

May 15, 2019

**Via Email**

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Dale Baich  
*President*

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*Legal Director*

*Re: Native American Religious Dress Accommodation*

Dear Dr. Kellis and Ms. Pritchard:

We have been contacted by LaRissa Waln, a senior at Valley Vista High School, regarding the school's unlawful refusal to accommodate her religious beliefs and practice during this Thursday's graduation ceremony. In accordance with her Native American faith, Ms. Waln—an enrolled member of the Sisseton-Wahpeton Sioux Tribe—seeks to wear beadwork and an eagle feather on her graduation cap. Under Arizona's Free Exercise of Religion Act (FERA), A.R.S. § 41-1493 *et seq.*, the school may not deny Ms. Waln's requested accommodation. She must be permitted to wear these religiously significant items on her graduation cap.

As you may know, eagle feathers are of the utmost significance to Native American religious practice. According to Native American religious tradition, eagles have a special connection with God and carry peoples' prayers to the heavens. Many Native Americans thus believe that bald and golden eagle feathers are sacred religious objects representing honesty, truth, majesty, strength, courage, wisdom, power, and freedom. *See, e.g.,* Press Release on Policy on Tribal Member Use of Eagle Feathers, Department of Justice (October 12, 2012), <https://www.justice.gov/opa/pr/justice-department-announces-policy-tribal-member-use-eagle-feathers>. ("From time immemorial, many Native Americans have viewed eagle feathers and other bird parts as sacred elements of their religious and cultural traditions."). In fact, many "Native Americans hold eagle feathers sacred and equate them to the cross or the Bible" in Christianity. *Environmental Protection v. Native American Free Exercise of Religion*, 22 Hastings Const. L.Q. 771, 774-75 (1995).



Consistent with these religious beliefs, an eagle feather is typically gifted to a young Native American person at a time of great honor and personal achievement. So too, the beadwork prepared by Ms. Waln’s father for her graduation cap has important religious meaning: It signifies and honors the spiritual role that family plays in the graduate’s success. These religious items are especially important for many Native Americans in ceremonial contexts like a graduation, and Ms. Waln has a sincere religious belief that wearing these sacred religious symbols on her graduation cap is necessary to recognize and express thanks for God’s blessing over her achievement.

Arizona’s FERA provides heightened protections for the very type of religious exercise in which Ms. Waln seeks to engage here. The law prohibits the government, including school districts, from imposing a substantial burden on an individual’s religious exercise unless the government can demonstrate that this burden is (1) “in furtherance of a compelling governmental interest” and (2) “the least restrictive means of furthering that compelling governmental interest.” A.R.S. § 41-1493.01(C).<sup>1</sup>

As explained above, Ms. Waln’s religious beliefs regarding the wear of an eagle feather and beadwork on her graduation cap are sincerely held. Denying her the ability to abide by her faith while participating in her graduation ceremony would substantially burden her religious exercise.<sup>2</sup>

Thus, under each prong of the legal analysis mandated by the FERA, school officials must meet a heavy burden to justify denying Ms. Waln’s requested religious accommodation. *Dysart* has failed to do so here. There is simply no *compelling* governmental interest in prohibiting her from exercising her Native American faith in this context. The proposed accommodation would merely permit Ms. Waln to take part in a passive, quiet religious observance. It would pose no harm to anyone else; nor

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<sup>1</sup> FERA “parallels” the federal Religious Freedom Restoration Act, making federal case law instructive on its application. *See State v. Hardesty*, 222 Ariz. 363, 365, 214 P.3d 1004, 1006 (2009).

<sup>2</sup> We understand that school officials have stated that Ms. Waln may instead place the feather in her hair, hold the feather, or pin it to her dress. However, these alternatives do not comport with Ms. Waln’s religious beliefs, which instruct that the feather and beadwork must be placed above the head and cannot be covered by the cap, for doing so would desecrate these objects.

would it cause disruption or otherwise impede the progress of the graduation ceremony.

Moreover, even if school officials could demonstrate a compelling interest in prohibiting Ms. Waln from attaching religiously significant items to her graduation cap, the fact that other schools—including some in Arizona—have permitted Native American students to wear these items at graduation makes clear that denying Ms. Waln’s proposed religious accommodation would not be the least restrictive means of furthering a compelling governmental interest. *See, e.g.*, Brenna Bailey, *TUSD to allow tribal regalia at graduation*, Arizona Daily Star (Mar. 28, 2019); *Holt v. Hobbs*, 135 S. Ct. 853, 866 (2015) (holding, under same legal standard mandated by the FERA, that prison’s denial of religious accommodation for beard was not the “least restrictive means” of achieving a compelling interest where “many other prisons allow inmates to grow beards while ensuring prison safety and security”).

Unfortunately, in a meeting yesterday with Ms. Waln’s father, Dr. Kellis demonstrated that he simply does not understand the law that governs Ms. Waln’s request. Justifying the District’s denial of a religious accommodation here, Dr. Kellis pointed to a 2016 judicial decision in Oklahoma. But in that case, the court’s analysis was based on the Free Speech Clause and Free Exercise Clause of the First Amendment, under which the analysis applied to school officials is different and more deferential to schools than the legal standard applied under Arizona’s FERA. *See generally Griffith v. Caney Valley Public Schools*, 157 F.Supp.3d 1159, 1164-65 (N.D. Okla. 2016) (considering only whether “the school’s current dress policy is reasonably related to a legitimate pedagogical concern” and whether “the policy lacks a rational basis”).

As explained above, the legal standard applied to schools under Arizona’s FERA—strict scrutiny—provides heightened protection for religious exercise and is much more exacting than the analysis applied by the court in *Griffith*. Indeed, using the same legal standard set forth in FERA, courts have already required religious exemptions to mandatory dress code or appearance policies. Under this legal standard, for example, courts have required a public school to allow a Native American student to maintain his long hair in accordance with his religious beliefs, *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248 (5th Cir. 2010), a prison to permit a Muslim prisoner to grow a beard in accordance with his religious beliefs, *Holt v. Hobbs*, 135 S. Ct. 853 (2015), and the U.S. Army to authorize a Sikh ROTC cadet to wear a turban, beard, and unshorn hair. *Singh v. McHugh*, 109 F. Supp. 3d 72 (D.D.C. 2015). In each of these cases, the courts found that the



government could not meet the heavy burden for denying a religious exemption under the strict-scrutiny test.

During yesterday's meeting, Dr. Kellis also complained that other students might seek religious exemptions or accommodations if Ms. Waln's accommodation is granted. Dr. Kellis's reasoning further demonstrates a gross ignorance of the applicable law here. This "slippery slope" argument has repeatedly been rejected by courts that have applied the same legal standard set forth in FERA. *See, e.g., Yellowbear v. Lampert*, 741 F.3d 48, 62 (10th Cir. 2014) (holding that prison failed to show that denying a Native American prisoner access to a sweat lodge was the least restrictive means of accomplishing a compelling governmental interest and rejecting "slippery slope" argument because "the law requires considerably more than milquetoast musing that granting one request might lead to others").

No student should have to choose between exercising her faith and attending her graduation ceremony. We respectfully request that you immediately allow Ms. Waln to participate in graduation while wearing her eagle feather and beadwork on her graduation cap, as required under Arizona's religious-freedom law. Thank you for your prompt attention to this matter and please do not hesitate to contact us if you have any questions.

Sincerely,



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