



Transmitted via Electronic Mail
September 12, 2024

Rob Bonta, Attorney General
California Department of Justice
1515 Clay Street
Oakland, CA 94612-1499
[REDACTED]

Re: Complaint against Clovis Unified School District and other California school districts for denying students their right to wear traditional tribal regalia or other adornments of religious or cultural significance at commencement ceremonies in violation of California Education Code and the U.S. and California Constitutions.

Dear Attorney General Bonta:

Complainants Roman and Rieka Rain Tree, on behalf of their son Xavier Rain Tree and daughter Lola Rain Tree; Ray Rocha on behalf of his daughter Jennie Rocha; and Indigenous Justice, a registered 501(c)(3) nonprofit organization, bring this complaint in response to Clovis Unified School District’s repeated, discriminatory and unlawful violations of Native American students’ rights to wear traditional tribal regalia or recognized objects of religious or cultural significance at commencement ceremonies. As set forth in detail below, the District’s actions violate multiple provisions of the California Education Code and the U.S. and California constitutions. Complainants seek injunctive relief to prevent Clovis Unified School District (hereinafter, “CUSD” or “District”) and other local educational agencies statewide from continuing and future violations of students’ statutory and constitutional rights.

Native American students, families, and advocates have tried to hold CUSD accountable for its bad behavior since at least 2015,¹ but the District continues to obstruct students from exercising their legal rights year after year. CUSD’s reoccurring legal violations generally happen mere minutes before students begin their graduation ceremony, denying students any opportunity to avoid injury or meaningfully challenge the District’s illegal actions. Most recently, on June 5, 2024, as Xavier Rain Tree arrived to participate in his high school graduation ceremony, CUSD staff seized his beaded Golden Eagle feather and his graduation cap (beaded by his mother with a single strand of beads) and instructed him to remove his Tribal yarn belt. These confiscated adornments were created and gifted to him by his parents and carry cultural and spiritual meaning for Xavier as an Indigenous student. CUSD staff then gave Xavier a generic tie and instructed him to put it on. His father, Roman Rain Tree, expressed, “when I saw my son, I thought, what did you do to my child? They tried to rob my son of the gifts we gave him for his

¹ For example, CUSD was sued on precisely this issue nearly a decade ago, in June 2015, to enforce Native American student Christian Titman’s constitutional and statutory rights to wear an eagle feather at his high school graduation ceremony. Pl.’s Mem. of P. & A. in Supp. of Ex Parte Appl. for TRO and Order to Show Cause, *Titman v. Clovis Unified School District*, No. 15CECG01717 (Fresno Cnty. Superior Ct.). CUSD agreed to settle that case within one day in a testament to the strength of those legal claims. Settlement Agreement, *Titman v. Clovis Unified School District*, No. 15CECG01717 (Fresno Cnty. Superior Ct.). Yet, on multiple occasions since then, CUSD has flagrantly and continually refused to allow Native American students to wear legally protected tribal, cultural and religious adornments at their graduation ceremonies.

graduation, tried to strip him of his Indigeneity by removing his regalia showing pride in his Tribe; and instead tried to conform him to their idea of what a model student should look like, just like what happened to Native American people during the Boarding School Era in California” – an era of brutal and forced assimilation described in more detail below.

CUSD’s violation of Xavier’s rights happened just days after the District refused to allow another student, Jennie Rocha, to wear a handmade Comanche stole, gifted to her by the Comanche Nation, to her commencement ceremony. District officials stated the stole – which had Comanche designs and language on it – was neither “traditional tribal regalia” nor “culturally significant.” The District relented only after the Rocha Family submitted a legal affidavit from Comanche Tribal Chairman Forrest Tahdooahnippah attesting to the stole’s cultural significance.

Attorney General investigation and intervention are urgently needed to ensure CUSD does not continue to evade its legal responsibility to allow graduating students to wear tribal regalia and items of cultural significance. CUSD must be required to consistently respect the laws of California and the United States protecting students’ rights to express their identity, culture, and religion during what should be a joyous capstone celebration of their academic accomplishments rather than a denigration of students’ Native American identity. CUSD’s policies and practices are an example of common California school district policies and practices that create significant obstacles to Native American students exercising their rights to tribal, cultural and religious expression at graduation, and an example of systemic educational discrimination, which are within your purview to investigate and resolve.² As such, Complainants request remedies to enforce these laws as to CUSD and as to local educational agencies with similar unlawful policies and practices across California.

I. Complainants’ Facts

A. Rain Tree Family

Xavier Rain Tree (Choinumni Tribe of Yokuts, Wukchumni Tribe of Yokuts, Dunlap Band of Mono Indians, Choctaw, and African American) graduated after four years on the Honor Roll on June 5, 2024 from Clovis West High School (“Clovis West”). While at Clovis West, Xavier attended the Center for Advanced Research and Technology and was a member of the National Honor Society. Xavier has tremendous pride in his Indigenous identity, culture, and heritage instilled by his parents, Roman and Rieka Rain Tree, and other elders in his family. Xavier has been deeply engaged in community activities for several years. He has been involved in youth programs at the Fresno American Indian Health Project since he was 10 years old, where he serves on the local Native American Youth Council. Xavier regularly participates in Gathering of Native Americans (GONA), which incorporates the value of four levels of human growth and responsibility which are found in and grounded in Native culture. Xavier is also a multimedia artist; he created a short documentary to educate youth in his community on the dangers of vaping and, with his elders, has created videos teaching Yokuts language and other cultural practices.³

On June 5, 2024, Xavier arrived for his graduation ceremony wearing a graduation cap and tassel that had been beaded by his mother; and a Golden Eagle feather attached to his beaded graduation cap tassel. In

² *Bureau of Children’s Justice*, California Department of Justice Office of the Attorney General, <https://oag.ca.gov/bcj> (last visited Sept. 11, 2024).

³ See Xavier's Video Library, available at <https://drive.google.com/drive/u/0/folders/1XnD6vhQtDC14H0FhmMbVPEOkQuRpC2xW> (last visited Sept. 11, 2024); Community Media Access Collaborative (CMAC), *Puff Puff | Xavier Raintree*, YouTube (Sept. 20, 2023), <https://www.youtube.com/watch?v=tE5TEUTh3gY>.

the Yokut Tribes, the gift of an eagle feather to wear at a ceremony carries significant cultural and spiritual meaning and is a great honor given in recognition of an important transition. After dropping him off at the graduation site, his parents drove back home to get Xavier's Native sash, woven for him by his mother in colors associated with his Tribe, along with his National Honor Society medal.

When Xavier entered the building, three separate Clovis West staff told Xavier that he would not be allowed to wear any of his items of Tribal regalia because Xavier did not have "paperwork" from Clovis West pre-approving the items. Clovis West staff members Lorenzo Rodriguez and Lisa Ebright then tried to grab the beaded Golden Eagle feather from Xavier, thus additionally violating strict legal parameters and cultural norms that allow only the student or his parents to touch the Golden Eagle feather. Golden Eagles and their feathers are considered sacred by the Yokuts and many other Tribes. Ms. Ebright demanded that Xavier hand over his Golden Eagle feather and beaded tassel, and his beaded graduation cap, which he did because he felt he had no choice. She then instructed Xavier to put on a tie in generic Clovis West colors instead.

