

DISTRICT COURT
FILED

FOR THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

MAY 15 2023

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

(1) Lena' Black,)
)
Plaintiff,)
)
v.)
)
(1) Broken Arrow Public Schools;)
(2) Lesa Dickson; and)
(3) Karen Holman)
)
Defendants.)

CJ-2023-01695
Case No.

TRACY L. PRIDDY

CIVIL PETITION

The plaintiff, Lena' Black ("Plaintiff" or "Ms. Black"), for her claims for relief alleges and states as follows:

INTRODUCTION

1. On May 16, 2022, Ms. Black, an enrolled member of the Otoe-Missouria Tribe of Oklahoma and of Osage descent, arrived at Broken Arrow High School wearing her graduation regalia that included an eagle feather plume attached to her mortarboard.
2. Ms. Black received the eagle plume in an Otoe-Missouria pluming ceremony when she was three years of age.
3. The plume Ms. Black received in this pluming ceremony represents the prayers of her Otoe-Missouria people for her life and protection. As such, it is a sacred object.
4. While in line waiting to walk onto the Broken Arrow High School football field to take her seat at the graduation ceremony, Ms. Black was accosted by two school officials.
5. The school officials told her she could not proceed to the graduation ceremony with her eagle plume attached to her mortarboard because it was a prohibited "decoration."
6. Ms. Black attempted to explain the importance of her plume, and why it was not a decoration.

7. The school officials ignored Ms. Black's explanations and attempted to forcibly remove the eagle plume from her mortarboard.
8. The school officials physically touched Ms. Black's eagle plume and mortarboard during this encounter.
9. As a result of the encounter with the school officials, Ms. Black's sacred eagle plume was physically and ceremonially damaged.
10. Ms. Black, who suffers from an anxiety disorder, was distraught.
11. In the presence of other students, faculty, and staff, Ms. Black collapsed to the ground while the school officials continued to grab at her eagle plume and mortarboard.
12. In order to protect herself and her eagle plume, Ms. Black removed her mortarboard and her plume from the mortarboard.
13. Ms. Black then ran out to the football field to catch up with her fellow students.
14. She would eventually walk across the graduation stage holding her eagle plume in her hand.
15. Other students, however, were permitted to wear various secular stoles, cords, and other items to the graduation recognizing their academic achievement.
16. Some students also wore religious items like crosses and hijabs.
17. This unnecessary, traumatic experience ruined Ms. Black's graduation experience, a day of celebration for her, her family, and her community for Ms. Black's academic accomplishments, personal growth, and future prospects.
18. High school graduation is a deeply significant event for Ms. Black and other Native American students who wish to practice their religious beliefs, celebrate their academic achievements, and transition into adulthood by wearing an eagle feather and other tribal regalia at their graduation ceremonies.
19. This civil rights action seeks to protect the rights of all Native American students to wear religious items at their graduation ceremonies unmolested by school officials.

20. Native students should be permitted to recognize their academic achievement from a religious and spiritual viewpoint, just as so many other students are allowed to recognize their academic achievement from a secular viewpoint.
21. Ms. Black seeks damages against Broken Arrow Public Schools (“School District”), Lesa Dickson, and Karen Holman (“Individual Defendants”) as set forth below, for prohibiting her from wearing her sacred eagle plume at her high school graduation, thereby infringing upon her right to free exercise of religion and freedom of speech under the Oklahoma Constitution, the Oklahoma Religious Freedom Act (“ORFA”), the United States Constitution, and 42 U.S.C. § 1983. Ms. Black also seeks damages for the School District’s negligence and the Individual Defendant’s intentional infliction of emotional distress.

PARTIES

22. Plaintiff, LENA’ BLACK, is a citizen of the State of Oklahoma and an enrolled member of the Otoe-Missouria Tribe of Oklahoma and is of Osage descent.
23. Defendant, BROKEN ARROW PUBLIC SCHOOLS, is an Oklahoma independent school district with headquarters and administrative offices in Broken Arrow, Oklahoma.
24. Defendant, LESA DICKSON, is an employee of Broken Arrow Public Schools and is sued in her individual capacity.
25. Defendant, KAREN HOLMAN, is an employee of Broken Arrow Public Schools and is sued in her individual capacity.

