelling needs.

I humbly request that you inform all school districts in the state regarding their obligations under the law, students’ rights with respect to spiritual eagle feathers, and the risks of litigation being filed against a school for failure to abide by the Oklahoma Religious Freedom Act. Respecting the religious beliefs of all Oklahoma students, include Native American students, is the right thing to do, and having some schools prohibit a religious practice that other schools permit makes little sense.

Please do not hesitate to contact my Office if you have any questions or concerns.

Thank you,

A handwritten signature in black ink, appearing to read "Mike Hunter". The signature is written in a cursive, slightly stylized font.

Mike Hunter
Attorney General of Oklahoma