IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HAYDEN GRIFFITH, an Individual	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	**Case No. 15-CV-273-GKF-FHM**
CANEY VALLEY PUBLIC SCHOOLS, et al.,	)	
	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COME NOW, Defendants, Independent School District No. 18, Washington County, Oklahoma, also known as Caney Valley Public Schools, ("District"), Rick Peters, District Superintendent, Clint Sumner, member, District Board of Education, Joe Lewis, member, District Board of Education, Jeanie Huffaker, member, District Board of Education, Ron Pruitt, member, District Board of Education, Sue Woods, member, District Board of Education ("Defendants") and move to dismiss Plaintiff's Complaint for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff fails to state any claim against Defendants under 42 U.S.C § 1983 and Okla. Stat. tit. 51, § 251 *et seq*. Additionally, any claims asserted against any individual defendant should be dismissed as such claims are duplicative of Plaintiff's claims against District.

Standard of Review

A motion pursuant to Rule 12(b)(6) assumes that the court is authorized to resolve the dispute and tests whether there is a legal dispute to resolve. In deciding a motion to dismiss for failure to state a claim, the allegations of the complaint must be viewed in the light most favorable to the plaintiff. *Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir. 1984). Pleadings that are no more than legal conclusions are not entitled to the assumption of truth; while legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009). A complaint need not contain detailed factual allegations; however, a plaintiff's obligation requires more than labels and conclusions, and a mere recitation of the elements of a cause of action will not be sufficient. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

Argument and Authority

Introduction

Plaintiff, Hayden Griffith, a graduating District student, has filed suit because the District administration has stated it will refuse to allow Plaintiff to affix an eagle feather to the graduation cap (along side the tassel) she will wear at District's graduation ceremony on Thursday, May 21, 2015. Plaintiff does not contest the requirement to wear the uniform cap, including the tassel, and the gown. Instead she claims that the denial of the ability to wear the eagle feather amounts to an unlawful infringement on her right to freedom of religious

expression, amounting to a deprivation of her rights under the First Amendment to the United States Constitution. In addition, Plaintiff claims in her second cause of action that the District's actions amounts to a substantial burden on her right to free exercise of religion in violation of Title 51 O.S. §§ 251, et seq., the Oklahoma Religious Freedom Act. Plaintiff seeks declaratory and injunctive relief.

As the evidence will show, District has valid neutral reasons for refusing Plaintiff's request and has never allowed any student participating in any graduation to decorate or adorn the student's graduation cap. Although the District's student population is approximately forty percent (40%) Native American, District has never received a request by a Native American student to affix an eagle feather to the student's graduation cap.

Proposition I: PLAINTIFF FAILS TO STATE ANY CLAIM UNDER 42 U.S.C § 1983.

A. Free Speech

"[T]he First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings, and must be applied in light of the special characteristics of the school environment." *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988). Nowhere is this more true than in the context of school-sponsored, student speech during the highly produced and controlled graduation ceremonies held by schools throughout the country each year. See e.g. *Lee v. Weisman*, 505 U.S. 577, 597, 112 S. Ct. 2649, 2660, 120 L. Ed. 2d 467 (1992)(stating, "At a high school graduation, teachers and principals must and do retain a high degree of control

over the precise contents of the program, the speeches, the timing, the movements, **the dress**, and the decorum of the students.")(citing *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986)) (emphasis added).

Though there are essentially three main types of speech that occur within a school setting, speech which occurs as part of a school sponsored activity may be reasonably controlled so long as the school's actions are reasonably related to legitimate pedagogical concerns. *Fleming v. Jefferson County Sch. Dist. R–1*, 298 F.3d 918, 923 (10th Cir.2002) (citing *Hazelwood*, 484 U.S. at 270–71, 108 S.Ct. 562).