When Mr. and Mrs. Rain Tree arrived back at the school with Xavier's Native sash and National Honors Society medal, they saw Xavier standing despondently in front of the school holding his graduation gown. Xavier was extremely upset by his interactions with CUSD staff, their refusal to allow him to wear his Tribal regalia and seizure of his Golden Eagle feather, beaded tassel, and beaded graduation cap. He told his family that he no longer wanted to participate in the graduation ceremony. Mr. and Mrs. Rain Tree spoke with Xavier until he had calmed down. Then they went to speak with CUSD staff to ensure that Xavier could exercise his civil rights to wear his Tribal regalia at his graduation ceremony. When Mr. Rain Tree calmly and firmly began the conversation with Clovis West staffer Ms. Ebright, she laughed repeatedly while stating "he will never wear that graduation cap" and then radioed for the police when Mr. Rain Tree asked for her name.

Over the course of the next 15-20 minutes, four more District staff became involved in the discussion along with two school police officers. One of the police officers, Officer Doug Wright, knows Xavier as a model student and tried advocating with CUSD staff to allow Xavier to wear his tribal regalia. Towards the end of the discussion, Mrs. Rain Tree pulled up online legal resources on her phone that state clearly that students have civil rights to wear items of traditional tribal regalia or other cultural or religious significance at graduation ceremonies under the California Education Code. At that point, with considerable reluctance, a District staff member who identified herself as a superintendent with decisional authority agreed that Xavier could wear his Golden Eagle feather and beaded tassel. She did not allow Xavier to wear his Native sash except tucked under his graduation gown like a necktie; and she categorically refused to allow Xavier to wear his beaded graduation cap. Ms. Ebright confiscated Xavier's beaded graduation cap and held it until after the ceremony. A photograph of Xavier wearing his graduation cap, beaded with a single strand of 75 beads, prior to the cap being confiscated by Ms. Ebright, is attached as Exhibit 1. Xavier was given a plain graduation cap to wear instead.

Mr. and Mrs. Rain Tree, Xavier, and Xavier's younger sister Lola (who is now attending Clovis West as a student in ninth grade) were all deeply impacted by the District's conduct. They feel strongly that the District tried to erase and denigrate Xavier's Native American identity, and in a perverse twist, on the very day capping all of Xavier's achievements that he had earned as an Indigenous student. All members of the Rain Tree Family are now fearful and anxious that the District will similarly disrespect and violate Lola's civil rights, and the rights of other Native American students throughout District schools, unless the Attorney General intervenes to address and remedy those violations so the same situation does not recur in the future.

B. Rocha Family

Jennie Rocha (Comanche) wished to wear a cord with the Comanche Nation seal, and a stole designed with the words “Comanche Nation” in the Comanche language and “Graduate 2024” in English, at her graduation ceremony from Clovis North High School (“Clovis North”). A photograph of Jennie wearing her Comanche stole is attached as Exhibit 2. She requested permission weeks ahead of her graduation ceremony by submitting a form, along with a picture of her Comanche cord and stole, to Clovis North administrators.

School and District administrators rejected Jennie’s request to wear her Comanche stole, claiming that it was neither “traditional tribal regalia” nor “a recognized object of religious or cultural significance.” When Jennie’s father, Ray Rocha, spoke to a school administrator to challenge the denial of Jennie’s constitutional and statutory rights, the administrator said, “if we let one student do this then we have to let every student do this and that won’t work.” The Rocha Family then sought assistance from California Indian Legal Services (“CILS”) and Indigenous Justice. After CILS and Indigenous Justice contacted District administrators, CUSD agreed to allow Jennie to wear her Comanche stole, but only if she removed the words “Graduate 2024.” The District’s insistence that Jennie rework her Comanche stole to remove the words “Graduate 2024” were based on the ill-informed assumption by District officials that those words were not a “culturally-related element” and therefore the stole was not a recognized object of cultural significance as presented. It was only after the Rocha Family went to significant lengths to obtain a legal affidavit from Comanche Tribal Chairman Tahdooahnipah attesting to the cultural significance of Jennie’s Comanche stole, and brought Jennie’s experience with the District violating her civil rights to the media, that the District finally granted Jennie permission to wear her cultural adornments to her graduation ceremony.⁴ Mr. Rocha said of his family’s struggle to give Jennie the opportunity to proudly express her Comanche heritage at her commencement ceremony: “I believe what my daughter is doing is good and for our culture and heritage and this is also for other kids in the future.”⁵

C. Indigenous Justice

Indigenous Justice is a statewide nonprofit organization that defends and protects Indigenous rights. Indigenous Justice is deeply committed to advocating for Indigenous sovereignty issues through developing powerful Indigenous leaders and communities and organizing with them to transform the systems, structures and stories that keep us all imprisoned both physically and spiritually. One of Indigenous Justice’s main priorities is advocating on behalf of Indigenous youth in California, especially in the Central Valley where school districts disproportionately exclude Indigenous students, their heritage, and their culture.

Indigenous Justice began advocating for Jennie Rocha’s rights to wear her Comanche stole after Mr. Rocha reached out to them for assistance in May 2024. Almost immediately, Ashley Crystal Rojas from Indigenous Justice reached out to CUSD, on behalf of Jennie Rocha, challenging CUSD’s denial of Jennie’s civil right to wear traditional tribal regalia or recognized objects of religious or cultural significance per California Education Code section 35183.1. During Ms. Rojas’s conversation with the District General Counsel Maiya Yang about this, General Counsel Yang said that she had looked up

⁴ Laura S. Diaz, *Indigenous Clovis, Hanford students were blocked, at first, from wearing traditional regalia*, The Fresno Bee (June 5, 2024, 10:28 AM), <https://www.fresnobee.com/news/local/education-lab/article288924148.html>.

⁵ Rich Rodriguez, *Clovis North students wins battles to wear unaltered Comanche vestment at graduation*, KMPH Fox 26 (May 31, 2024, 11:57 AM), <https://kmpfh.com/news/local/clovis-student-battles-to-wear-unaltered-comanche-vestment-at-graduation>.

images of Comanche people online and did not see them wearing stoles; therefore, in General Counsel Yang's estimation, stoles are neither traditional tribal regalia nor culturally significant to the Comanche Tribe. Ms. Rojas tried to explain to General Counsel Yang that the Comanche Tribe, and all Indigenous tribes, are part of a living culture and, as with other cultures, what is "culturally significant" is not static or easily captured in a quick Google search. Nevertheless, the District continued to deny Jennie's request to wear her Comanche stole at graduation until the request was "authenticated" by the Comanche Nation. Ms. Rojas asked General Counsel Yang if she understood that the request to have the stole "authenticated" was, in and of itself, a violation of Jennie's rights as a Comanche Tribal youth. The District finally granted Jennie permission to wear her Comanche stole to her graduation only after Jennie's family presented the District an affidavit by the Comanche Tribal Chairman explaining that Jennie's stole is, indeed, a recognized object of cultural significance to the Comanche Nation. Ms. Rojas later told General Counsel Yang that the District's entire "pre-approval" process places an undue burden on Indigenous students like Jennie Rocha that dissuades Indigenous families from validating their rights as Tribal citizens.

II. Historical Background

A. Public education for Native American peoples throughout California was historically a tool of oppression and genocide.

Since time immemorial, Native American tribes have passed down their cultures, languages and traditions through Indigenous ways of learning and knowing; holistic learning through direct engagement with rivers, forests, and the natural world, through oral histories, with the participation of entire tribal communities. Education has always been key to Native American ways of life.

