



MIKE HUNTER
ATTORNEY GENERAL

October 23, 2018

Vian Public Schools Board of Education
P.O. Box 434
Vian, OK 74962

Dear Members of the Vian School Board:

It has come to my attention that Cherokee tribal members who are students in your school are seeking to wear ceremonial eagle feathers on their graduation caps during their high school graduation. 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 view that the Oklahoma Religious Freedom Act (ORFA) generally requires public schools to permit Cherokee 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. Accordingly, I urge the Board to adopt or revise its policies to permit these religious practices at graduation.

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). Based on my understanding of Cherokee spiritual practices, prohibiting students from wearing ceremonial eagle feathers on their graduation caps would substantially burden their free exercise of religion under ORFA.

Thus, under the law, in order for the Board to prohibit such 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.¹

I hope this letter helps inform the Board's future decision making regarding the use of spiritual eagle feathers by Cherokee students during graduation ceremonies. I urge the Board to permit such use, consistent with the requirements of Oklahoma law. Please do not hesitate to contact my Office if you have any questions or concerns.

Thank you,



Mike Hunter
Attorney General of Oklahoma

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