JURISDICTION AND VENUE

26. All relevant events occurred in City of Broken Arrow, Tulsa County, Oklahoma.
27. Venue and jurisdiction are proper in this Court. Okla. Stat. tit. 51, § 163(C).
28. Plaintiff provided a Notice of Claim to Defendant concerning this matter on or about December 1, 2022.
29. Defendant acknowledged receipt of the Notice, but failed to respond to Plaintiff’s claim by April 1, 2023.

30. This suit is further authorized by ORFA, Okla. Stat. tit. 51, § 256A.

FACTUAL BACKGROUND

31. Ms. Black is an enrolled member of the Otoe-Missouria Tribe of Oklahoma and is of Osage descent.
32. Ms. Black is a 2022 graduate of Broken Arrow Public High School in Broken Arrow, Oklahoma.
33. The City of Broken Arrow gets its name from the Muscogee Creek settlement of the same name.¹
34. Broken Arrow Public High School is located within the exterior boundaries of the Muscogee Creek Reservation.
35. In advance of her Spring 2022 graduation, Ms. Black was told that, pursuant to the School District's graduation dress code policy ("Policy"), students were not permitted to decorate their graduation mortarboards.
36. High school students from other schools in Oklahoma have worn eagle feathers or eagle plumes to their high school graduation ceremonies, to denote their religious and cultural beliefs, as well as academic achievement.
37. Ms. Black did not consider her eagle plume to be a decoration but rather a religious, cultural item that was worn in part as recognition of her academic achievement.
38. She intended to wear her eagle plume as part of her religious practice to celebrate her graduation, which is a momentous occasion for Native American students.
39. Ms. Black received the eagle plume she intended to wear at graduation as a part of an Otoe-Missouria "pluming" ceremony when she was three years old.

¹ Betty Gerber, *Broken Arrow's Origins Led to its Name*, VISIT BROKEN ARROW (last visited May 14, 2023), <https://www.brokenarrowok.gov/our-city/visit/visitor-info/history-of-the-name-of-broken-arrow#:~:text=A%20group%20who%20had%20been,breaking%20materials%20for%20making%20arrows.>

40. The late Hank Childs, an Otoe-Missouria elder who was a religious and cultural leader in the Otoe-Missouria community, carried out the pluming ceremony, praying for the life of Ms. Black and for her protection.
41. The plume Ms. Black received in this pluming ceremony represents the prayers of her Otoe-Missouria people for her. As such, it is a sacred object.
42. Eagle plumes are very delicate.
43. Ms. Black and her family have fastidiously cared for this plume since she was three years old.
44. Throughout her life, Ms. Black has participated in cultural, traditional, and religious practices of her Otoe-Missouria and Osage peoples.
45. Ms. Black is a Southern Cloth Dancer and a Gourd Dancer.
46. As an integral part of her traditional regalia, Ms. Black wore the eagle plume during her dances a few times a month from her third birthday until 2019.
47. These dances, and the sacred eagle plume's use during them, serve a religious, cultural, and ceremonial purpose for Ms. Black.
48. As the current Red Rock Creek Princess, a formal role in her community, Ms. Black serves her community through a variety of responsibilities.
49. These responsibilities include acting as a cultural ambassador, cultural representative, and community aide.
50. Eagle feathers, like Ms. Black's plume, are protected by federal law under the Bald and Golden Eagle Protection Act. 16 U.S.C. § 668.
51. The religious use of these feathers by enrolled members of federally recognized Indian Tribes is also protected. Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes, 59 FR 22953 (Apr. 29, 1994) ("Eagle feathers hold a sacred place in Native American culture and religious practices."); *see also* 16 U.S.C. § 668a (creating religious exception for Native Americans to law forbidding possession of eagle feathers and parts); 50 C.F.R. § 22.60.