But, with the first contact between Native American and non-Native American peoples, state-funded education became a tool of oppression. When California was brought into the Union, its membership was founded on the forced removal, enslavement, and genocide of Native American peoples.⁶ As the state's first Governor, Peter Burnett, put it in his 1851 address to the Legislature: "That a war of extermination will continue to be waged between the two races until the Indian race becomes extinct must be expected."⁷ The State sanctioned and funded massacres against Native American peoples, authorizing \$1.29 million in the 1850s to pay for the militia campaigns that amounted to genocide.⁸ The State also displaced and dispossessed Native American people from their ancestral lands and passed laws that sought to erase Native American peoples altogether.⁹ Such laws included the 1850 "Act for the Governance and Protection of Indians," which made the enslavement of Native Californians legal and

⁶ Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873* 145-172 (2016).

⁷ *Id.* at 231-288.

⁸ See Brendan C. Lindsay, *Murder State: California's Native American Genocide, 1846-1873* 346 (2015); Madley, *supra* note 6, at 186-194. For a non-comprehensive list of genocide incidents in the San Joaquin Valley, *Timeline of Genocide Incidents in the San Joaquin Valley Region*, State of Cal. Native Am. Heritage Comm'n, <http://nahc.ca.gov/cp/timelines/san-joaquin/> (last visited Sept. 11, 2024).

⁹ Madley, *supra* note 6, at 186-194; Cutcha Risling Baldy & Kayla Begay, *Xo'ch Na:nahsde'il-te Survivance, Resilience and Unbroken Traditions in Northwest California*, in Ka'm-t'em: A Journey Toward Healing, 39-61 (Kishan Lara-Cooper & Walter J. Lara Sr., eds., 2019); Cutcha Risling Baldy, *We Are Dancing for You: Native Feminisms and the Revitalization of Women's Coming-of-Age Ceremonies* (2018).

fueled the kidnapping and trafficking of Native American children into indentured servitude.¹⁰ Native Californian youth were separated from their families, including at boarding school sites maintained by the U.S. government.¹¹ The largest of the California boarding schools, the Sherman Indian School in Riverside, has its own dedicated cemetery.¹²

Boarding schools “applied systematic militarized and identity-alteration methodologies” to assimilate Native American children under the guise of providing them a public education.¹³ The community beliefs, values, and language of Native American children were subjugated to colonial settler culture. The identity-alteration methodologies used against students included forbidding them from using their native languages or exercising their religions, forcing them to take “English” names, forcibly cutting their hair, and requiring them to wear military or other standard uniforms rather than familiar clothes from home that reflected their culture.¹⁴ One Native American boarding school survivor recalled, “all our clothes were taken away from us and we were given government issued clothing and...we were given numbers, you know, we weren’t – we never called by our name, we were all called by our numbers.”¹⁵

The legacies of these violent policies and practices continue to harm Native American peoples. While Native Americans today are no longer forced to attend boarding schools, they continue to face systematic barriers in California’s public schools, including a lack of culturally responsive curriculum that features Native American history, language and culture; inaccurate depictions of California and U.S. history; and invisibility of Native American contributions to society.

For many contemporary Native American students, high school graduations are momentous occasions that signify not only academic achievement but also proof of community resilience after centuries of U.S. government oppression. Cultural genocide echoing the trauma of the Boarding School Era persists to the present day when public school systems continue to ignore and violate Native American students’ rights to practice their traditions, beliefs, and customs.

Recognizing the continuing harm state education systems inflict on Native American students, in 2018, the California Legislature passed AB 1248, explicitly codifying students’ rights to wear “traditional tribal regalia or recognized objects of cultural or religious significance as an adornment at school graduation ceremonies” in the Education Code. This law was intended to protect Native American students and to address the continuing legacy of perpetually seeking to erase Native American people and culture. “Wearing these items allows Native students to honor their religious beliefs, pay respect to their ancestors, and recognize the ‘strength it took to reach this milestone’ as individuals and as members of their tribal communities.” *Waln v. Dysart Sch. Dist.*, 54 F.4th 1152, 1156 (9th Cir. 2022). However, Native

¹⁰ Gold Chains Podcast, *Episode 3: Indigenous Injustice*, ACLU Found. of N. Cal., <https://www.aclunc.org/sites/goldchains/podcast/episodes/ep03-indigenous-injustice.html> (last visited Sept. 11, 2024).

¹¹ Bryan Newland, *Federal Indian Boarding School Initiative Investigative Report*, U.S. Dep’t of the Interior, 83 (2022), https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf (stating that 12 Federal Indian boarding schools operated in California).

¹² *Sherman Indian School Cemetery*, Sherman Indian Museum, <https://www.shermanindianmuseum.org/cemetery1.htm> (last visited Sept. 11, 2024).

¹³ Newland, *supra* note 11, at 51.

¹⁴ *Id.* at 53.

¹⁵ Bryan Newland, *Federal Indian Boarding School Initiative Investigative Report: Vol. II*, 83 (2024), https://www.bia.gov/sites/default/files/media_document/doi_federal_indian_boarding_school_initiative_investigative_report_vii_final_508_compliant.pdf.

American students in CUSD and other school districts across California continue to be denied their rights to wear tribal regalia and cultural and religious adornments at their commencement ceremonies.

B. Clovis Unified School District’s history of discriminating against Native American students.

CUSD has a history of discriminating against Native American students. Below is a brief description of some recent examples of this discrimination, focusing only on events directly known by the complainants or their legal advocates.

Nine years ago, the District refused to allow Christian Titman, a member of the Pit River Tribe, to wear a five-inch-long eagle feather in his graduation cap. The District claimed that its interest in the “respect for the formality of the graduation ceremony, unity of the graduating class, and...avoid[ing] disruption of the graduation ceremonies that would likely occur if students were allowed to alter or add on to their graduation cap and gown” outweighed Christian’s constitutional rights to wear his eagle feather, which carried cultural and spiritual meaning for him as a member of the Pit River Tribe.¹⁶ The ACLU Foundation of Northern California, CILS, and the Native American Rights Fund filed suit on behalf of Christian to enforce his constitutional rights to free expression.¹⁷ A day later, the District entered into a settlement agreement allowing Christian to wear and display his eagle feather during the entire graduation ceremony.¹⁸

In 2018, motivated by Titman’s lawsuit against CUSD, the California Legislature enacted AB 1248 to ensure that the California Education Code has a clear and unequivocal statement that students are allowed to wear eagle feathers and other traditional tribal regalia in addition to graduation adornments of cultural or religious significance. This legislation was codified as Education Code section 35183.1. In 2021, the California Legislature passed AB 945 to establish a task force to hear the testimony of Californians who have been denied this right and to make recommendations for policies and practices to ensure such denials do not recur. The legislative history of AB 945 specifically notes that the new law was enacted in part because district administrators in Clovis Unified School District and Lemoore Union High School District had refused to allow multiple Native American students from wearing eagle feathers at their commencement ceremonies.¹⁹

Yet, the District has since refused to allow Native American students to wear legally protected tribal, cultural and religious adornments at their graduation ceremonies to express their identity and culture. In 2022, the District refused to allow Jennie Rocha’s brother, Christian Rocha (Comanche) to wear a Comanche stole that was gifted to him by the Comanche Nation. Because the Rocha Family did not know at that time that Christian had constitutional and statutory rights to wear his cultural stole, they did not challenge this legal violation. Instead, Christian was simply denied his right to represent his Comanche culture and heritage at his graduation ceremony. Complainants are aware of other Native American

¹⁶ Pl.’s Mem. of P. & A. in Supp. of Ex Parte Appl. for TRO and Order to Show Cause, *supra* note 1, at 4-5.

