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.	)	
	)	

REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendants, Independent School District No. 18, Washington County, Oklahoma, also known as Caney Valley Public Schools, ("District") and Rick Peters, District Superintendent, ("Peters") offer the following in reply to Plaintiff's Response to Defendants' Motion to Dismiss Plaintiff's First Amended Complaint.

ARGUMENTS AND AUTHORITY

As alleged in her First Amended Complaint, Plaintiff was gifted an eagle feather by a tribal elder "to recognize her academic success, great accomplishment of completing high school, and her passage into adulthood." [Doc. No. 31, ¶ 16]. She alleges that eagle feathers have traditionally played a role in Native American religious ceremonies, and they are considered sacred objects which "symbolize honesty, truth, majesty, strength, courage, wisdom, power, and freedom." [Doc. No. 31, ¶ 15.] According to Plaintiff, in her Native American tradition, when an eagle feather is gifted from a tribal elder, it is among the highest

forms of recognition that may be bestowed upon a young person, and it is "often seen as a sign of disrespect or dishonor" if the feather is not worn for the occasion for which it was given. [Doc. No. 31, ¶¶ 16-17.] Plaintiff then makes the conclusion that by not being allowed to wear the eagle feather on her cap during graduation she has "disrespected the sacred eagle feather, the tribal elder who gifted the sacred eagle feather to her, and God" and thus her religious beliefs have been substantially burdened. [Doc. No. 31, ¶ 31.]

At issue in this matter is a dispute as to whether the District's graduation dress policy and proposed accommodation substantially burdened the Plaintiffs' exercise of religion or improperly violated the Plaintiff's free speech or free exercise rights.

A. Freedom of Speech

In her Response [Doc. No. 33] Plaintiff contends that because the District has allowed "some students to wear sashes and stoles for the National Honor Society and Future Farmers of America at graduation" [Doc. No. 31, ¶ 30], that District has somehow created a designated or limited public forum of the type identified in *Hazlewood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 260, 108 S. Ct. 562, 564, 98 L. Ed. 2d 592 (1988) . [Doc. No. 33, Pgs. 10-11].

School facilities or activities may be deemed to be public forums "only if school authorities have by policy or by practice opened the facilities for indiscriminate use by the general public, or by some segment of the public, such as student organizations." Id. (emphasis added). Here, as is evident from Plaintiff's claim that she was not allowed a

variance to the rule, the District has maintained control over the graduation ceremony and the student graduation regalia. The long standing rule clearly states that "**HATS MAY NOT BE DECORATED AT ALL**" and no student has been allowed a variance to the rule. [Doc. No. 31, ¶¶ 23-24].

Though Plaintiff has alleged that District has allowed certain students to wear sashes and stoles over their graduation gowns, two important distinctions must be made: 1) even as alleged, neither the sashes nor stoles are worn over or affixed to the graduation cap; and 2) the sashes and stoles are recognition for academic success and participation in school sponsored activities. Though Plaintiff attempts to differentiate both groups by arguing that these organizations are not governmental entities, such a designation is not dispositive of whether they are school sponsored or recognized, or even whether the District has allowed students to indiscriminately attach any sign or symbol of academic success or failure to their graduation cap.

Neither is this a case where Plaintiff's speech "happens to occur on school premises" as was described in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.,* 393 U.S. 503, 509, 89 S. Ct. 733, 737, 21 L. Ed. 2d 731 (1969). Like *Bear v. Fleming, "*it is the school-sponsored event—the graduation exercises—which provide the forum and opportunity for [Ms. Griffith's] speech." 714 F. Supp. 2d 972, 988 (D.S.D 2010). Pursuant to the Tenth Circuit's jurisprudence, speech made during graduation is "school-sponsored" and may be reasonably controlled even as to subject matter. *Corder v. Lewis Palmer School Dist. No. 38*, 566 F.3d

1219, 1227(10th Cir. 2009); *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).

Finally Plaintiff asserts that the District has set forth facts "unsupported by any record" by arguing that it has a reasonable pedagogical interest in limiting the manner of dress during graduation. [Doc. No. 33, Pg. 16, FN 6; Pg. 18]. Respectfully, in determining whether a defendant has a rational basis for a rule or policy, the Court may look to any conceivable legitimate governmental interest, even those not advanced by the Defendants. *Little Sisters of the Poor Home for the Aged, Denver, Colo. v. Burwell*, 794 F.3d 1151, 1199 (10th Cir. 2015). Rather, "the burden is upon the challenging party to negative any reasonably conceivable state of facts that could provide a rational basis." *Id. citing Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 367, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001). As Plaintiff's speech at the District's graduation ceremony was school-sponsored, and District's restriction on the decoration of graduation caps is reasonably related to a pedagogical concern, Plaintiff's free speech claim should be dismissed.

