

Native American Rights Fund

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January 9, 2015

Sent via Email and U.S. Mail

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Community High School
500 Stanford Road
Grand Forks, ND 58203

RE: Seniors' Right to Wear Eagle Feathers at Graduation

Grand Forks Public School Administration:

Founded in 1970, the Native American Rights Fund (NARF) is the oldest and largest nonprofit law firm dedicated to asserting and defending the rights of Indian tribes, organizations and individuals nationwide. NARF's legal practice is concentrated in five key areas: the preservation of tribal existence; the protection of tribal natural resources; the promotion of Native American human rights; the accountability of governments to Native Americans; and the development of Indian law and educating the public about Indian rights, laws, and issues.

NARF has been asked by the Grand Forks Native American Parent Committee to write a letter of support for its effort to broaden current graduation policy to permit a very sincere form of cultural and religious expression,

Native students wearing eagle feathers at high school graduation. We write today to wholeheartedly endorse this effort by the Parent Committee. Over NARF's 45 year history, we have been asked on numerous occasions to provide this same form of support. We are proud to say that we have never had to bring litigation in these types of situations. When considering a sincere request by Native parents to expand graduation policy, we have never had a school district refuse to do so, once there has been an opportunity to engage in constructive and meaningful dialogue on this matter.

From a policy standpoint, it only makes sense to permit Native American students to wear eagle feathers at graduation. Both bald and golden eagles (and their feathers) are highly revered and considered sacred within American Indian traditions, culture and religion. They are honored with great care and shown the deepest respect. These feathers represent honesty, truth, majesty, strength, courage, wisdom, power, and freedom. We appreciate your general interest in applying policy consistently, but in this instance you have a significant Native American community and population in your school district, with aboriginal ties to the landscape that spans millennia, with a sincere and fervent belief in the sanctity of the eagle, and the proud cultural significance of being permitted to display it on such a special occasion.

Federal law unequivocally recognizes and protects the right of Native persons to possess eagle feathers. *See, e.g.*, the Bald and Golden Eagle Protection Act of 1962, 16 U.S.C. § 668 (2014); 1994 Presidential Executive Memorandum entitled "Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes," 59 Fed. Reg. 22953 ("Eagle feathers hold a sacred place in Native American culture and religious practices."); 2012 United States Department of Justice Policy on Tribal Member Use of Eagle Feathers, <http://www.justice.gov/opa/pr/2012/October/12-ag-1234.html> ("From time immemorial, many Native Americans have viewed eagle feathers and other bird parts as sacred elements of their religious and cultural traditions.").

According to the North Dakota constitution, "the free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state." N.D. Const. Art. 1, §4. Regulations that tend to burden the free exercise of religion, whether directly or indirectly, necessitate a balancing of the individual's religious interests with the importance of the state's interests. *State v. Shaver*, 294 N.W.2d 883, 890 (N.D. 1980). When balancing these interests, time-honored and established religious beliefs should be "given great weight." *State v. Rivinius*, 328 N.W.2d 220, 226 (N.D. 1982). As mentioned above, eagle feathers are most highly revered in Native American religion and tradition, and this has been so for countless generations.

It should also be noted that North Dakota has recognized that it is appropriate to carve out exceptions to generally applicable rules only for students (and their parents) who demonstrate a sincerely held religious belief. *See id.* Consequently, Grand Forks Public Schools could carve out an exception to the graduation dress code for expression of sincerely held religious beliefs without opening the door for all sorts of non-religious student expression.

Typically, an eagle feather is given only in times of great honor – for example, eagle feathers are given to mark great personal achievement. The gift of an eagle feather to a youth is a great honor and is typically given to recognize an important transition in his or her life. Many young people are given eagle feathers upon graduation from high school to signify achievement of this important educational journey and the honor the graduate brings to his or her family, community, and tribe.

In deciding how to press forward in this matter, we ask Grand Forks School District to remember that “in our society and in our culture high school graduation is one of life’s most significant occasions.” *Lee v. Weisman*, 505 U.S. 577, 595, 112 S.Ct. 2649, 2659, 120 L.Ed.2d 467 (1992). “Graduation is a time for family and those closest to the student to celebrate success and express mutual wishes of gratitude and respect, all to the end of impressing upon the young person that role that it is his or her right and duty to assume in the community and all of its diverse parts.” *Id.* In light of the significance that the eagle feather has to Native American students, especially at graduation, we urge you to permit Native American students to express their religious and spiritual beliefs by wearing eagle feathers on their cap or gown.

Thank you in advance for your consideration in this matter.



Steven C. Moore
Senior Staff Attorney
Native American Rights Fund

Sincerely,



Matthew L. Campbell
Staff Attorney
Native American Rights Fund

cc: Native American Parent Committee