In determining whether speech is school-sponsored speech, the Court should consider "the imprimatur and pedagogical interests of the school." *Fleming*, 298 F.3d at 924. If the subject speech bears the imprimatur of the school and involves pedagogical interests, then it is school sponsored speech which may be restricted so long as the restrictions are reasonably related to legitimate pedagogical concerns. *Hazelwood*, 484 U.S. at 273, 108 S. Ct. at 571.

Here, the speech sought to be regulated by District is the dress of the students during the graduation ceremony. The Tenth Circuit, in holding that speech made during graduation ceremonies was school-sponsored, stated that a high school graduation ceremony is "so closely connected to the school that it appears the school is somehow sponsoring the speech." *Corder v. Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219, 1229 (10th Cir. 2009) (quoting, *Fleming*, 298 F.3d at 925). In so ruling, the Court considered the fact that the school district

had placed restrictions on the content of speech prior to graduation, and exercised control over valedictory speeches. *Id*.

Other courts have similarly held that speech made during graduation ceremonies is school sponsored. In *Bear v. Fleming*, 714 F. Supp. 2d 972 (D.S.D. 2010), a student sued public school district officials alleging that they had violated his right to free speech under the First Amendment when they required him to wear a cap and gown over traditional Native American clothing at graduation. In considering the complaint and a motion for preliminary and permanent injunctive relief, the court ruled that the student's dress during graduation constituted school-sponsored speech. As explained by the court:

> A graduation proceeding is a theatrical production in a sense—the actors, director, and stage crew, or rather the students, administrators, teachers, and staff members, hope to convey a message the audience will understand and appreciate. This is not a case where Mr. Dreaming Bear's speech happens to occur in a school setting as in *Tinker*. Rather, it is the school-sponsored event—the graduation exercises—which provide the forum and opportunity for Mr. Dreaming Bear's speech. This speech would occur during a school-sponsored activity that "students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school." *Hazelwood*, 484 U.S. at 271, 108 S.Ct. 562. This fact places Mr. Dreaming Bear's case squarely within the scrutiny standard of *Hazelwood*.

Bear, 714 F. Supp. 2d at 988 (emphasis added.)

School-sponsored speech may be restricted if the restriction is reasonably related to legitimate educational concerns. *Hazelwood*, 484 U.S. at 273, 108 S. Ct. at 571. Here, District's practice of regulating student dress during commencement is related to learning, and has a legitimate pedagogical interest. Graduation is an opportunity for the District to

impart one last message to its student community before they complete their studies. By prohibiting the decoration of student caps and requirements regarding similar dress, the District's messages of unity, community, discipline, and respect for authority are conveyed to the students, and no one student is singled out for anything but their academic or school related achievement. Further still, prohibiting adornments and decorations to student caps, the part of a students graduation gown most visible to the audience, avoids controversy in the community, and the singling out of any one student based on how that student has decided to decorate his or her cap.

Plaintiff has alleged that she desires to wear an eagle feather, which was given to her as a sign of great personal accomplishment, to show her pride for her culture and personal success. Though Ms. Griffith's desire is certainly honorable, and respect for her culture is warranted, it is exactly the reason why District prohibits adornments and decorations on caps. District desires to limit recognition of personal achievement during graduation to academic success or school related functions, while Ms. Griffith desires to wear an eagle feather to show her own personal achievement and pride for her particular tribe. Indeed, a large percentage of the District's student population is Native American, and it is to be expected that there will be many Native American parents, family and students watching the ceremony. Those present will understand the significance of Ms. Griffith's eagle feather, that it was given to her in recognition of her personal accomplishments, and this will detract from the general graduation message of class unity and academic success. These concerns are

similar to those that were considered by the Tenth Circuit in *Corder*, and the District Court in *Bear,* both of which found that school-sponsored speech could be restricted.

In *Corder*, the court found that the school district's unwritten policy of reviewing valedictory speeches prior to graduation and retaining editorial control was reasonably related to learning. *Corder*, 566 F.3d 1219, 1229 (10th Cir. 2009). The Tenth Circuit found that the graduation ceremony was "an opportunity for the School District to impart lessons on discipline, courtesy, and respect for authority" and that the content of speech could be restricted to avoid controversy and preserve neutrality. *Id.* As such, any message which detracted from that theme could be restricted by the school district to conform to the message it wished to display.