52. In advance of graduation, Ms. Black asked her teacher, Anne Dresel, who is an employee of Broken Arrow Public Schools within the meaning of Okla. Stat. tit. 51, § 152(7), about wearing an eagle plume on her mortarboard.
53. Ms. Dresel affirmed that Ms. Black could wear the plume during graduation.
54. Ms. Dresel did not provide Ms. Black with any additional information about seeking specific approval to wear her eagle plume.
55. Ms. Black was never provided written information about the School District's Policy for gaining approval to wear her eagle plume at graduation.
56. As a graduating senior, Ms. Black participated in the school's graduation ceremony on May 16, 2022.
57. Knowing she had approval to wear her plume to graduation, on May 16, 2022, around 5:00 p.m., Ms. Black arrived at Broken Arrow Public High School proudly wearing her graduation regalia including a mortarboard with her eagle plume affixed.
58. The mortarboard was pinned to her hair.
59. Ms. Black was intentional about putting together the regalia she wore at graduation because of the importance of the graduation ceremony to her, her family, and her Native community.
60. Ms. Black chose to wear this particular plume because it represents the prayers of the Otoe-Missouria people that supported her on her life and educational journey, and it symbolizes the support she received to reach this benchmark in her life.
61. Ms. Black wanted to take the prayers and meaning of that plume with her into graduation.
62. Ms. Black also wore a traditional skirt gifted by her mother and made by her aunt which included colors used for gourd dancing.
63. Ms. Black's aunt made the skirt specifically for Ms. Black's graduation.
64. As required, Ms. Black arrived at the Broken Arrow Public High School Library for check-in.

65. Teachers and other school officials were present and coordinating students as they arrived.
66. Ms. Black had forgotten her graduation stole and therefore walked around the school looking for another one.
67. Once she found a replacement stole, she returned to the library.
68. As students checked in at the library, they were instructed to form or join a group.
69. Each group was led and monitored by a teacher.
70. As the groups were formed, Ms. Black became anxious because she was unable to join a group with her friends.
71. She spoke with Summer VanHoozer, her guidance counselor, and Brett Gray, a teacher, both employees of Broken Arrow Public Schools within the meaning of Okla. Stat. tit. 51, § 152(7).
72. Ms. Vanhoozer and Mr. Gray attempted to help her feel less anxious.
73. Up to this point, no employee of Broken Arrow Public Schools had raised any objection to Ms. Black's attire, including the eagle plume.
74. Ms. Black was in the library surrounded by school staff for approximately forty-five minutes.
75. While in the library, Ms. Black saw other students wearing pins on their sashes for various activities and clubs.
76. Numerous students wore colorful honor cords and sashes representing various groups and organizations.
77. One student wore a U.S. Army stole.
78. One student wore a hijab under her mortarboard.
79. Another student wore a beaded medallion.
80. Another student wore a cross on a necklace over his stole and other graduation regalia.

81. After leaving the library, Ms. Black walked through several checkpoints during which time the appropriateness of her attire was reviewed by between five and ten school officials.
82. Through each checkpoint, her plume was attached to her mortarboard.
83. None of the School District's employees at any of these checkpoints mentioned or said anything about Ms. Black's plume.
84. As Ms. Black approached the football field where the graduation was to take place, Defendant Dickson approached her.
85. Defendant Dickson is an employee of Broken Arrow Public Schools within the meaning of Okla. Stat. tit. 51, §152(7).
86. Defendant Dickson physically put her hand on Ms. Black, stopped Ms. Black from proceeding to the football field, and asked whether Ms. Black was allowed to wear her eagle plume.
87. Defendant Dickson walked away and returned with Defendant Holman.
88. Defendant Holman is an employee of Broken Arrow Public Schools within the meaning of Okla. Stat. tit. 51, §152(7).
89. Defendant Holman shouted at Ms. Black.
90. Defendant Holman walked briskly towards Ms. Black.
91. Defendant Holman yelled at Ms. Black that she needed to remove the "decoration" from her mortarboard.
92. Defendant Holman attempted to get Ms. Black's attention by yelling at her and then immediately moved to grab her.
93. Ms. Black asked them to "hold on."
94. Ms. Black attempted to explain that her eagle plume is a religious and cultural item, not a decoration.
95. She also attempted to explain that the plume was significant and that it was physically attached to her mortarboard.

