



May 22, 2015

Via Email and U.S. Mail

Matthew Campbell  
Native American Rights Fund  
1506 Broadway  
Boulder, CO 80302-6296

Delia Parr  
California Indian Legal Services  
324 F Street  
Eureka, CA 95501

Novella Coleman  
ACLU Foundation of Northern California  
39 Drumm Street  
San Francisco, CA 94111

Re: Student Dress Code for Graduation Ceremony

Dear Mr. Campbell, Ms. Parr, and Ms. Coleman:

We have received your letter of May 19, 2015 indicating student Christian Titman's wish to wear an eagle feather on his cap during the graduation ceremony at Clovis High School. As indicated in my email to Mr. Campbell earlier this week, I have reviewed the letter with counsel and other members of the District's administrative team, and provide the following response to the items outlined in your letter.

Senior Expectations – Dress Code and Graduation

Clovis High School's Senior Activities Handbook outlines the expectations related to student dress, as well as student behavior, both of which reflect the formality of the graduation ceremony. The District requires students to follow certain dress code parameters for the graduation ceremonies. The dress code includes the provision that the only acceptable accessories to the standard gown are the CSF Gold Cord, CSF Life Pin, Top 20 Medallion, and the National Honor Society Sash, all of which are academic awards earned by students during high school. In keeping with the dress code, previous requests by students to wear stoles, leis, rosaries, and necklaces have not been approved for wear outside of a student's gown or on a graduation cap tassel. The Senior Activities Handbook describes that the required graduation attire signifies the unity of the class and the students as graduates of Clovis High School.

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The Senior Activities Handbook also emphasizes that graduation is a formal ceremony. Seniors are expected to attend multiple graduation rehearsals to prepare for the ceremony. In addition, students are expected to behave in a manner that respects the formality of the ceremony and any behavior that draws undue attention to an individual is not acceptable. Towards that end, the Handbook advises that large signs, balloons, and noisemakers are not allowed in the stadium for graduation.

The purpose behind the graduation dress code and these behavior expectations includes a show of respect for the formality of the graduation ceremony, unity of the graduating class, and also to avoid disruption of the graduation ceremonies that would likely occur if students were allowed to alter or add on to their graduation cap and gown.

#### Participating in Graduation Ceremonies is a Privilege

Participation in graduation ceremonies is a privilege, not a right. Accordingly, attendance at and participation in a graduation ceremony is not a protected right. (*Swany v. San Ramon Valley Unified Sch. Dist.* (N.D. Cal. 1989) 720 F.Supp. 764.)

As a privilege, the District and Clovis High School may impose rules and limitations upon participation in graduation so long as they have a rational basis, i.e., rationally related to a legitimate interest of the District and/or Clovis High School. (*Steffes- v. Cal. Interscholastic Federation* (1986) 176 Cal.App.3d 739.) There are various rational and legitimate reasons for the graduation dress code. As discussed above, these reasons include the uniformity and unity created by the students' appearance in their caps and gowns, along with avoiding disruption of the graduation ceremonies that would take place if students were allowed to alter or add on to their caps and gowns.

Your letter describes that the eagle feather holds religious significance to Native Americans and that Christian wishes to wear the feather for religious and spiritual reasons in order to honor his heritage. Courts have considered similar situations according to the rational basis standard. Under the United States Supreme Court's decision in *Employment Division v. Smith* (1990) 494 U.S. 872, "a rationally based, neutral law of general applicability does not violate the right to free exercise of religion even though the law incidentally burdens a particular religious belief or practice." (*Miller v. Reed* (9th Cir. 1999) 176 F.3d 1202, 1206.) As such, "*Smith* held that neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling interest" and that a rational basis standard applies in such instances. (*City of Boerne v. Flores* (1997) 521 U.S. 507, 514.)

As described above, the dress code for graduation has been implemented in a neutral manner such that requests to wear stoles, leis, rosaries, and necklaces on the outside of the graduation robe or on the graduation cap tassel have also not been granted. Accordingly, the dress code does not violate the free exercise of religion, even though it may incidentally affect a particular religious belief.



### New Federal District Court Case on School Graduation Dress Code

Most recently, on May 20, 2015, the United States District Court for the Northern District of Oklahoma issued a ruling involving a dispute over a high school student's request to wear an eagle feather on her tassel in violation of the school district's graduation dress code. (See *Griffith v. Caney Valley Public Schools*, U.S.D.C. Northern Dist. of Oklahoma, Case No. 15-CV-273-GKF-FHM.) The student's request included claims that the dress code violated her rights to the free exercise of religion, as well as free speech. The court denied the student's request for a preliminary injunction and instead upheld the district's dress code which prevented her from wearing the eagle feather. In reaching its decision, the court found that the school's policy of prohibiting all decorations on graduation caps is a neutral policy of general applicability. In addition, the school had a legitimate interest in maintaining the formality of the graduation ceremony and in demonstrating the unity of the graduating class. The court also found that by allowing students to wear certain forms of academic recognition, such as National Honor Society stoles, the school did not transform the ceremony into a public forum where the school had relinquished control over the content and the orderly proceedings. Because the court found that the dress code was both neutral and generally applicable and was rationally related to a legitimate governmental interest, the court concluded that student failed to demonstrate that she was likely to prevail on the merits and therefore her request for a preliminary injunction was denied.

### Alternatives for Graduation

We are optimistic that we can find an alternative that will be meaningful for Christian within the District's parameters for the graduation ceremony. For example, Christian could wear the eagle feather immediately after the ceremony, although not during the ceremony itself. The principal and others will also be available to pose for photos with Christian wearing the eagle feather following the ceremony, if that would be meaningful to the family. If, however, Christian or his family would like to have other alternatives considered to wear the eagle feather during the ceremony, please have them contact Associate Superintendent Norm Anderson to schedule a meeting. Mr. Anderson may be reached at 559-327-9350 on Tuesday, May 26, 2015.

Respectfully,



Janet Young, Ed.D.  
Superintendent

cc: Norm Anderson, Associate Superintendent for School Leadership, Clovis Unified School District  
Ruth Mendyk, Lozano Smith Attorneys at Law