Likewise, in *Bear*, though the Court found that Mr. Dreaming Bear's desire to wear traditional clothing was "much more to him than a mere fashion choice or a way to distinguish himself from other students" the school district's concern in "honoring its graduating seniors and preserving the unity of the class at this most auspicious event" were reasonably related to its educational mission. *Bear*, 714 F. Supp. at 989.

In this case, Plaintiff has requested to wear an eagle feather, which was given to her as a symbol of her personal achievement and recognition. Doc. No. 4, ¶ 21-22. She desires to wear the feather as part of her graduation cap, which constitutes school-sponsored speech. However, District has a pedagogical interest in conveying one last message of unity, academic achievement, discipline, and respect for authority. District's rule of prohibiting

personal adornments and decorations to the most visible part of a graduate's apparel works to prevent personal, non-academic recognition and emphasizes class unity to the student body and all those observing the ceremony.

B. Free Exercise

Neutral rules of general applicability ordinarily do not raise free exercise concerns, even if they incidentally burden a particular religious practice or belief. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993); *Employment Div. v. Smith*, 494 U.S. 872, 879, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990). The Free Exercise Clause offers no protection when neutral rules of general applicability are enforced. *Tenafly Eruv Ass'n., Inc. v. Borough of Tenafly*, 309 F.3d 144, 165 (3d Cir. 2002). A neutral rule of general applicability is reviewed under the rational basis standard. *Id.* at 165. However, if a rule is not neutral or is not generally applicable, strict scrutiny applies. *Id.*

Here, District has a long standing rule prohibiting any decorations or adornments to its students graduation caps. In whole, the specific rule in question states, "HATS MAY NOT BE DECORATED AT ALL." Doc. No. 4, Complaint, ¶ 27. The rule does not limit any one particular decoration or practice, but is neutral as to its restrictions and applies to all decorations to a student cap.

Though Plaintiff generally alleges that District allows students to wear "National Honor Society sashes and stoles at graduation," these academic adornments are given to

students who have gained admission in the National Honor Society, a recognized student-achievement organization. The sashes are academic in nature, fitting into the District's general message of academics and academic success. Further, Plaintiff has been given the alternative of wearing the eagle feather attached to her gown, in her hair, or as a neckless, much as a sashe/stole is worn over the gown. Doc. No. 4, ¶ 31. Clearly then, District is applying the rule generally, and without regard to content or practice.[1]

As the rule is content neutral and generally applied, the Court must determine only whether the District has a rationale basis for its prohibition. As described above, the graduation ceremony is the District's one last opportunity to convey a message to its students. As a single class, which has worked its way together through school to earn their diploma, District desires to show unity among the class, and to avoid any personal recognition other than for academic success. Prohibiting students from decorating their caps with personal messages, eye catching decorations, or religious adornments of any type keeps the student body in similar appearance, and appears uniform not only to the participants, but the audience observing the ceremony. Further, prohibiting non-academic personal recognition helps to

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[1] Pursuant to the Tenth Circuit's holding in Swanson v. Guthrie Indep. Sch. Dist. No. I-L, 135 F.3d 694 (10th Cir. 1998), to fall within the hybrid-rights exception, there has to be "at least [a] . . . colorable showing of infringement of recognized and specific constitutional rights, rather than mere invocation of a general right." As Plaintiff has failed to sufficiently plead a Free Speech claim, she has failed to make a "colorable showing" sufficient to bring her Free Exercise claim within the hybrid exception. Thus, District's prohibition on cap decorations should be reviewed using the rational basis test. See also, Axson-Flynn v. Johnson, 356 F.3d 1277 (10th Cir. 2004).

prevent controversy or to elevate any one student's personal status above another in terms of social status or income, or political and religious beliefs.

