

NOTE TO STUDENTS/FAMILIES:

South Dakota law protects public-school students’ right to wear an eagle feather, eagle plume, or beaded cap at graduation. The law does not explicitly require that students provide any notice of their plan to do so or otherwise seek approval.

However, if school officials have suggested that students may not be allowed to wear tribal regalia, or if you are concerned that they will try to prevent a student from doing so on graduation day, this letter may assist you in addressing any concerns and ensuring, in advance, that there will not be any problems during graduation.

In addition, South Dakota’s tribal-regalia law authorizes school administrators to “determine if a beaded graduation cap is appropriate.” Thus, to avoid problems on graduation day, it may be prudent to seek advance approval for a particular beaded cap.

(To ensure that you see all instructional comments in the margin of this document, turn on “show comments” in Microsoft Word.)

[Date]

Superintendent [First and Last Name]
Principal [First and Last Name]
[School District Address]

Re: South Dakota law protecting the right to wear tribal regalia at graduation

Dear Superintendent [Last Name] and Principal [Last Name]:

South Dakota law protects the right of students to wear tribal regalia at graduation. While the law does not require students to notify schools of their intent to do so, because some school officials have indicated that they are not aware of these legal protections, I am writing to let you know that that my student, [Name], plans to wear [an eagle feather/eagle plume/beaded graduation cap] during this year’s graduation ceremony. I respectfully ask that the school district follow the law regarding this matter.

[Student’s Name] is [Tribal affiliation/Native American]. Our Native American heritage and traditions are an important part of our family’s history, culture, and identity. Under South Dakota law, a public school district may not prohibit a “Native American student from wearing an eagle feather, eagle plume, or an appropriate beaded graduation cap at a school honoring or graduation ceremony.”¹ ***Thus, the school district must allow [Student’s Name] to wear [an eagle feather or eagle plume or beaded graduation cap].***

In addition, although Section 13-1-66 of South Dakota law does not speak directly to students’ rights to wear other tribal regalia—for example, traditional Native American dress, beaded medallions, jewelry, moccasins, or other items of cultural and religious significance—allowing these items would be well within the spirit of the law’s intent to protect Native Americans’ traditions and expression during

¹ S.D. Codified Laws § 13-1-66 (2022).

graduation ceremonies. Moreover, South Dakota’s religious-freedom statute,² as well as federal law,³ may require public schools to allow Indigenous students to wear these items. To that end, I respectfully request that [Student’s Name] be permitted to wear [specify other than eagle feather/plume or beaded cap].

Wearing tribal regalia plays an important role in graduation ceremonies for many Indigenous students. These items of cultural and religious significance are typically gifted by students’ families or tribal elders to recognize the student’s success and academic achievements. Graduation ceremonies are especially meaningful for Native American students because they have long faced structural barriers and discrimination in the educational context and, as a result, may be less likely to graduate from high school than their peers.⁴ Indeed, these students have suffered horrific persecution by the government and education system:

Beginning with the Indian Civilization Act of 1819 and running through the 1960s, the United States enacted laws and implemented policies establishing and supporting Indian boarding schools across the nation. During that time, the purpose of Indian boarding schools was to culturally assimilate Indigenous children by forcibly relocating them from their families and communities to distant residential facilities where their American Indian, Alaska Native, and Native Hawaiian identities, languages, and beliefs were to be forcibly suppressed.⁵

As U.S. Supreme Court Justice Neil Gorsuch recently explained, “[u]pon the children’s arrival, the boarding schools would often . . . cut their hair . . . and confiscate their traditional clothes.”⁶ The schools

² Under Section 1-1A-4 of South Dakota law, government entities, including public school districts, may not “[s]ubstantially burden a person’s exercise of religion unless applying the burden to that person’s exercise of religion in a particular situation is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling government interest.” The ability to wear tribal regalia during graduation is not only important to [Student’s Name] from a cultural perspective, but it is also a core expression of our Native American religious beliefs. Denying [Student’s Name] the right to wear these religious items substantially burdens their religious exercise. Generalized school interests in discipline, authority, and uniformity—which have traditionally been asserted to justify school dress codes and grooming policies—are simply inadequate reasons for denying a religious accommodation under this legal standard. Thus, the school must accommodate this religious exercise at graduation. *See, e.g., A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 265-66 (5th Cir. 2010) (holding that public school’s requirement that Native American student wear hair in bun or braided and tucked into his collar violated similar Texas religious-freedom law).