96. Ignoring this, the Individual Defendants attempted to physically pull Ms. Black's eagle plume off her mortarboard.
97. As the Individual Defendants attempted to remove the sacred eagle plume from her mortarboard, they grabbed at and touched both Ms. Black's mortarboard and the eagle plume.
98. During this encounter, Ms. Black experienced a panic attack and collapsed to the ground.
99. As Ms. Black was on the ground with her knees to her chest, the Individual Defendants remained very physically close to Ms. Black in a threatening manner.
100. Ms. Black found this upsetting and overwhelming.
101. This occurred in full view of other members of the graduating class.
102. Ms. Black was humiliated to have others witness this encounter.
103. Ms. Black's friend, Tierra Calderwood, attempted to assist Ms. Black, but another teacher told Ms. Calderwood that the incident did not concern her and she should not interfere.
104. While Ms. Black was on the ground in severe emotional distress, both Defendants continued to grab at the eagle plume on Ms. Black's mortarboard.
105. Ms. VanHoozer saw this encounter.
106. This encounter went on for around ten minutes.
107. The Individual Defendants suggested Ms. Black wear the eagle plume on another part of her body.
108. Ms. Black refused, as to do so would be inconsistent with her religious beliefs.
109. In an attempt to resolve the untenable situation, Ms. Black unpinned her mortarboard from her hair and untied her eagle plume from the mortarboard.
110. Ms. Black held the eagle plume in her hand.
111. Ms. Black then stood up and ran to catch up with a group of students who were processing out onto the football field.

112. As Ms. Black walked towards the field to rejoin her classmates she was visibly upset and sobbing.
113. Entering the field was overwhelming and stressful for Ms. Black.
114. There were multiple cameras and the field was covered with chairs and people.
115. Ms. Black took her seat but was still in severe emotional distress.
116. After approximately fifteen minutes of trying to remain in her seat, Ms. Black became overwhelmed with emotion and grief.
117. As a result, she walked off the football field.
118. Ms. Black was then was met by her mother, Marci Black.
119. Upon seeing her mother, Ms. Black again fell to the ground.
120. Ms. Black tried to speak but was so upset she had difficulty communicating.
121. It was the most upset her mother had ever seen her.
122. Ms. Black did not want to go back out to the graduation ceremony and suggested her diploma could be mailed instead.
123. Ms. Black's grandmother Jackie Galven and uncle Morgan Black also came to Ms. Black's assistance and tried to help calm her down so she could rejoin the ceremony.
124. After approximately fifteen minutes, Ms. Black returned to her seat on the football field.
125. During the graduation ceremony, Ms. Black recalls another student speaking about their Christianity and the importance of their religious beliefs in one of the graduation speeches.
126. Ms. Black felt defeated and stripped of her religious beliefs.
127. Ms. Black would eventually walk across the graduation stage holding her damaged eagle plume in her hand.
128. Two days after the graduation ceremony, Ms. Black met with Ms. VanHoozer who indicated that the altercation resulted from a "miscommunication," and that Ms. Black

should have coordinated her request to wear her sacred eagle plume with the School District's Native American Education Coordinator.