¹⁷ Compl. for Declaratory and Inj. Relief, *Titman v. Clovis Unified School District*, No. 15CECG01717 (Fresno Cnty. Superior Ct.).

¹⁸ Settlement Agreement, *supra* note 1.

¹⁹ *Pupils Adornments at School Graduation Ceremonies Task Force: Hearing on Cal. Assemb. B. 945 Before the S. Judiciary Comm.*, 2021-2022 Reg. Sess. (2021), https://sjud.senate.ca.gov/sites/sjud.senate.ca.gov/files/202120220ab945_ab_945_spc_06-25-2021_assembly_senate_judiciary_committee_122876.pdf.

students who have been similarly denied their rights by CUSD to wear traditional tribal regalia or other objects of cultural or religious significance at their graduation ceremony.

Throughout his time in District schools, Xavier and his sister Lola have experienced multiple incidents where District staff have disregarded and denigrated their Native American identity and culture. For example, District policy states that when a student is absent to attend cultural or religious ceremonies, the absence is excused. Yet every time Xavier attended biannual Bear Dance ceremonies, Choctaw and Cherokee powwows, and ceremonies for California Indian Day, school staff who knew he was absent for ceremony marked the absences as unexcused and Xavier was consistently deemed truant. During annual Native American Heritage Days, while school staff reliably requested that Roman Rain Tree volunteer to present on his Tribal culture in school classrooms, Xavier was disciplined for violating the school dress code by wearing moccasins reflecting his Cherokee heritage. The schools Xavier and Lola attended never included any discussion about California Tribes in the social studies curriculum. In fact, four years ago, when Lola was in fifth grade, she was instructed by her teacher to complete an assignment valorizing California missions, which are historical sites in California where slavery and other genocidal practices were committed against Native Americans, including the Yokut Tribes and Mono Indians Tribe of which Lola is a member. Lola worked hard to complete every aspect of the assignment from the perspective of a Native Californian. She highlighted the genocide of her ancestral Tribal members rather than the positive aspects of the missions (e.g., “create a brochure encouraging people to visit the missions”). She received the grade of a “C” because she did not complete the assignment with a positive lens on missions.

C. The District’s current graduation ceremony policies and unlawful pre-approval process.

According to the District, it must impose a graduation ceremony dress code to “present[] the graduating class as a unified group...[which] does not allow personalization or adornment of graduation robes or caps outside of what is allowed for in the Education Code.”²⁰ But notwithstanding, the District does allow certain exemptions from the rule prohibiting personalization or adornment. Specifically, the District allows—without restriction—students to wear certain academic cords and sashes, including the CSF Life Gold Cord, National Honor Society Sash, Symbol of Academic Distinction Medallion, Seal of Bi-Literacy Medallion, and AVID Cord, on their graduation attire. Exhibit 3.

Any student who wishes to wear traditional tribal regalia or a recognized item of religious or cultural significance, however, must first obtain written approval from school or District administrators weeks ahead of time (“pre-approval”). *Id.* As noted on the pre-approval form, students wishing to wear tribal, cultural or religious adornments must describe “the item’s religious or cultural significance to student and/or student’s relationship with traditional tribal regalia.” School or District staff then evaluate the request to determine if the item is “traditional tribal regalia” or an object of “cultural significance” or “religious significance.” Staff generally make these determinations with limited to no knowledge about Tribes or the significance of particular cultures or religions. This pre-approval process imposes a substantial and onerous administrative obstacle to students wishing to wear traditional tribal regalia or other items of cultural or religious significance to their commencement ceremony.

CUSD’s pre-approval process creates an absolute barrier to wearing tribal regalia for many Native American students in District schools. This is for several reasons. First, in keeping with cultural traditions, a student’s Tribal regalia or cultural items may be made and/or gifted to the student shortly before the commencement ceremony, well after the District’s deadline for pre-approval. Second, CUSD

²⁰ Diaz, *supra* note 4 (quoting CUSD spokesperson Kelly Avants).

schools like Clovis West distribute graduation caps and gowns to students shortly before the graduation ceremony; in Xavier’s case, he received his cap and gown from Clovis West just 7 days before the graduation ceremony. It was impossible for him to take a picture of the beadwork on his cap and submit it for pre-approval because he did not even receive the cap until three weeks after the pre-approval deadline. Third, Native American students and families are often deeply uncomfortable with providing photographs of Tribal regalia or items of cultural or religious significance to school staff as an administrative matter for “pre-approval” because it violates important cultural norms respecting the sanctity and sacredness of those objects and is a harrowing reminder of how objects and sites sacred to Native American Tribes have been historically devalued and desecrated (and still are up to the present day throughout much of California). Fourth, many Native American students know that they have the right to wear tribal regalia or other culturally or religiously significant items but do not want to endure a painful, and sometimes humiliating, unlawful process to seek permission from school or District staff to exercise their civil rights.

In fact, many students would rather forgo their rights rather than have to endure being denied permission to wear their Tribal regalia because District or school staff do not believe it is “traditional,” “tribal,” “culturally significant” or “religiously significant.” Xavier Rain Tree knows multiple Native American students in District schools who are aware of what happened to him and Jennie Rocha, and those students would rather not wear their Tribal regalia than be subjected to the same humiliating treatment that Jennie and her parents, and Xavier and his parents, endured regarding their graduation ceremonies.

III. State and Federal Law Protects Students’ Civil Rights to Wear Traditional Tribal Regalia or Other Objects of Cultural or Religious Significance as Graduation Adornments.

As explained above, California’s local governments have a long-standing history of harming Native American communities. Denying Native American students their rights to wear tribal, religious, or cultural adornments at commencement is an extension of long-standing cultural genocide against Native American communities. Our state and federal laws forbid this. School districts that deny students their rights to wear their adornments at commencement through, for example, pre-approval processes, violate our state and federal anti-discrimination laws, free exercise protections, and free speech protections.

A. California Education Code Section 35183.1

California Education Code section 35183.1(a) plainly states: “A pupil may wear traditional tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies.” Section 35183.1(b) defines the terms “adornment” to mean “something attached to, or worn with, but not replacing, the cap and gown customarily worn at school graduation ceremonies” and “cultural” to mean “recognized practices and traditions of a certain group of people.”

As a matter of statutory interpretation, students and their families determine whether an adornment is “[a] recognized object[] of religious or cultural significance.” California rules of statutory construction require courts to determine the legislative intent of a statute to “effectuate the purpose of the law.” *Uber Techs. Pricing Cases*, 46 Cal. App. 5th 963, 973 (2020); *see also* Cal. Educ. Code § 2 (noting the Education Code’s provisions “are to be liberally construed, with a view to effect its objects and to promote justice”). A commonsense reading of the statutory text, that students and their families determine what is culturally or religiously significant, fulfills the purpose of the statute to ensure “students [are able] to wear tribal regalia or recognized objects of religious or cultural significance” as adornments to their traditional graduation garments. S. Rules Comm., S. Floor Analysis of Assemb. B. 1248, 2017–2018 Reg. Sess., at 1 (Cal. 2018). Affirming this, the California Attorney General observed that section 35183.1 is intended to

ensure “every graduating California student, regardless of their identity, are allowed to represent their family, culture, and/or faith affiliation in graduation ceremonies through regalia or adornments...” Letter from Rob Bonta to California School Superintendents, Cal. Att’y Gen., Cal. Office of Att’y Gen. (May 6, 2021).

