



April 7, 2022

VIA EMAIL

Catherine E. Lhamon
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Department of Education
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Re: Title VI Protections for Graduating Indigenous Students

Dear Assistant Secretary Lhamon:

We write to request that your office take action supporting Indigenous students' rights to wear tribal regalia during their 2022 high school graduation ceremonies.¹ Specifically, we ask that you issue a fact sheet or other guidance to remind qualifying schools of their non-discrimination obligations under Title VI of the Civil Rights Act of 1964, and that you commit to swiftly investigating complaints made against schools that restrict students' tribal regalia in possible violation of federal law.

Tribal regalia, such as eagle feathers and beadwork, have tremendous cultural and spiritual significance for many Indigenous people. Many believe, for example, that eagles have a special connection with God and carry followers' prayers to the heavens.² Bald and golden eagle feathers are considered sacred religious objects representing honesty, truth, majesty, strength, courage, wisdom, power, and freedom.³ In fact, some Indigenous people "equate them to the cross or the Bible" in Christianity.⁴ Many Indigenous students thus believe that graduation from high school—a pivotal, once-in-a-lifetime achievement—cannot be properly or fully celebrated, from a spiritual and cultural perspective, unless they are permitted to wear a sacred eagle feather or other ceremonial tribal regalia.

¹ In this letter, the term "Indigenous" refers to and includes students with Native American, American Indian, Alaska Native, Native Hawaiian, or other Indigenous

Some schools still prohibit Indigenous students from wearing tribal regalia during graduation.

Despite the unique role that tribal regalia plays for graduating Indigenous students, seniors across the country have been prohibited from wearing eagle feathers, beadwork, and other religious and cultural items during graduation. Under the threat of reprimand by school officials, many students have been forced to relent to these restrictions in order to take part in their commencement ceremonies.⁵ Students who have resisted these rules, meanwhile, have had their sacred objects confiscated,⁶ have been expelled or excluded from the graduation ceremony,⁷ or have been denied their diploma.⁸

For example, LaRissa Waln, a senior at Valley Vista High School in Arizona, was turned away from her 2019 graduation ceremony because her graduation cap was decorated with traditional beadwork and an eagle feather.⁹ As an enrolled member of the Sisseton-Wahpeton Sioux Tribe, and consistent with her family's spiritual and cultural practices, Ms. Waln's personal achievement

⁵ See, e.g., Brooke Crum, *Midway ISD offers to settle religious rights suit stating Cherokee student forced to remove eagle feather graduation cap*, Waco Tribune-Herald (Nov. 2, 2019), https://wacotrib.com/news/education/midway-isd-offers-to-settle-religious-rights-suit-stating-choerokee-student-forced-to-remove-eagle/article_75876837-a4d2-5b5d-8acb-ec47b3e28e7f.html (assistant principal at Texas high school refused to allow Cherokee student to walk in the opening processional unless student removed graduation cap adorned with beadwork and eagle feather); Courtney Tanner, *Student forced to take off Navajo feathers at graduation*, AP State News (June 28, 2019), <https://apnews.com/article/1c7128cd6fb849e09c41a41c7505a716> (Navajo student forced to remove eagle feathers from graduation cap after teacher demanded they be taken off, threatened to confiscate them, and warned that student would not be able to participate in graduation).

⁶ See, e.g., Charlotte West, *Native students fight to wear traditional regalia at graduation*, High Country News (June 16, 2021), <https://www.hcn.org/articles/education-native-students-fight-to-wear-traditional-regalia-at-graduation> (Anchorage public-school teacher seized Indigenous student's sealskin cap before graduation ceremony); Elle Cabrera, *Canyon View graduate says she was forced to remove cap with Native American decorations*, The Spectrum (May 28, 2021), <https://www.thespectrum.com/story/news/2021/05/28/graduate-says-she-had-remove-cap-native-american-decorations/7472800002/> (Indigenous Utah student told just before graduation ceremony that "she would not be allowed to