129. That alleged requirement had never previously been communicated to Ms. Black, even when she specifically asked a School District employee if she could wear her plume at graduation.
130. Moreover, Ms. Black could not have asked the Native American Education Coordinator for Broken Arrow High School, as the individual filling this role had been on leave since September 2020.
131. No interim coordinator was ever appointed.
132. The School District's implementation of its Policy is part of a long and ongoing history of schools engaging in discriminatory conduct toward Native American students.
133. In the United States, schools and educational institutions have historically helped to enforce assimilative policies against Native American students and children.
134. Schools, like Broken Arrow Public School, continue to enforce similar assimilative policies today.
135. Defendants' actions ruined Ms. Black's graduation, a day of special significance for her, her family, and her Tribal Nation.
136. As a result of the encounter with the Individual Defendants, Ms. Black's sacred eagle plume was physically damaged.
137. The sacred eagle plume is now tainted with the negative energy and memories of the encounter.
138. Ms. Black has not worn this plume since graduation and now wears a different plume with her regalia.
139. The plume from graduation is still very important to Ms. Black, but she is not sure she will ever use it again.
140. Similarly, when Ms. Black wears the skirt gifted by her mother and made by her aunt, she is reminded of her traumatic graduation experience.

141. To her, the skirt feels tarnished by the whole event.
142. Ms. Black and her family continue to feel intense disappointment, stress, anger, and sadness related to this incident.
143. This event exacerbated Ms. Black's anxiety disorder.
144. Ms. Black is now in college and remains wary of her teachers.
145. She now has significant of anxiety about her eventual college graduation, including whether she will be able to wear an eagle plume or attend without fear.
146. Ms. Black has sought counseling to process the trauma of this event.

FIRST CAUSE OF ACTION

(Plaintiff's Claims Against Broken Arrow Public Schools for Violation of Her Rights Under the Oklahoma Religious Freedom Act)

147. Plaintiff re-alleges and incorporates by references all of the proceeding allegations into this First Cause of Action.
148. The ORFA, Okla. Stat. tit. 51, § 251 et seq., provides certain protections against the infringement of an individual's constitutionally guaranteed First Amendment rights to free exercise of religion by state or local government actors.
149. The ORFA provides, "Except as provided in subsection B of this section, no governmental entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability."
150. The ORFA, Okla. Stat. tit. 51, § 253(B), provides:

"No governmental entity shall substantially burden a person's free exercise of religion unless it 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."

151. The ORFA, Okla. Stat. tit. 51, § 252(2), defines “[e]xercise of religion” as including “the exercise of religion under . . . the First Amendment to the Constitution of the United States[.]”
152. The ORFA, Okla. Stat. tit. 51, § 252(5), defines “[g]overnmental entity” as “any branch, department, agency or instrumentality of state government, or any official or other person acting under color of state law, or any political subdivision of this state” which includes Defendants.
153. Defendants substantially burdened Ms. Black’s exercise of religion by forcing her to choose between her religious beliefs and the benefit of her graduation ceremony.
154. To the extent the School District has a rule of general applicability that would have precluded Ms. Black from exercising her religious beliefs by wearing an eagle plume on her mortarboard at the Broken Arrow High School graduation ceremony, it was unenforceable against Ms. Black under the ORFA because it substantially burdened her right to free exercise of her religion.
155. There is no compelling governmental interest in any rule or policy that would have precluded Ms. Black from wearing an eagle plume on her mortarboard at her graduation ceremony.
156. Even if there were a compelling governmental interest in a rule of general applicability concerning attire at graduation ceremonies, a rule or policy precluding Ms. Black from wearing an eagle plume on her mortarboard at Broken Arrow High School’s graduation ceremony is not the least restrictive means of furthering that compelling governmental interest, especially in light of its infringement on Ms. Black’s right to free exercise of religion.
157. High school students at Broken Arrow High School and other schools in Oklahoma have worn eagle feathers or plumes to their high school graduation ceremonies, to denote their religious and cultural beliefs, as well as their academic achievement.
158. In 2019, Oklahoma Attorney General Mike Hunter expressed the opinion that “the Oklahoma Religious Freedom Act generally requires public schools to permit Native American 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.”²

SECOND CAUSE OF ACTION

(Plaintiff's Claims against Defendant Broken Arrow Public Schools for Violation of her Right to Freedom of Speech under the Oklahoma Constitution)