B. U.S. Constitution, First Amendment, Free Speech and Free Exercise

The First Amendment restricts the ability of a school district such as Clovis Unified to make or enforce a rule that infringes the rights of students to free speech and the free exercise of their religious faith. In particular, the Free Speech Clause “generally prohibits suppressing speech ‘because of its message,’ and the Supreme Court has enforced that prohibition in the public-school setting.” *Waln*, 54 F.4th at 1161 (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828-29 (1995)). The Free Exercise Clause prohibits government entities from burdening “sincere religious practice pursuant to a policy that is not ‘neutral’ or ‘generally applicable.’” *Id.* at 1159 (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022)). The expressive acts at issue here—wearing an eagle feather and other Tribal regalia to convey a message about one’s Native American heritage, resilience, academic achievement, and religion—readily fall within both of these fundamental protections.

C. California Constitution Article I, Sections & 4, Free Speech and Free Exercise

As with its federal counterpart, the California Constitution also protects the liberty of speech providing that, “[e]very person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.” Cal. Const. art. I, § 2(a). This clause “is broader and more protective than the free speech clause of the First Amendment.” *Prigmore v. City of Redding*, 211 Cal. App. 4th 1322, 1336 (2012). Student free speech is protected at a level at least as robust as federal constitutional standards. Similarly robust is the state’s guarantees for the “[f]ree exercise and enjoyment of religion without discrimination or preference.” Cal. Const. art. I, § 4.

D. California Education Code Section 48907(a)

The California Education Code more broadly recognizes these federal and state constitutional rights to free expression and free exercise. Specifically, Section 48907(a) states that public school students:

shall have the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, *the wearing of buttons, badges, and other insignia*, and the right of expression in official publications, whether or not the publications *or other means of expression* are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material that so incites pupils as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.

Cal. Educ. Code § 48907(a) (emphasis added). Although the Legislature’s intent in enacting this statute was to ensure that California’s schools respect students’ robust First Amendment right to free expression affirmed by the Supreme Court in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969), and its progeny, the statutory language is in some respects more protective than the constitutional provision. *Smith v. Novato Unified Sch. Dist.*, 150 Cal. App. 4th 1439, 1452 (2007) (“section 48907 provides broader protection for student speech in California public school newspapers” than the First

Amendment); *Lopez v. Tulare Joint Union High Sch. Dist.*, 34 Cal. App. 4th 1302, 1319 (1995) (“neither the legislative history of section 48907 nor California case law supports the conclusion that a student’s free speech rights under section 48907 are only coextensive with those guaranteed by the First Amendment and federal case law”).

Wearing tribal regalia or other items of cultural or religious significance at commencement ceremonies is expressive conduct. Native American students, such as Xavier Rain Tree and Jennie Rocha, wear these items as adornments to their graduation attire to express and honor their Native American heritage, identity, family, and for religious and spiritual reasons. Section 48907(a), supported by the First Amendment and California Constitution, recognizes this by specifically protecting students’ rights to wear “insignia” and to engage in “other means of expression” than those listed.

E. California Education Code Section 48950.

California Education Code section 48950(a) states that “[a] school district operating one or more high schools . . . shall not make or enforce a rule subjecting a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.” Thus, students are protected from disciplinary sanctions, including police enforcement action, solely on the basis of the student wearing tribal regalia or other items of cultural or religious significance at a graduation ceremony when other students are permitted to wear sashes and other non-tribal adornments.

Here, District Board Policy 5127 states that “[d]uring the graduation ceremony, a student may be removed from the ceremony for failure to comply with District and school policies, regulations and rules, and for conduct that is disruptive or that poses a risk to safety.”²¹ Although CUSD staff did not explicitly cite to a particular rule subjecting Xavier to disciplinary sanctions if he wore his beaded graduation cap, CUSD staffer Lisa Ebright called for police assistance very quickly when Xavier’s father, Mr. Rain Tree, questioned her about her refusal to allow Xavier to wear his items of Tribal regalia. Police officers were also on site at the school, demonstrating that anyone (such as Mr. Rain Tree) perceived by school staff (such as Ms. Ebright) as “disruptive” or challenging any decisions made by school staff would be threatened with police intervention, including possible arrest.

F. Equal Protection Clause of the California Constitution and Education Code Section 220.

Under the California Constitution and state statutory civil rights protections, California has a public policy of anti-discrimination based on race, ethnicity, national origin, religion, and other protected characteristics in its public schools. Cal. Const. art. I, § 7(a), art. IV, § 16(a); Cal. Educ. Code § 220 *et seq.*; Cal. Gov’t Code § 11135. Here, students in CUSD and other local educational agencies are entitled be free of discrimination in District programs and activities, including in their commencement ceremonies which are part of their educational experience, regardless of their Tribal affiliation (ethnicity and/or national origin), culture (race, ethnicity and/or national origin), or religion.

²¹ Clovis Unified School District Board Policy No. 5127, (Nov. 18, 2020), <https://boardpolicies.cusd.com/Downloads/5127%20Board%20Policy.pdf>.

IV. The District’s “Pre-Approval” Requirement Severely Limits and/or Prohibits Students from Wearing Protected Graduation Adornments and Violates Students’ Civil Rights.

As noted previously, CUSD allows students to wear certain academic cords and sashes on their graduation attire without restriction. Exhibit 3. However, if a student wishes to wear traditional tribal regalia or a recognized item of religious or cultural significance, the student must obtain—weeks ahead of time—prior written approval from school or District administrators who evaluate the request. These administrators have limited or, more likely, no knowledge about Tribes or cultural significance when attempting to determine if items are “traditional tribal regalia” or objects “cultural significance” or “religious significance.” For the reasons described in more detail above in Section II(c), the District’s pre-approval process imposes a significant – and sometimes absolute – barrier for students wishing to wear Tribal, cultural or religious adornments.

A. The District’s pre-approval policy violates California Education Code 35183.1.

The District allows certain graduation adornments without requiring any pre-approval process. Inexplicably, however, the District asserts that pre-approval of traditional tribal regalia, or other recognized objects religious or cultural significance, is necessary to avoid a “substantial disruption, or material interference with, the ceremony.” Thus, on its face, the policy’s differential treatment of certain adornments violates students’ constitutional rights to free speech and free exercise and directly contravenes California Education Code section 35183.1, which explicitly codifies a student’s right “to wear traditional tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies.”

Moreover, as demonstrated in Jennie Rocha’s case, the District claims that it has the authority to evaluate whether a graduation adornment is a recognized object of religious or cultural significance rather than Jennie herself or her family making that evaluation. This interpretation of Section 35183.1 leads to an absurd result. First, school district officials are ill-equipped to make decisions about the cultural significance of Tribal regalia, and their attempts to make those decisions undermine the plain purpose of the statute. Here, Jennie sought approval from CUSD to wear an honorific Comanche stole provided to her through her Tribe, which is culturally significant to her, at her high school graduation. CUSD conducted uninformed internet research and decided that Jennie’s Tribe, the Comanches of Oklahoma, had no history of using stoles at high school graduations; and therefore, Jennie’s stole could not possess any cultural significance for her. CUSD denied approval of the stole and forced the Rocha Family to obtain legal counsel and seek a declaration from the Comanche Tribal Chair to “prove” the stole’s cultural significance. Second, Section 35183.1 was enacted into law to protect Jennie’s rights as a student to wear objects of cultural significance at commencement, not to deny her those rights. Placing the authority to determine cultural or religious significance with the school district, as opposed to the person who identifies with that culture, renders the statute meaningless. Canons of statutory interpretation recognize that courts will not interpret a statute in a way that would lead to absurd consequences the legislature would not have intended. *See e.g., In re J.W.*, 29 Cal. 4th 200, 210 (2002).

