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NATIVE AMERICAN RIGHTS FUND

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Polson High School
Attn: Principal Peter Hamilton
111 4th Avenue East
Polson, MT 59860

Polson School District #23
Attn: School Board
111 4th Avenue East
Polson, MT 59860

June 3, 2019

Dear Principal Hamilton:

We are writing to you on behalf of the American Civil Liberties Union of Montana, Western Native Voice, and the Native American Rights Fund. We recently received reports concerning Polson High School’s policy regarding graduation attire. Specifically, we understand that Polson High School’s policy forces Native American students to obtain “pre-approval” from you for their traditional regalia adorning graduation attire. As you know, the law in Montana provides that all schools may not prohibit students from wearing traditional regalia at graduation. Mont. Code Ann. § 2-1-315. Polson High School issued a public statement on May 24, 2019 inviting “questions or concerns.” We would like to take this opportunity to provide some background on the law in this area.

Montana’s constitution and statutes provide unique protection for Native American culture and expression. The Montana Constitution indisputably “recognizes the distinct and unique cultural

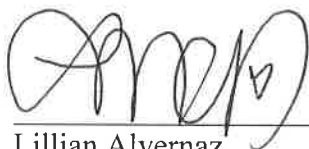
heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.” Mont. Const. art. X, § 1. Further, state law codifies the constitutional dogma of the state “to recognize the distinct and unique cultural heritage of American Indians and to be committed in its educational goals to the preservation of their cultural heritage.” Mont. Code Ann. § 20-1-501. Finally, to guarantee proper implementation of the aforementioned law, Mont. Code Ann. § 2-1-315 forbids a school district from “prohibit[ing] an individual from wearing traditional tribal regalia or objects of cultural significance at a public event.” Mont. Code Ann. § 2-1-315(3)(c). “‘Public event’ means . . . a graduation ceremony.” *Id.*

Polson High School’s policy requiring pre-approval for traditional regalia runs afoul of the spirit and letter of Montana law. Restricting or subjectively determining whether and how Native American students may proudly recognize their accomplishment within the context of their cultural heritage undermines the very purpose of a high school graduation’s ritualism. The policy provides that administration will make a subjective determination regarding what type of regalia is appropriate. Put another way, non-Native individuals may be in a position to determine what is, or is not, culturally appropriate. Each individual experiences their own culture and heritage differently, and it is impermissible and improper for anyone other than the individual students to make determinations regarding what is culturally important to and appropriate for them. Any policy that Polson High School adopts should promote, not restrict, Native students’ ability to celebrate wearing traditional regalia. It also contradicts Montana educators’ legal obligation to respect and preserve Native American heritage. Finally, requiring students – especially students from historically marginalized cultures – to schedule a special visit with a non-Native principal presents an additional barrier to full enjoyment of the law.

We understand that the pre-approval policy may be intended to prohibit offensive attire at graduation. In the event a student arrives with offensive attire, your policy regarding replacing a decorated mortarboard before the graduation ceremony provides an adequate remedy. However, as it is, this policy appears to be targeted at a particular subset of students because of their tribal identity.

The ACLU welcomes the opportunity to work with Polson High School to develop and implement policies that comply with Mont. Code Ann. § 2-1-315 and the state constitutional mandate of recognizing and preserving Native American culture and heritage. We request that you adjust your policy in a way that unequivocally allows Native American students to wear traditional regalia at graduation, without any prior restraint or approval. Please let us know how you intend to address the situation and if we could be of any assistance moving forward. If you have any questions or would like to discuss school policies further, please feel free to contact us.

Sincerely,



Lillian Alvernaz
ACLU of Montana



David Gover, Staff Attorney
Litigation Management Committee Member
Native American Rights Fund