B. Free Exercise

In whole, the District's rule regarding the decoration or adornment of graduation caps states, "**HATS MAY NOT BE DECORATED AT ALL.**" [Doc. No. 31, ¶ 23]. Plaintiff does not argue or assert that the rule is non-neutral, but argues in her response [Doc. No. 33, Pg. 17] that the rule is not a rule of general applicability. In support of her argument, she alleges that the rule was made in an "ad hoc fashion" by Defendant Peters. However,

contrary to the argument made in her response, in the First Amended Complaint she asserts that it was not Peters who first told her that she could not wear the feather, but a teacher who saw a Facebook post about the feather. [Doc. No. 31, ¶ 20]. Plaintiff and her mother then formally requested that the school allow her to wear the feather, and it was only then that they were told by Peters that it would not be allowed. [Doc. No. 31, ¶ 21]. She further admits that "Mrs. Ward's Graduation Top 10" was circulated among all graduating students clearly stating that graduation caps could not be decorated. [Doc. No. 31, ¶ 23].

Plaintiff's First Amended Complaint does not support a claim that the District's graduation dress code was a non-generally applicable, ad hoc rule. The dress code concerning graduation caps was facially neutral and generally applicable with regard to all students, and neither any history nor the text of the rule suggest that it was targeted at a particular group or practice. Plaintiff's allegation that the rule was non-general or applied "ad hoc" is not supported by the claims she makes in her own Complaint that the rule was distributed to all graduating students and that she was first confronted by a teacher regarding the addition to her graduation regalia.

An equal protection claim will fail "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Copelin–Brown v. N.M. State Pers. Office*, 399 F.3d 1248, 1255 (10th Cir.2005) (quotations omitted). Because the District's rule is subject to rational basis review and Plaintiff has failed to allege facts sufficient to overcome the rational basis test, her claim under the free exercise clause of the

First Amendment should be dismissed.

C. Oklahoma Religious Freedom Act

"[A] plaintiff in an [Oklahoma Religious Freedom Act] 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 (emphasis added). 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).

From the facts alleged, the burden here is minimal in that Plaintiff is not allowed to wear an object which she considers to have sacred value for a short period during a public graduation ceremony. Like the prisoner in *Steele*, the simple fact that a plaintiff has a religious conviction that is burdened in some way does not automatically result in a substantial burden forbidden under the ORFA. The practice of Plaintiff's religion has not been substantially burdened. Plaintiff is not being prevented from conduct or expression that "manifests some central tenet" of her individual beliefs.

Likewise, Plaintiff has admitted that she was given alternatives to wearing the feather hanging to the side of her head as a tassel. As Plaintiff alleged, she could have worn the feather on some other spot not on her cap, held it in her hands, or even worn it in her hair, which for all purposes would have been similar to wearing the feather attached to a tassel on

the cap. Any burden in wearing the feather in a similar location, but not affixed to her graduation cap, would be minimal and would not constitute a substantial burden under the ORFA. [Doc. No. 31, ¶ 27].

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.

D. Superintendent Rick Peters

Plaintiff argues that the claims alleged against Peters should not be dismissed "because there is no proof that he was operating within policy-making authority that was duly delegated by the School Board." [Doc. No. 33, Pg. 18].[1] Here, Plaintiff has sued Peters only "in his *official capacity* as Superintendent of Caney Valley Public Schools . . . ." [Doc. No. 31, ¶ 5, (emphasis added)]. Though an individual capacity suit "seeks to impose personal liability upon a government official for actions he takes under color of state law," an official capacity suit is "only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165, 105 S.Ct. 3099, 2105, 87 L.Ed.2d 114 (1985). "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the

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[1] Plaintiff does not appear to address whether Peters as an individual should be dismissed under the ORFA. However, the same rational that such claims are duplicative when filed against both the political subdivision and a district employee sued in their official capacity applies.

entity," and not as a suit against the official personally, "for the real party in interest is the entity." *Id*. at 166, 105 S.Ct. at 3105. If Plaintiff is attempting to assert that Peters acted contrary to District policy and thus outside of his official duties, an individual suit naming Peters in that capacity might be appropriate. However, Plaintiff has clearly pled that it was the District's written policy to prohibit decorations to the graduation cap, which Peters and other officials upheld. [Doc. No. 31, ¶¶20-24].

As Plaintiff has sued Superintendent Peters only in his official capacity, her claims are duplicative to those asserted against the District and should be dismissed.

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 shown that the District's rule imposed a substantial burden on a religious practice. As such, the Defendants respectfully request that all of Plaintiff's claims be dismissed, along with any claim asserted against Peters in his official capacity.

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Certificate of Service

I hereby certify that on September 16, 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