B. The District’s pre-approval policy is an unlawful restriction of student’s free expression and free exercise.

As an initial matter, CUSD’s “pre-approval” process fails constitutional principles because it burdens students’ expressive and religious rights without any reasonable justification. The restriction is not being enforced evenhandedly and it is being used to censor speech that is in no way disruptive to the graduation ceremony. By allowing some students to wear certain types of accessories on their graduation attire, but

not traditional tribal regalia or other items of cultural or religious significance, the District is burdening protected expression and discriminating against students seeking to exercise their free speech and religious practices.

Second, restrictions on speech must be “narrowly tailored to serve a significant government interest and leave open ample alternative channels of communication.” *Prigmore*, 211 Cal. App. 4th at 1335. Under this standard, courts have struck down time and place restrictions that treat speech differently depending on content and also prevent speakers from sufficiently accessing their intended audience. *Best Friends Animal Soc’y v. Macerich Westside Pavilion Prop. LLC*, 193 Cal. App. 4th 168, 175-76 (2011) (collecting cases). Prohibiting a student from wearing and displaying symbols of their Native American identity or culture at their commencement cuts graduating students off from belonging to their families and community in the audience. It is not reasonable; it is not narrowly tailored to serve any significant government interest; and it does not leave open any alternative ways for the student to express themselves to a unique audience during their graduation. Under state law, “the crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time.” *U.C. Nuclear Weapons Labs Conversion Project v. Lawrence Livermore Lab’y.*, 154 Cal. App. 3d 1157, 1168 (1984) (citation omitted).

Here, nothing about Xavier or Jennie displaying adornments expressing their culture, identity and achievement is incompatible with a graduation ceremony. Indeed, allowing students to wear personally significant adornments, such as traditional tribal regalia, on their graduation attire is entirely compatible with the normal activity of graduation ceremonies, as evidenced by the District unconditionally allowing students to wear certain academic cords and sashes on their cap and gown. *See* Exhibit 3.

C. The District denied regalia even though it was not likely to cause a substantial disruption of, or material interference with, the graduation ceremony.

Under the Education Code and the Constitution, as noted above, the only legal limitation on a student’s rights to wear traditional tribal regalia or other commencement adornments that are culturally or religiously significant is that a school district may “prohibit an item that is likely to cause a substantial disruption of, or material interference with, the ceremony.” Cal. Educ. Code § 35183.1. The statutory text of Section 35183.1 mirrors the “substantial disruption” standard articulated by the U.S. Supreme Court in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* fifty-five years ago which cemented students’ rights to free expression in public schools. *Tinker*, 393 U.S. at 513; S. Rules Comm., S. Floor Analysis of Assemb. B. 1248 at 6 (noting that the purpose of California Education code section 35183.1 is to require school districts to “focus [most] carefully on the question of whether any individual adornment would genuinely interfere with the graduation ceremony, rather than reacting to the content of the adornment or resorting to blanket rules that unnecessarily stifle individual student expression”).

Under *Tinker*, students have the right to express their views freely, so long as their chosen mode of expression does not “materially and substantially disrupt the work and discipline of the school.” *Tinker*, 393 U.S. at 513. This is a heavy standard for a school district to meet, as it is intended to be protective of students’ rights to free expression in school. As noted by the Supreme Court, “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.” *Tinker*, 393 U.S. at 508; *see also id.* at 509 (noting that it is the burden of school officials to justify censorship of student speech because as a general rule, students maintain free speech rights at school). Instead, “the decision to discipline speech must be supported by the existence of *specific facts* that could reasonably lead school officials to forecast disruption.” *J.C. ex rel. R.C. v. Beverly Hills Unified Sch. Dist.*, 711 F. Supp. 2d 1094, 1111 (C.D. Cal. 2010) (emphasis in original).

Consistent with *Tinker*, the Ninth Circuit has protected the free speech and free exercise rights of students at graduation ceremonies. In *Waln v. Dysart Sch. Dist.*, the court ruled that a school could face liability under the Free Exercise Clause, the Free Speech Clause, and the Equal Protection Clause for engaging in the selective enforcement of a graduation dress-code policy that prohibited students from decorating their graduation gown or cap. *Waln*, 54 F.4th at 1155. There, as here, the court held that a school could engage in unconstitutional conduct where a policy or practice is enforced at graduation “to permit the secular and forbid the religious.” *Id.* at 1159.

It is difficult to conceive of how the tribal regalia or cultural adornments worn by Xavier or Jennie could have posed a substantial disruption, even less than the “mild distraction or curiosity” found in *R.C.* or *Tinker*.

D. The District’s pre-approval policy is unconstitutional because it is viewpoint-based and fails strict scrutiny.

Discrimination against student free expression based on viewpoint is also constitutionally prohibited. *See, Tinker*, 393 U.S. at 509 (noting that viewpoint discrimination in school is not permissible if the government cannot show that the forbidden speech would “materially and substantially interfere” with educational operations); *see also Castorina ex rel. Rewt v. Madison Cnty. Sch. Bd.*, 246 F.3d 536, 540 (6th Cir. 2001) (noting that “viewpoint-specific speech restrictions are an egregious violation of the First Amendment”).

As set forth above, the District allows students to wear certain graduation adornments without obtaining advance permission; but it specifically requires students who wish to wear traditional tribal regalia or other recognized items of cultural or religious significance to go through a time-consuming, onerous, and offensive pre-approval process that in practice often operates as an absolute barrier to this form of expression at commencement ceremonies. Exhibit 3.

A school district that engages in viewpoint discrimination must pass strict scrutiny analysis to demonstrate that the restrictions on student expression serve a compelling government interest and are narrowly tailored to serve that interest. *See Waln*, 54 F.4th at 1162. Here, the only government interest the District has offered to anyone to rationalize its policy is that the “graduation ceremony dress code...focuses on presenting the graduating class as a unified group...[which] does not allow personalization or adornment of graduation robes or caps outside of what is allowed for in the Education Code.”²² Yet, Xavier’s and Jennie’s expression is specifically protected by Education Code § 35183.1, in addition to the California and U.S. Constitutions. Therefore, the District has asserted no compelling government interest for this restriction and it collapses under strict scrutiny.

E. “Pre-approval” constitutes an unlawful prior restraint on students’ constitutional right to expressive conduct and statutory rights under California law.

Where the government “subject[s] the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards,” its action is presumptively unconstitutional. *Shuttlesworth v. City of Birmingham, Ala.*, 394 U.S. 147, 150-151 (1969). Restrictions that operate as a “prior restraint” on speech—that is, restrictions giving “public officials the power to deny use of a forum in advance of actual expression,” *Ward v. Rock Against Racism*, 491 U.S. 781, 795 n.5 (1989) (citation omitted)—bear “a heavy presumption of unconstitutionality,” *U.S. v. Baugh*, 187 F.3d 1037, 1042 (9th Cir. 1999). This key legal principle applies to student expression. *Tinker*, 393 U.S. at 511 (holding that

²² Diaz, *supra* note 4 (quoting CUSD spokesperson Kelly Avants).