159. Plaintiff re-alleges and incorporates by reference all of the proceeding allegations into this Second Cause of Action.
160. The Oklahoma Constitution provides protections against the infringement of an individual's rights to freedom of speech.
161. The Broken Arrow School District is a governmental entity, and its individual representatives are its agents, in their official capacities. The Defendant and its agents derive their official powers from state law.
162. The Oklahoma Constitution, art. II, § 22 provides, “Every person may freely speak, write, or publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.”
163. Defendant's refusal to allow Ms. Black to wear her sacred eagle plume on her mortarboard at her graduation ceremony was a violation of the broad protection afforded to Ms. Black's speech by the Oklahoma Constitution and violated her right to free speech under Oklahoma law.
164. The Broken Arrow High School graduation ceremony was a limited public forum.
165. Time, place, and manner restrictions imposed must be reasonable, and content-based prohibitions, as at issue in this case, must be narrowly-drawn to effectuate a compelling state interest. *State ex rel. Dep't of Transp. v. Pile*, 1979 OK 152, 603 P.2d 337, 341.
166. The Oklahoma Supreme Court has held when evaluating time, place, and manner regulation in the free speech context, Oklahoma courts will allow “the widest latitude

² See Exhibit 1.

for discussion and the narrowest range for its restriction” under the federal and State constitutions. *Id.* at 340.

167. The prohibition at issue violated Ms. Black’s constitutional rights because (1) it did not further a substantial government interest (the plume was in no way disruptive of any legitimate pedagogical interest); (2) the Defendant’s interest was plainly related to the suppression of free expression; and (3) the incidental restriction on Ms. Black’s free speech rights was not the narrowest range for restriction and was greater than was essential to furtherance of Defendant’s interest.

THIRD CAUSE OF ACTION

(Plaintiff’s Claim Against Defendant Broken Arrow Public Schools for Violation of Her Right to Free Exercise of Religion Under the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983)

168. Plaintiff realleges and incorporates by reference all of the preceding allegations into this Third Cause of Action.
169. The First Amendment of the U.S. Constitution provides, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I.
170. The Free Exercise Clause of the First Amendment is incorporated against the states through the Fourteenth Amendment.
171. Ms. Black has a right under the First Amendment of the United States Constitution to the free exercise of her religion and expression of her religious beliefs.
172. At all times relevant herein, the Defendants acted under the color of the law of the State of Oklahoma and their actions had the effect of depriving Ms. Black of her federal constitutional rights, specifically including the free exercise clause of the First Amendment.
173. A Party may bring suit under 42 U.S.C. § 1983 for deprivations of rights, immunities, or privileges of citizenship under color of state law or authority.

174. Defendants' attempts to prohibit Ms. Black from wearing her sacred eagle plume as part of her graduation regalia was not neutral and of general application—as evidenced by the accommodations allowed to other students—and was plainly targeted at Ms. Black's religious beliefs and practices as a Native American.
175. Such a governmental action can pass muster only if it is narrowly tailored to advance a compelling government interest.
176. Defendants' imposition on Ms. Black's free exercise of her religious rights was not narrowly tailored to advance any compelling state interest as accommodations were granted to students at Ms. Black's graduation and have been granted to other students in the past.
177. Further, Defendants can in no way demonstrate a compelling interest in suppressing one student's silent, non-disruptive expression of religious conviction and cultural pride while allowing other adornments on mortarboards and gowns, as well as allowing students to speak about their religious beliefs during speeches.

FOURTH CAUSE OF ACTION

(Plaintiff's Claims Against Defendant Broken Arrow Public Schools for Violation of Her Right to Freedom of Speech under the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983)

178. Plaintiff realleges and incorporates by reference all of the preceding allegations into this Fourth Cause of Action.
179. The First Amendment to the U.S. Constitution provides, "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. Const. amend I.
180. The free speech clause of the First Amendment is incorporated against the states through the Fourteenth Amendment.
181. Ms. Black has a right to freedom of speech under the First Amendment.
182. At all times relevant herein, the Defendants acted under the color of the law of the State of Oklahoma, and their actions had the effect of depriving Ms. Black of her federal

constitutional rights, including specifically the free speech clause of the First Amendment.