Intentional discrimination against Indigenous students in violation of Title VI may arise in various situations. Despite an existing policy permitting religious exemptions from graduation dress rules, a school official could deny requests made by Indigenous students based on the official's animus toward the students' faith or culture. Or schools could deny some Indigenous students the right to wear tribal regalia even as they allow other students to wear comparable items. For example, in 2019, a Utah school allowed one student to wear a flower lei in recognition of the student's cultural heritage but demanded that a Navajo student remove feathers attached to her graduation cap,

practices that have the effect of discriminating “must be eliminated unless they are shown to be necessary to the program’s operation and there is no less discriminatory alternative.”¹⁹

Although there is no private right of action for unintentional discrimination under Title VI,²⁰ the Department of Education and other agencies retain the ability to enforce the statute’s robust protections against disparate impact discrimination.²¹ In connection with this enforcement, the Department has promulgated 34 C.F.R. 100.3, which states that a recipient of federal funds (such as a school) may not “utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.”²²

Restrictions on tribal regalia harm Indigenous students and are unnecessary.

Neutral school policies that restrict Indigenous students from wearing tribal regalia during graduation ceremonies subject these students to significant adversity and harm.²³ As discussed above, these policies are enforced through the threat of substantial penalties for students who disobey them, including exclusion from the graduation ceremony itself, confiscation of regalia items, and denial of a diploma. Students who ultimately comply with these restrictions under threat of punishment may nevertheless suffer cultural, psychological, or spiritual harm. Other students who successfully protest these rules do so at great personal expense: At a time when they should be focused on finishing their schooling and enjoying their senior year, they must instead devote significant effort and resources to navigating local administrative processes and appeals and enduring the media spotlight that often comes with such challenges.²⁴ And still others will meet the same fate as Ms. Waln: They will be excluded from their graduation ceremonies and subjected

¹⁹ *Id.*

²⁰ See *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001).

²¹ See Catherine E. Lhamon, Letter to Comm’r on U.S. Comm’n on Civ. Rts., Dep’t of Educ. (Feb. 8, 2016), <https://www2.ed.gov/about/offices/list/ocr/correspondence/federal-entities/20160208-t6-disparate-impact.pdf> (“urging federal agencies ‘to remember that [we] serve an especially critical role in enforcing Title VI disparate impact regulations . . . [Because] [v]ictims can only turn to the administrative complaint process, . . . agencies must be particularly vigilant in ensuring strong enforcement in this area’”) (quoting 2009 Memorandum from the Acting Assistant Att’y Gen. on Strengthening of Enforcement of Title VI of the Civil Rights Act of 1964); DOJ Title VI Manual, *supra* n.18 (“Federal funding agencies play a vital role in enforcing the prohibition on disparate impact discrimination through complaint investigations, compliance reviews, and guidance on how to comply with Title VI.”)

²² 34 C.F.R. 100.3(b)(2).

²³ See DOJ Title VI Manual, *supra* n.18 (noting that “courts frequently assume that the impacts alleged were sufficiently adverse, impliedly recognizing a wide range of harms, including physical, economic, social, cultural, and psychological” and that “threatened or imminent harm” also may satisfy the disparate impact harm requirement).

²⁴ ~~See~~ ~~the~~ ~~46~~ ~~ET~~ ~~007~~ ~~WBTF~~ ~~49~~ ~~f~~ ~~10002~~ ~~mG~~ ~~PA~~ ~~hon~~

to other repercussions—merely for practicing their cultural and religious beliefs, which cause no harm to anyone else.

The present-day harms that these policies cause to Indigenous students cannot be fully understood unless they are placed into the historical context of the multifaceted efforts to separate Indigenous children from their families and tribes and to deny them their rights of cultural and religious expression. To take just one example:

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students are already much less likely to graduate than their peers,²⁹ and policies that prohibit significant cultural and religious practices, such as wearing tribal regalia at graduation, may further diminish these students' sense of belonging and success in school,³⁰ thereby *undermining* schools' educational mission.

And any claims that allowing these practices would cause disruption or difficulty would be speculative at best.³¹ There is simply no evidence that schools have experienced disruption or difficulty as a result of allowing students to wear tribal regalia at graduation. Moreover, there are a number of less discriminatory alternatives that schools could pursue to alleviate any concerns they may have, including advanced review of the tribal regalia that will be worn and imposing and enforcing behavioral rules during the ceremony.

The government has an

Of course, the reach of Title VI's disparate impact protections will depend on the particular circumstances of each individual case. We understand that there are some situations where these protections will not apply. But many

students and