“[s]tudents in school . . . may not be confined to the expression of those sentiments that are officially approved”). Here, as noted above, Native American and other students must obtain advance permission from the District before they are allowed to exercise their constitutional rights to free expression and free exercise through wearing traditional tribal regalia or other recognized objects of cultural or religious expression at their graduation ceremonies. In both policy and practice, this pre-approval policy operates as an unconstitutional prior restraint on students’ First Amendment freedoms.

F. The District’s graduation attire policy violates the Equal Protection Clause and state statutory civil rights laws prohibiting discrimination on race, ethnicity, national origin, and religion.

Under the California Constitution’s equal protection clause and state statutory civil rights laws, classifications based on race, ethnicity, national origin, or religion (among other protected categories) trigger strict scrutiny. Cal. Const. art. I, § 7(a), art. IV, § 16(a); *In re Marriage Cases*, 43 Cal. 4th 757, 784 (2008); Cal. Educ. Code § 220 *et seq.*; Cal. Gov’t Code § 11135. Students’ right to basic educational equity in public schools is a “fundamental interest.” Cal. Const. art. IX, § 5; *Butt v. State of Cal.*, 4 Cal. 4th 668, 681 (1992) (affirming that “access to a public education is a uniquely fundamental personal interest in California”). Heightened scrutiny of state action applies where the fundamental right to education is impinged and there is disparate impact between at least two categories of students. Evidence of intentional discrimination is not required. *Butt*, 4 Cal. 4th at 681 (affirming that the State is required to take steps to correct disparities between districts “even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents”); *Collins v. Thurmond*, 41 Cal. App. 5th 879, 896-897 (2019).

i. The District’s policy places additional burdens on students who wish to express their race, ethnicity, national origin, and religion.

Here, the District’s policy is unconstitutionally discriminatory because students who wish to wear certain academic cords, sashes, and medals may do so without going through an onerous process to gain advance permission; while students who wish to wear tribal regalia or items of cultural or religious significance must go through the pre-approval process (which, in many cases, acts as an absolute barrier to students wearing their items of tribal regalia or cultural or religious significance). CUSD’s pre-approval policy thus places a special and unlawful burden on a student’s expression of their race, ethnicity, national origin and/or religion at commencement ceremonies that cannot meet strict scrutiny and is a violation of California’s Equal Protection Clause, California Education Code section 220 and California Government Code section 11135.

ii. The District selectively discriminates against Native American students when enforcing its policy.

A key aspect of the District’s pre-approval policy is that District and school staff are granted significant discretion to evaluate whether an adornment is “traditional tribal regalia” or a “recognized object of cultural or religious significance.”²³ This discretion to evaluate the tribal, cultural or religious authenticity of a student’s adornment is granted regardless of the staff member’s knowledge (or ignorance) about a student’s Tribe, culture or religion. Enforcement of the policy is uniquely susceptible to racial and ethnic bias and has already led to selective denials of Native American students’ rights to wear tribal regalia and

²³ Diaz, *supra* note 4 (quoting CUSD spokesperson Kelly Avants as stating that students wanting to wear cultural or religious regalia at graduation must submit a request so the district can evaluate the item).

other cultural adornments, which is a violation under the California Constitution’s equal protection clause and state statutory civil rights laws. Cal. Const. art. I, § 7(a), art. IV, § 16(a); Cal. Educ. Code § 220 *et seq.*; Cal. Gov’t Code § 11135.

For example, the District repeatedly denied Jennie Rocha’s request to wear a graduation stole with the words “Comanche Nation” in the Comanche language because (non-Comanche, non-Native American) school and District staff shockingly claimed it was neither “traditional tribal regalia” nor a “recognized object of cultural significance.” Jennie’s brother, Christian, was similarly denied his request to wear a Comanche stole in 2022 on the same basis. In a May 2024 phone conversation with CILS attorney Jay Petersen, who was advocating for Jennie’s right to wear her Comanche stole at graduation, District General Counsel Maiya Yang stated that she had done some internet research on Comanche people and there was no historic use of the stole, so Jennie’s stole could not be “traditional tribal regalia.” In a separate phone conversation with Ashley Crystal Rojas from Indigenous Justice, General Counsel Yang restated that she had “looked up” images of Comanche people and they were not wearing stoles, so in CUSD’s estimate, Jennie’s Comanche stole is not a “recognized object of cultural significance.” After significant pressure from advocates and attention from the media, District staff then told Mr. Rocha that the words “Graduate 2024” on the Comanche stole must be removed (significantly altering the stole) before the District would approve Jennie wearing it at her graduation ceremony because “Graduation 2024” is not a cultural element. The District finally relented and allowed Jennie to wear her cultural stole after the Rocha Family went to great lengths to obtain an affidavit from the Comanche Tribal Chairman that Jennie’s Comanche stole is, indeed, a recognized object of cultural significance. Undoubtedly, adornments from cultures with which CUSD staff are more familiar have not required further authentication from students through the pre-approval process, much less to the level the District demanded from the Rocha Family. It is nearly inconceivable, for example, that CUSD would require a student with German heritage wishing to wear a stole displaying the German flag and German folk-art patterns to obtain an affidavit from German Prime Minister Olaf Scholz testifying to its cultural significance before approving the request.

Furthermore, as noted above in Section IV(a), as a matter of statutory construction, what is “traditional tribal regalia” or an object of “religious or cultural significance” is for the Native American student and their family to define, not the school district.²⁴ To the extent any lawful evaluation can be conducted by the school district, it must focus on the sincere beliefs of the person exercising the right. *See U.S. v. Seeger*, 380 U.S. 163, 165-166 (“the test of belief ‘in a relation to a Supreme Being’ is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor”). No provision of the California Education Code grants a school district the authority to determine what is “traditional tribal regalia” or “culturally significant” as against the sincerely held belief of a student, their family, and their cultural community. CUSD’s assertion that the uneducated opinions of its staff regarding what is “traditional” and “significant” to Native American students holds greater weight than the views and beliefs of Native American students themselves is a shocking illustration of the racial and ethnic bias that pervades District schools.

²⁴ *See also* United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, Article 14 (stating that Indigenous peoples have the right to establish educational systems in a manner appropriate to their cultural methods of teaching and learning), Article 15 (stating the “Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information”), Article 31 (stating that Indigenous peoples have the right to “protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions,” and “States shall take effective measures to recognize and protect the exercise of these rights”).

V. Similar Unlawful “Pre-Approval Processes” Are Replicated in School Districts Across California, Leading to Harmful Denials and Erasure of Students’ Native American Identity Every Year.

Although the facts presented throughout this Complaint focus primarily on Clovis USD, school districts across California have similar unlawful policies placing obstacles in the path of students who wish to express their Tribal and cultural identity and heritage at commencement ceremonies. Every year, disproportionate numbers of Native American students are denied the right to wear graduation adornments that reflect their ethnic, cultural, and religious identity at a key academic achievement ceremony.

In 2023, CILS, the ACLU Foundation of Southern California, and the ACLU Foundation of Northern California collected information from 50 local educational agencies (“LEAs”) regarding graduation dress code policies. This is a small sample of the hundreds of California’s school districts that have annual commencement ceremonies. The findings reveal that California public schools continue to enforce policies that restrict the tribal, cultural, or religious expression of students at commencement ceremonies.