Prohibiting personal adornment of student graduation caps has a rational basis in the District's desire to convey a particular message to its students and the audience. As the rule is content neutral and generally applied, Plaintiff's Free Exercise claim must be dismissed.

Proposition II: PLAINTIFF HAS FAILED TO STATE A CLAIM UNDER THE OKLAHOMA RELIGIOUS FREEDOM ACT.

The Oklahoma Religious Freedom Act ("ORFA") states:

> A. Except as provided in subsection B of this section, no governmental entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability.
>
> B. No governmental entity shall substantially burden a person's free exercise of religion unless it demonstrates that application of the burden to the person is:
>
> 1. Essential to further a compelling governmental interest; and
>
> 2. The least restrictive means of furthering that compelling governmental interest.

Okla. Stat. tit. 51 § 253.

In interpreting the Act, the Oklahoma Court of Civil Appeals has held that "a plaintiff in an ORFA action must . . . make an initial prima facie showing of 'substantial burden' before any burden of persuasion shifts to the state." *Steele v. Guilfoyle*, 2003 OK CIV APP 70, ¶ 7, 76 P.3d 99, 102.

Throughout her Complaint, Plaintiff has alleged the importance of eagle feathers to Native American culture and religion, and states that "she wishes to wear the single eagle

feather gifted to her by the tribal elder to symbolically acknowledge her native American culture and as a practice and expression of her Native American religious beliefs." Doc. No. 4, ¶ 23. Plaintiff has not alleged that there is any religious requirement that she wear the feather for every important event in her life, only that she wishes or desires to do so for graduation. She does not allege that her failure to wear the feather would result in any type of dishonor, blasphemy, or break any type religious requirement. She alleges only that she "wishes" to wear it to "symbolically acknowledge her Native American culture and as a practice and expression of her Native American religious beliefs." *Id.* To that extent, it would appear to be similar to a Catholic student desiring to carry rosary beads, or to attach them to his graduation cap, and not substantially different to a Christian student who desires to carry a copy of the Bible in his hands or to write "John 3:16" on the top of his or her cap. Though indeed it may be a symbolic expression of faith or culture, it is not a practice that is required by the student's religion, the failure of which would result in a violation of the student's beliefs of faith.

The issue before the Court is quite similar to the facts of *Steele v. Guilfoyle*, the only Oklahoma appeals court decision that has addressed the ORFA. In *Steele*, inmate Anthony Steele brought an action against the Oklahoma Department of Corrections alleging that he had been forced to live with non-muslim cell mates who consumed pork, and had photographs of "beings with souls" hanging in their cell. *Id.* at ¶ 2. He contended that the other cell mates defiled his cell, and prevented angels from entering his cell. *Id.* He alleged

that such an assignment was a violation of his rights under ORFA and the Federal Religious Land Use and Institutionalized Persons act of 2000 ("RLUIPA"). The Court of Civil Appeals relied upon federal case law interpreting RLUIPA, which is identical to the ORFA, and found that a regulation is said to be a substantial burden where it:

> [S]ignificantly inhibit[s] or constrain[s] conduct or expression that manifests some central tenet of a prisoner's individual beliefs, meaningfully curtail[s] a prisoner's ability to express adherence to his or her faith; or ... deny[s] a prisoner reasonable opportunities to engage in those activities that are fundamental to a prisoner's religion.

Id. at ¶ 8 (citing, *Werner v. McCotter*, 49 F.3d 1476, 1480 (10th Cir.1995). A government regulation does not substantially burden religious activity when it merely has an incidental effect that makes it more difficult to practice the religion. *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450-51, 108 S.Ct. 1319, 1326, 99 L.Ed.2d 534 (1988).

