



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

SEP 29 2015

Martin B. Copenhaver  
President  
Andover Newton Theological School  
210 Herrick Road  
Newton Centre, MA 02459-2243

Dear President Copenhaver:

Pursuant to 25 U.S.C. 3007 and 43 C.F.R. 10.12 (e), this letter serves as notice to Andover Newton Theological School (Andover Newton) that an allegation concerning the failure of Andover Newton to comply with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) was filed with the Department of the Interior. I have determined that the alleged failure to comply has been substantiated. Additionally, the Department of the Interior wishes to advise you that the National NAGPRA Program is ready to assist Andover Newton in achieving NAGPRA compliance.

On June 26, 2015, Rosita Worl, President of the Sealaska Heritage Institute, alleged that:

1. Andover Newton has possession or control of a collection that may include Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony.
2. To date, Andover Newton has not completed a summary of this collection, which omission constitutes a failure to comply with the requirements of NAGPRA, as set forth at 43 C.F.R. 10.12 (b)(1)(ii).

The investigation found that:

1. Andover Newton Theological School (Andover Newton) is a postsecondary institution of higher learning.
2. The U.S. Department of Education (ED), a Federal agency, as the term "Federal agency" is defined in the regulations implementing the Native American Graves Protection and Repatriation Act (NAGPRA; 43 C.F.R. 10.2 (a)(1)), has confirmed that:
  - Andover Newton is a participant in Federal Student Aid programs of ED;
  - As a participant in Federal Student Aid programs of ED, Andover Newton is an entity to whom scholarships, loans, grants, wages, or other funds are extended by ED under Title IV of the Higher Education Act of 1965 (Pub. L. 89-329, 79 Stat. 1219, 20 U.S.C. 1001 et seq.), as amended (Title IV), for payment to or on behalf of

- students admitted to Andover Newton, or extended directly to such students for payment to Andover Newton; and
- Andover Newton is documented as having continuously participated in Federal Student Aid programs of ED since the Department began keeping records on Title IV Federal Student Aid Program participation, in academic year 1996-97.
3. As Andover Newton is an entity to whom scholarships, loans, grants, wages, or other funds are extended by ED under Title IV, Andover Newton is a recipient of Federal financial assistance in the form of funds.
  4. Andover Newton has had control of an object in the custody of the Peabody Essex Museum, in Salem Massachusetts, identified as E53450 or "Fishhook, early- to mid-19<sup>th</sup> century," continuously from November 16, 1990 to the present.
  5. On July 22, 2015, David Katzeek, whose Tlingit name is Kingeisti, subscribed, swore to, and acknowledged before Sandra S. Jack, Notary Public, State of Alaska, the following:
    - He is a member of the Central Council of Tlingit & Haida Indian Tribes, which is a native entity within the State of Alaska recognized and eligible to receive services from the United States Bureau of Indian Affairs;
    - He is a traditional religious leader, as the term "traditional religious leader" is defined in the regulations implementing NAGPRA (43 C.F.R. 10.2 (d)(3));
    - The item identified as E53450 or "Fishhook, early- to mid-19<sup>th</sup> century" is known as *Gooch Kuyéik Náxw*, or Halibut Hook with Wolf Spirit;
    - The *Gooch Kuyéik Náxw* is used in a religious ceremony performed during halibut fishing;
    - The *Gooch Kuyéik Náxw* is needed by traditional religious leaders from the Kaagwaantaan (Wolf) Clan of the Central Council of Tlingit & Haida Indian Tribes for traditional religious practices related to halibut fishing;
    - The *Gooch Kuyéik Náxw* is carved in the form of a wolf, which is the crest of the Kaagwaantaan (Wolf) Clan and is a wolf "spirit"; and
    - Clan crests and spirit designs are *at.óow*, which are highly valued clan possessions that cannot be alienated by an individual.
  6. To date, Andover Newton has not completed a summary of its collection that contains the *Gooch Kuyéik Náxw*, or Halibut Hook with Wolf Spirit (E53450 or "Fishhook, early- to mid-19<sup>th</sup> century"), and has not provided a summary to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with items in the collection.

Based on the above findings, I have made the following determination with respect to the alleged failure to comply:

**1504 \_ANDOVER NEWTON THEOLOGICAL SCHOOL.** As a recipient of Federal financial assistance through the Federal Student Aid program, Andover Newton is an institution that receives Federal funds under NAGPRA, as the term "receives Federal funds" is defined in the regulations implementing the Act (43 C.F.R. 10.2 (a)(3)(iii)). Since November 16, 1990, Andover Newton has had control of at least one NAGPRA cultural item, the *Gooch Kuyéik Náxw*, which is an object that is both a sacred object and an object of cultural patrimony, as the terms "sacred objects" and "cultural patrimony" are defined under

the Act (25 U.S.C. 3001 (3)(C) & (D), respectively). Consequently, Andover Newton is a "museum" under NAGPRA and its implementing regulations (25 U.S.C. 3001 (8) and 43 C.F.R. 10.2 (a)(3)). Assuming that Andover Newton first received Federal funds in the 1996-97 academic year, Andover Newton would have been required to complete a summary of its collection and provide it to any Indian tribe or Native Hawaiian organization that is, or is likely to be, culturally affiliated with items in the collection no later than April 20, 2010 (43 C.F.R. 10.13 (d)(1)). The failure of Andover Newton to complete a summary of its collection constitutes a failure to comply with the requirements of NAGPRA, as set forth at 43 C.F.R. 10.12 (b)(1)(ii).

Pursuant to 43 C.F.R. 10.12 (f), upon receipt of this notice of failure to comply, you may:

1. Within 45 days of the date of service, seek informal discussion with the Secretary of the Interior's designee by contacting NAGPRA Enforcement Coordinator David Tarler (david\_tarler@nps.gov); and/or
2. Within 45 days of the date of service, request a hearing to contest this finding; or
3. Take no action and await my notice of assessment.

Procedures for requesting a hearing are set forth at 43 C.F.R. 10.12 (j). The current address for filing a hearing request is **Departmental Cases Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 351 South West Temple, Suite 6.300, Salt Lake City, UT 84101**. The current address for serving a copy of the hearing request on the Solicitor of the Department of the Interior is **U.S. Department of the Interior, Office of the Solicitor, 1849 C Street NW, Mail Stop 6415, Attn: DPW, Washington, DC 20240-0001**. Failure to file a written request for a hearing within 45 days of the date of service waives your right to a hearing. After 45 days from the date of service, and if no hearing is requested, I am authorized under 43 C.F.R. 10.12 (h) to assess a civil penalty against Andover Newton Theological School for failure to comply with the requirements of NAGPRA. Andover Newton Theological School has the right to seek judicial review of any final administrative decision assessing a civil penalty.

More information on NAGPRA, as well as the civil penalty hearing and appeal process, can be found in the enclosed copies of 25 U.S.C. 3001-3013 and 43 C.F.R. Part 10. If you have any questions, or would like to initiate an informal discussion of this matter, you may contact NAGPRA Enforcement Coordinator David Tarler. Alternatively, if you take no action, you may hear from this office in approximately eight weeks. If you seek technical assistance on NAGPRA compliance, you may contact the National NAGPRA Program, at [nagpra\\_info@nps.gov](mailto:nagpra_info@nps.gov).

Sincerely,



Michael Bean  
Principal Deputy Assistant Secretary for Fish  
and Wildlife and Parks