At least 28 school districts in the sample required students to obtain pre-approval (days or weeks ahead of time) from school or district staff before they are allowed to wear traditional tribal regalia or recognized object of cultural or religious significance with their graduation attire. A majority of those 28 school districts did not, however, require pre-approval for students to wear military dress to graduation ceremonies.

Twenty-two LEAs provided no information in their student/parent handbooks about how to obtain pre-approval. At least one district required students to present leis or other items of cultural/religious significance at the graduation rehearsal. Depending on when the rehearsal takes place, this may not be possible. For example, leis are fresh flowers and cannot be presented days before the ceremony.²⁵ Moreover, for many Native American students, tribal regalia or other items of cultural or religious significance are gifted by a community member or family member shortly before the commencement ceremony, making it unfeasible for students to present their items to school officials ahead of the ceremony. Bishop Unified School District, which is adjacent to the Bishop Paiute Reservation and which has a Native American student population that is over thirty times the statewide average, limits commencement adornments to only an eagle feather and requires students to request pre-approval for all other traditional tribal regalia or other items of cultural or religious significance.

These examples demonstrate that statewide action is urgently needed by your office to clarify existing law and send the message that, as California’s chief law officer, you will not tolerate these ongoing civil rights violations during commencement ceremonies.

VI. Remedies Requested

We respectfully request the California Department of Justice Bureau of Children’s Justice investigate the District’s actions described above and take other actions to require LEAs statewide to develop and implement plans to accomplish the following remedies, at a minimum:

²⁵ A video of a family advocating for their Native Hawaiian student’s right to wear a lei at her 2024 graduation ceremony in San Diego County highlights the heartbreak and anguish accompanying the school district’s violation of her rights. @Kainoa.b, TikTok (June 8, 2024), <https://www.tiktok.com/@kainoa.b/video/7378262312290880810?lang=en>.

- A. Move to enjoin all “pre-approval” policies as applied to traditional tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies in Clovis Unified School District.
- B. Require Clovis Unified School District, including all staff who violated the civil rights of Xavier Rain Tree and Jennie Rocha, to publicly apologize to those students and their families.
- C. Require disciplinary consequences for Clovis Unified School District staff who unlawfully denied Xavier Rain Tree and Jennie Rocha from wearing their traditional tribal regalia and cultural adornments.
- D. Require CUSD to establish a committee of community representatives, which shall include Native American tribal leaders and members, Native-led community organizations, and family members of Native American CUSD students, to increase CUSD’s cultural competency with the local Native American community.
- E. Issue guidance to all local educational agencies in California that, pursuant to California Education Code section 35183.1 and constitutional law, students must be permitted to wear traditional tribal regalia or other recognized objects of cultural or religious significance as commencement adornments without the need for “pre-approval.”
- F. Issue guidance to all local educational agencies in California that that whether an object is of “cultural or religious significance” is determined by the sincere beliefs of the student and not by the school district.
- G. Support statewide legislation clarifying that:
 - There are actionable legal consequences when local educational agencies violate California Education Code § 35183.1;
 - The authority to determine what is “traditional tribal regalia” and “a recognized object of cultural or religious significance” resides with the student; and
 - Requiring students to obtain pre-approval to wear traditional tribal regalia or objects of cultural or religious significance at commencement ceremonies is unlawful.

Please do not hesitate to contact Linnea Nelson at [REDACTED] if you have any questions or need additional information. We look forward to your response to this complaint.

Respectfully submitted,

[REDACTED]

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION OF NORTHERN CALIFORNIA

Linnea Nelson, Senior Education Equity Attorney, Racial & Economic Justice Program

Grayce Zelphin, Director, Racial & Economic Justice Program

Chessie Thacher, Senior Staff Attorney, Democracy & Civic Engagement Program

Angélica Salceda, Director, Democracy & Civic Engagement Program



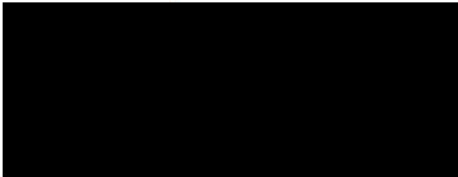
CALIFORNIA INDIAN LEGAL SERVICES

Jay Petersen, Senior Staff Attorney



**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN CALIFORNIA**

Ana Nájera Mendoza, Education Equity Project Director



**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SAN DIEGO AND IMPERIAL COUNTIES**

Efaon Cobb, Deputy Legal Director

CC: Office of Native American Affairs (ONAA)


Merri Lopez-Keifer, 

Isaac Bojorquez, 


California Department of Education

Judy Delgado, 

Office of the State Superintendent of Public Instruction

Tony Thurmond, State Superintendent of Public Instruction, 

Office of Assemblymember James Ramos

Linda Sacks, 

Native American Graduation Adornments Taskforce



- Laurie E. Gonzalez, Rincon Band of Luiseño Indians
- Olivia Chilcote, San Luis Rey Band of Mission Indians, Luiseño
- Nakia Zavalla, Santa Ynez Band of Chumash Indians
- Rudy Ortega, Fernandeseño Tataviam Band of Mission Indians
- Wes Crawford, Yurok Tribe
- Corinna Gould, Confederated Villages of Lisjan Nation

Meryl Piccard, Bishop Paiute Tribe
Ken Woodrow, Wusachi Tribe – Eshom Valley Band
Andrew Alejandro, Paskenta Band of Nomlaki Indians
Joseph Murphy, Pechanga Band of Mission Indians
c/o Judy Delgado, [REDACTED]

Exhibit 1



Exhibit 2



Exhibit 3

Clovis West High School

Request to Wear Adornment at Graduation Ceremony

Students may wear these academic cords and sashes with their cap and gown for the graduation ceremony:

CSF Life Gold Cord, National Honor Society Sash, Symbol of Academic Distinction Medallion, Seal of Bi-Literacy Medallion, and AVID Cord.

Students wanting to wear an additional item of adornment (recognized item of religious or cultural significance or traditional tribal regalia) at school graduation ceremonies must complete the information below and return this form to the Deputy Principal's Office by **May 10th, 2024**. By submitting this request, student and parent(s) verify the personal religious, cultural, or traditional tribal significance of the adornment requested.

Student Name: _____ Student ID: _____

Parent(s) Name(s): _____ Phone Number: _____

Date of Graduation Ceremony: **June 5th, 2024**

Description of Item Student Requests to Wear at Graduation Ceremony: Include measurements of the item and details of how student intends to wear item and **attach a picture of you wearing the adornment to this form.**

Description of the item's religious or cultural significance to student and/or student's relationship with traditional tribal regalia:

The Deputy Principal will review the request and notify student and parent(s) whether the request is approved prior to the graduation ceremony. The student must bring the adornment item to the Deputy Principal's Office to be photographed in the manner in which it will be worn. Student must have the photograph and approval form at the graduation ceremony. If student does not have either, student will not be allowed to wear the adornment. Students whose requests are denied may appeal to the Area Superintendent, but all appeals must be completed at least two days before the graduation ceremony.

Deputy Principal: _____ Approved: _____ Denied: _____ Date: _____

An "adornment" means something attached to, or worn with, but not replacing, the cap and gown traditionally worn at school graduation ceremonies.

"Cultural" means recognized practices and traditions of a certain group of people.

The District has the discretion and authority to prohibit an item that is likely to cause a substantial disruption of, or material interference with, the ceremony.

(Education Code § 35183.1)

647307