

First Amendment Request to Wear Tribal Regalia at Graduation

NOTE TO STUDENTS/FAMILIES:

Some states, including Alaska, Arizona, California, Kansas, Mississippi, Montana, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Utah, and Washington, have laws that explicitly protect the right to wear tribal regalia at graduation. Many other states offer strong legal protections for religious exercise. (For many Indigenous students, wearing tribal regalia at graduation is not only an important cultural practice, but it also has significant spiritual or religious meaning.) If you live in a state that has explicit protections for wearing tribal regalia at graduation or stronger protections for religious exercise, check out our other resources to determine whether you are eligible for protection under those state laws and whether you should use the self-advocacy template letter for your state.

Even if your state does not have a tribal regalia law or heightened protections for religious exercise, the First Amendment to the U.S. Constitution may require your public school to allow you to wear tribal regalia if any students are permitted to adorn their graduation caps or gowns with other items, or if the school allows other exceptions to the graduation dress code.

Use the template letter below if your school will not allow you to wear tribal regalia but has permitted (or will permit) some students to wear other, visible and personally expressive adornments, clothing, jewelry, or messages during graduation.

This template letter is provided as a tool to assist Indigenous students and their families in self-advocating for the right to wear tribal regalia at graduation. It is not legal advice and does not create an attorney-client relationship with the ACLU, any ACLU affiliate, or any attorney.

[Date]

Superintendent [First and Last Name]
Principal [First and Last Name]
[School District Address]

Re: First Amendment right to wear tribal regalia at graduation

Dear Superintendent [Last Name] and Principal [Last Name]:

I am writing to request that my student, [Name], be permitted to wear [specify item(s) of tribal regalia] during this year's graduation ceremony. Federal law protects this right, and I respectfully ask that the school district follow the law regarding this matter.

[Student's Name] is [Tribal affiliation/Native American/Indigenous.] Our [Native American/Indigenous] heritage and traditions are an important part of our family's history, religion, and identity. Tribal regalia, including eagle feathers, beadwork on graduation caps, and other items, plays an important role in graduation ceremonies for many Indigenous students. These items are typically gifted to graduating students by their families or tribal elders to recognize the student's success and academic achievements, and to celebrate these achievements from a cultural and spiritual perspective.

Graduation ceremonies are especially meaningful for Indigenous students because they have long faced structural barriers and discrimination in the educational context and, as a result, may be less likely to graduate from high school than their peers.¹ Indeed, these students have suffered horrific persecution by the government and education system:

Beginning with the Indian Civilization Act of 1819 and running through the 1960s, the United States enacted laws and implemented policies establishing and supporting Indian boarding schools across the nation. During that time, the purpose of Indian boarding schools was to culturally assimilate Indigenous children by forcibly relocating them from their families and communities to distant residential facilities where their American Indian, Alaska Native, and Native Hawaiian identities, languages, and beliefs were to be forcibly suppressed.²

¹ See, e.g., Jinghong Cai, *The Condition of Native American Students*, Nat'l Sch. Bds. Ass'n. (Dec. 1, 2020), <https://www.nsba.org/ASBJ/2020/December/condition-native-american-students>.

² Memo from Sec. of the Interior Deb Haaland Regarding Fed. Indian Boarding Sch. Initiative (June 22, 2021) 1, <https://www.doi.gov/sites/doi.gov/files/secint-memo-esb46-01914-federal-indian-boarding-school-truth-initiative-2021-06-22-final508-1.pdf>.

As U.S. Supreme Court Justice Neil Gorsuch recently explained, “[u]pon the children’s arrival, the boarding schools would often . . . cut their hair . . . and confiscate their traditional clothes.”³ The schools also “frequently prohibited children from speaking their native language or engaging in customary cultural or religious practice.”⁴

The appalling legacy of Indian boarding schools remains today, “manifesting itself in Indigenous communities through intergenerational trauma, cycles of violence and abuse, disappearance, premature deaths, and other undocumented bodily and mental impacts.”⁵ Denying students like [Student’s Name] the right to wear tribal regalia during graduation further deprives them of their heritage, faith, and identity, perpetuating the destructive assimilation policies of the past and promoting harmful stereotypes and misunderstandings of Indigenous Peoples.⁶ *It also violates federal law.*

It is our understanding that school officials have permitted some students to wear other, visible and personally expressive adornments, clothing, jewelry, or messages during graduation. For example, [fill in.] Thus, school officials must allow [Student’s Name] to do the same. The First Amendment to the U.S. Constitution prohibits public schools from selectively or unevenly enforcing a graduation dress code to exclude tribal regalia.⁷

In addition, Title VI of the Civil Rights Act of 1964 prohibits federally funded schools from discriminating based on race, ethnicity, or national origin. Even if schools do not intend to discriminate, if their policies disproportionately and negatively affect students of a particular race, ethnicity, or national origin, the policies will likely be considered discriminatory. School policies that prevent Indigenous students from wearing tribal regalia may violate this law.⁸

³ *Haaland v. Brackeen*, 599 U.S. 255, 300 (2023) (Gorsuch, J., concurring) (internal citations omitted).

⁴ *Id.*

⁵ Memo from Sec. of the Interior, *supra* n.2, at 1, 3 (“Over the course of the Program, thousands of Indigenous children were removed from their homes and placed in Federal boarding schools across the country. Many who survived the ordeal returned home changed in unimaginable ways, and their experiences still resonate across the generations.”).

⁶ See *Becoming Visible: A Landscape Analysis of State Efforts to Provide Native American Education for All*, Nat’l Congress of Am. Indians (Sep. 2019) 8-9, https://archive.ncai.org/policy-research-center/research-data/prc-publications/NCAI-Becoming_Visible_Report-Digital_FINAL_10_2019.pdf (“A startling 72 percent of Americans rarely encounter or receive information about Native Americans... Invisibility, myths, and stereotypes about Native peoples perpetuated through K-12 education are reinforced across society, resulting in an enduring and damaging narrative regarding tribal nations and their citizens. The impact is profound. Native Americans live in a culture where they are often misunderstood, stereotyped, and experience racism on a daily basis. The lack of accurate knowledge about Native Americans contributes to these experiences and hinders the ability of all Americans to experience and celebrate the unique cultural identities, histories, and contributions of Native peoples.”).

⁷ See *Waln v. Dysart Sch. Dist.*, 54 F.4th 1152, 1160-61 (9th Cir. 2022) (discussing free-speech and religious-freedom First Amendment implications of selective enforcement of graduation dress-code policies).

⁸ See *Indigenous Students Should Be Allowed to Wear Tribal Regalia at Graduation*, ACLU (Apr. 7, 2022), <https://www.aclu.org/news/religious-liberty/indigenous-students-should-be-allowed-to-wear-tribal-regalia-at-graduation>.

This letter is my [first/second/third] communication with the school district regarding this matter. [In response to my previous communications, district officials have (fill in).] Because the First Amendment is clear and because Indigenous students deserve to have their culture and heritage recognized in a manner that is meaningful to them and their families, I hope that there will be no need to pursue this matter further.

Please contact me as soon as possible at [cell phone / email address] to confirm that [Student's Name] will be allowed to wear [item(s) of tribal regalia] at the upcoming graduation ceremony.

Sincerely,

[Signature of Parent/Guardian]

[Parent/Guardian Name]