183. A Party may bring suit under 42 U.S.C. § 1983 for deprivations of rights, immunities, or privileges of citizenship under color of state law or authority.
184. Defendants' refusal to allow Ms. Black to wear her sacred eagle feather attached to her mortarboard during her high school graduation ceremony violated Ms. Black's right to free speech.
185. Silent, passive expressive action unaccompanied by any disorder disturbance is pure speech protected by the First Amendment.
186. Pure speech involves media that predominately serve to express thoughts, emotions, or ideas.
187. Ms. Black's desire to wear religious tribal regalia was a desire to engage in purely passive conduct.
188. Alternatively, Ms. Black's conduct carried an expressive component that was sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments, because it was intended to convey a particularized religious and cultural message that was likely to be understood by others.
189. The Broken Arrow High School Graduation was a limited public forum.
190. Time, place, and manner regulations must be reasonable.
191. Content-based prohibitions, like the one at issue here, must be narrowly drawn to effectuate a compelling state interest.
192. The regulation at issue here is a self-evident content-based prohibition.
193. The Defendants' prohibition and focus was only on Ms. Black.
194. Further, Defendants cannot have a compelling state interest in restricting Ms. Black's quiet expression of her sacred religious beliefs while allowing other students to express their religious beliefs.

195. Even if the regulation at issue is found to be content-neutral, which it clearly was not, it still violated Ms. Black's constitutional rights because (1) it did not further an important or substantial government interest (Ms. Black wearing her sacred eagle feather affixed to her mortarboard was in no way disruptive of any legitimate pedagogical interest); (2) the Defendants' interest was plainly related to the suppression of free expression; and (3) the incidental restriction on Ms. Black's First Amendment freedoms was greater than what was essential to furtherance of that interest.

FIFTH CAUSE OF ACTION

(Plaintiff's Claim Against Defendant Broken Arrow Public Schools for Negligence)

196. Plaintiff re-alleges and incorporates by reference all of the preceeding allegations into this Fifth Cause of Action.
197. Defendant Broken Arrow Public Schools owed a duty to Ms. Black, a graduating student, to protect her from harm at the Broken Arrow High School graduation ceremony and to exercise reasonable care in running its graduation ceremony and the implementation of the School District's Policy, including enforcement of that Policy.
198. Defendant Broken Arrow Public Schools breached its duty to Ms. Black by negligently implementing and enforcing the School District's Policy.
199. Defendant Broken Arrow Public Schools breached its duty to Ms. Black by negligently supervising and training its employees in the implementation of that Policy.
200. The School District failed to adequately inform Ms. Black of its Policy and how to obtain approval to wear her eagle plume.
201. The School District failed to appoint an interim Native Education Coordinator to approve exemptions from the School District's Policy.
202. The School District also failed to train its staff to appropriately enforce the Policy, as evidenced by the actions of Ms. Dressel who failed to advise Ms. Black to seek a formal exemption and the Individual Defendants' conduct toward Ms. Black.

203. Further, the School District did not adequately train or supervise the Individual Defendants who verbally assaulted Ms. Black and attempted to forcibly remove Ms. Black's sacred eagle plume.
204. The negligent actions of the School District and its employees directly caused serious injury to Ms. Black who suffered a panic attack and collapsed to the ground at her graduation.
205. As a result of the School District's negligence, Ms. Black has had to seek medical treatment.
206. She also continues to suffer emotional distress in the forms of trauma, anxiety, stress, anger, and sadness.
207. As a result of the School District's negligence, Ms. Black's eagle plume was physically and ceremonially damaged.
208. Ms. Black is entitled to recover damages to compensate for her severe emotional distress and the damage to her eagle plume.