³ Public schools’ selective or uneven enforcement of a graduation dress code to exclude tribal regalia violates the First Amendment to the U.S. Constitution. *See generally Waln v. Dysart Sch. Dist.*, 54 F.4th 1152, 1161 (9th Cir. 2022). In addition, Title VI of the Civil Rights Act of 1964 prohibits federally funded schools from discriminating based on race, ethnicity, or national origin. Even if schools do not intend to discriminate, if their policies disproportionately and negatively affect students of a particular race, ethnicity, or national origin, the policies will likely be considered discriminatory. School policies that prevent Indigenous students from wearing tribal regalia may violate this law. *See Indigenous Students Should Be Allowed to Wear Tribal Regalia at Graduation*, ACLU (Apr. 7, 2022), <https://www.aclu.org/news/religious-liberty/indigenous-students-should-be-allowed-to-wear-tribal-regalia-at-graduation>.

⁴ *See, e.g.,* Jinghong Cai, *The Condition of Native American Students*, Nat’l Sch. Bds. Ass’n (Dec. 1, 2020), <https://www.nsba.org/ASBJ/2020/December/condition-native-american-students>.

⁵ Memo from Sec. of the Interior Deb Haaland Regarding Fed. Indian Boarding Sch. Initiative (June 22, 2021) 1, <https://www.doi.gov/sites/doi.gov/files/secint-memo-esb46-01914-federal-indian-boarding-school-truth-initiative-2021-06-22-final508-1.pdf>.

⁶ *Haaland v. Brackeen*, 599 U.S. 255, 300 (2023) (Gorsuch, J., concurring) (internal citations omitted).

also “frequently prohibited children from speaking their native language or engaging in customary cultural or religious practice.”⁷

The appalling legacy of Indian boarding schools remains today, “manifesting itself in Indigenous communities through intergenerational trauma, cycles of violence and abuse, disappearance, premature deaths, and other undocumented bodily and mental impacts.”⁸ Denying students like [Student’s Name] the right to wear tribal regalia at a graduation ceremony further deprives them of their heritage and identity, perpetuating the destructive assimilation policies of the past and promoting harmful stereotypes and misunderstandings of Indigenous Peoples.⁹

This letter is our [first/second/third] communication with the school district regarding this matter. [In response to our previous communications, district officials have (fill in)]. Because South Dakota law is clear, and because Native American students deserve to have their culture, faith, and heritage recognized in a manner that is meaningful to that student and their family, we hope that there will be no need to pursue this matter further.

Please contact me as soon as possible at [cell phone/email address] to confirm that [Student’s Name] will be allowed to wear [item(s) of tribal regalia] at the upcoming graduation ceremony.

Sincerely,

[Signature of Parent/Guardian]

[Parent/Guardian Name]

⁷ *Id.*

⁸ Memo from Sec. of the Interior, *supra* n.5, at 1, 3 (“Over the course of the Program, thousands of Indigenous children were removed from their homes and placed in Federal boarding schools across the country. Many who survived the ordeal returned home changed in unimaginable ways, and their experiences still resonate across the generations.”).

⁹ See *Becoming Visible: A Landscape Analysis of State Efforts to Provide Native American Education for All*, Nat’l Congress of Am. Indians (Sept. 2019) 8-9, https://archive.ncai.org/policy-research-center/research-data/prc-publications/NCAI-Becoming_Visible_Report-Digital_FINAL_10_2019.pdf (“A startling 72 percent of Americans rarely encounter or receive information about Native Americans . . . Invisibility, myths, and stereotypes about Native peoples perpetuated through K-12 education are reinforced across society, resulting in an enduring and damaging narrative regarding tribal nations and their citizens. The impact is profound. Native Americans live in a culture where they are often misunderstood, stereotyped, and experience racism on a daily basis. The lack of accurate knowledge about Native Americans contributes to these experiences and hinders the ability of all Americans to experience and celebrate the unique cultural identities, histories, and contributions of Native peoples.”).