Relying upon this understanding of "substantial burden" the Oklahoma Court of Civil Appeals found in *Steele* that the plaintiff had failed to demonstrate that the DOC's random assignment of cell mates substantially burdened the inmate's right to exercise his religion. That is to say, that even though eating pork and having pictures hanging in the cell may have kept angels from entering the cell, as was his belief, it was not a substantial burden on the inmate who could still pray, or otherwise practice his faith while incarcerated. Here, Plaintiff is not being prevented from conduct or expression that "manifests some central tenet" of her individual beliefs. Plaintiff alleges that the feather is seen as having religious significance and is highly regarded, and that if the feather is worn, it must be worn in a place of

prominence. Plaintiff merely "wishes" (Doc. No. 4, ¶ 23) to wear a feather during graduation, but has not alleged any particular belief that wearing the feather is required, or would result in an action contrary to her religious beliefs.

Likewise, Plaintiff admits in her Complaint that she has been given alternatives including wearing the feather as a necklace, or affixing the feather to her hair. Doc. No. 4, ¶ 31. Plaintiff does not allege that District has restricted how the feather should be affixed, only that it is not physically attached to the graduation cap. Plaintiff desires to wear the feather "attached to the top of the cap along with the traditional tassel." Doc. No. 4, ¶ 24. She then alleges that wearing the feather in her hair, even hanging next to the tassel, would be a substantial burden on her religious beliefs, as the feather must take prominence and hang next to the tassel from a cord attached to the top of her cap from where it could be placed in her hair.

Respectfully, Plaintiff fails to allege any fact sufficient to support her claim that wearing the feather in her hair next to the tassel merely inches away from where it would hang if attached to the cap would be a substantial burden, while wearing the feather, hanging from a chord next to the tassel and in an identical position is not.

As Plaintiff has failed to sufficiently allege that the practice of her religion has been substantially burdened by either not wearing the feather, or wearing the feather in her hair, her claim under the ORFA must be dismissed.

Proposition III: THE CLAIMS ASSERTED AGAINST INDIVIDUAL DEFENDANTS SHOULD BE DISMISSED

As part of this action, Plaintiff has named Rick Peters, District Superintendent; and all five members of the District Board of Education. Plaintiffs name all of the individuals in their "official capacity." This is true for all of the federal claims as well as all state claims. However, such "official capacity" allegations are unnecessary, duplicative and confusing.

The United State Supreme Court has long recognized and held that a suit against a person in his or her official capacity is the same as a suit against the public entity. *Monell v. Dept. of Soc. Serv. of City of N.Y.*, 436 U.S. 658, 690 n. 55, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). *See, Kentucky v. Graham*, 473 U.S. 159, 165, 105 S.Ct. 3099, 7 L.Ed.2d 114, 121 (1985). The Tenth Circuit has also recognized this fact. *Griess v. Colorado*, 841 F.2d 1042, 1045 (10th Cir. 1988). Additionally, under Oklahoma law, claims against governmental officers acting in their official capacities are the same as claims against the entity that such officers represent and an attempt to impose liability on that entity. *Pellegrino v. State ex rel Cameron Univ.*, 2003 OK 2, 63 P.3d 535, 537. Thus, the naming of the individuals in their official capacity is just another way of naming District as a defendant, and is redundant to Plaintiffs' state and federal law claims.

Conclusion

Plaintiff has failed to state a claim under either the Free Speech or Free Exercise clause of the First Amendment to the United States Constitution through 42 U.S.C. § 1983, and has not sufficiently pled a claim under the Oklahoma Religious Freedom Act, Okla. Stat.

tit. 51, § 251 *et seq*. Further, Plaintiff has alleged claims against the Superintendent and all five (5) members of the Board of Education. Claims against individuals in their official capacities are duplicitous and should be dismissed.

Wherefore, Defendants respectfully request that all of Plaintiff's claims be dismissed.

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Certificate of Service

I hereby certify that on May 18, 2015 I electronically transmitted the attached document to the Clerk of the Court using the ECF system for filing and transmittal of a Notice of Electronic filing to the following registrants: Matthew Campbell, Daniel E. Gomez, Joel West Williams, Brady Henderson.

S/Anthony T. Childers