SIXTH CAUSE OF ACTION

(Plaintiff's Claim Against the Individual Defendants in Their Individual Capacities for Intentional Infliction of Emotional Distress)

209. Plaintiff re-alleges and incorporates by reference all of the preceding allegations into this Sixth Cause of Action.
210. On May 16, 2022, the Individual Defendants intentionally or recklessly attempted to remove Ms. Black's eagle plume by physically touching her, shouting at her, invading her personal space, and touching and damaging her eagle plume while she was attempting to participate in her high school graduation ceremony.
211. The Individual Defendants' actions were so extreme and outrageous as to go beyond all possible bounds of decency and would be considered atrocious and utterly intolerable to a reasonable person.
212. As a result of the Individual Defendants' extreme and outrageous conduct, Ms. Black suffered and continues to suffer severe emotional distress.

213. As a result of the Individual Defendant's extreme and outrageous conduct, Ms. Black has sought medical treatment.

214. Ms. Black is entitled to recover damages for the Individual Defendant's intentional infliction of emotional distress.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment as follows:

215. That this Court grant to the Plaintiff compensatory damages of at least \$50,000;

216. Grant to the Plaintiff punitive damages;

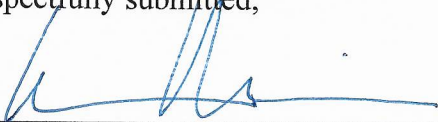
217. Grant to the Plaintiff the reasonable costs and expenses of this action, including attorney's fees; and

218. Grant such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

219. Plaintiff hereby demands a trial by jury.

Respectfully submitted,



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Counsel for Plaintiff

EXHIBIT 1



MIKE HUNTER
ATTORNEY GENERAL

May 8, 2019

Michael W. Rogers
Secretary of Education
2300 N. Lincoln Blvd, Room 122
Oklahoma City, OK 73105

Joy Hofmeister
Superintendent of Public Instruction
2500 N. Lincoln Blvd.
Oklahoma City, OK 73105

Dear Secretary Rogers and Superintendent Hofmeister:

I have learned recently that several schools in Oklahoma are intending to prohibit Native American students from wearing ceremonial eagle feathers during upcoming high school graduation ceremonies. As this issue has arisen several times in the last few years with schools across the State, I write to you in hopes of establishing a uniform practice among school districts regarding this spiritual practice.

Pursuant to the Oklahoma Religious Freedom Act (ORFA), the law generally requires public schools to permit Native American 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. My office advanced this view in a 2016 case out of Caney Valley,¹ and again last year in a letter to the Vian school board, which had initially proposed prohibiting these spiritual items. After receiving my letter, the Vian school board reversed course and announced it will permit the eagle feathers at its upcoming graduation ceremony.

Unfortunately, it appears that various schools in the state are continuing to tell Native American students that they cannot wear the spiritual eagle feathers on their graduation cap. Accordingly, I seek to inform all school districts in the state on my views of what Oklahoma law requires, as I did with the Vian school district. 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 hope that, in your roles as Secretary of Education and Superintendent of Public Instruction, you will inform all of the school districts in the state of their obligations under the law.

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

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). Prohibiting students from wearing ceremonial eagle feathers on their graduation caps, if that conduct is motivated by their religious beliefs, would substantially burden their free exercise of religion under ORFA. Of course, recognizing the ceremonial use of spiritual eagle feathers as a protected religious exercise would not require schools to permit practices that are not religious, and many courts have recognized that religious freedom protections apply only to practices motivated by beliefs that are sincerely held.

Thus, under the law, in order for a school to prohibit this 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.

I humbly request that you inform all school districts in the state regarding their obligations under the law, students’ rights with respect to spiritual eagle feathers, and the risks of litigation being filed against a school for failure to abide by the Oklahoma Religious Freedom Act. Respecting the religious beliefs of all Oklahoma students, include Native American students, is the right thing to do, and having some schools prohibit a religious practice that other schools permit makes little sense.

Please do not hesitate to contact my Office if you have any questions or concerns.

Thank you,

A handwritten signature in black ink, reading "Mike Hunter". The signature is stylized with a large, bold "M" and a cursive "H".

Mike Hunter

Attorney General of Oklahoma