
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 1248 **Hearing Date:** May 9, 2018
Author: Gloria
Version: January 3, 2018
Urgency: No **Fiscal:** No
Consultant: Brandon Darnell

Subject: Pupils: right to wear religious, ceremonial, or cultural adornments at school graduation ceremonies.

NOTE: This bill has been referred to the Committees on Education and Judiciary. A "do pass" motion should include referral to the Committee on Judiciary.

SUMMARY

This bill specifies that a pupil has the right to wear religious, ceremonial, or cultural adornments at school graduation ceremonies.

BACKGROUND

Existing law:

- 1) Authorizes the governing board of school districts to adopt a reasonable dress code policy that requires pupils to wear a schoolwide uniform or prohibits pupils from wearing "gang-related apparel" if the governing board of the school district approves a plan that may be initiated by an individual school's principal, staff, and parents, and it determines that the policy is necessary for the health and safety of the school environment. (Education Code § 35183)
- 2) Authorizes individual schools to include a reasonable dress code as part of its school safety plan. (EC § 35183)
- 3) Specifies that a pupil has the right to wear a dress uniform, issued by a branch of the United States Armed Forces, during his or her high school graduation ceremony if he or she has met the graduation requirements and is an active member of the United States Armed Forces. (EC § 35183.3)
- 4) Prohibits a school district, charter school, or private secondary school from making or enforcing 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 by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution. (EC § 48950)

ANALYSIS

This bill specifies that a pupil has the right to wear religious, ceremonial, or cultural adornments at school graduation ceremonies. Specifically, this bill:

- 1) Specifies, notwithstanding any other law, that a pupil has the right to wear religious, ceremonial, or cultural adornments at school graduation ceremonies.
- 2) Prohibits its provisions from being construed to limit a local educational agency's authority to prohibit an item that is likely to cause a substantial disruption of, or interference with, the ceremony or to expand or diminish certain pupil rights relating to dress codes and freedom of speech.
- 3) For purposes of the bill, defines:
 - a) "Adornment" as "something attached to, or worn with, but not replacing, the cap and gown customarily worn at school graduation ceremonies."
 - b) "Cultural" as "relating to the habits, practices, beliefs, and traditions of a certain group of people."
 - c) "Local educational agency" as a school district, county office of education, or charter school.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "Under existing law, the California Education Code enables school districts to develop and enforce reasonable dress code policies. At their discretion, school districts have routinely adopted "no adornment" policies designed to maintain traditional decorum at commencement ceremonies. However, several incidents involving Native American students attempting to wear eagle feathers at graduation reveal that "no adornment" policies preclude students from recognizing their cultural traditions while celebrating their academic achievements." The author cites several examples in support, including eight Native American students at Lemoore High School in 2014 who were initially prohibited from wearing eagle feathers only to be allowed to do so several hours before the ceremony after parents and students organized a petition and a 2016 incident at Cosumnes Oaks High School in Elk Grove in which an African American student was warned against wearing a Kente cloth, a fabric worn during important occasions in African culture, and was escorted out of the graduation before officially receiving his diploma. In the author's view, "these cases illustrate how students have been unjustly prevented from recognizing their cultural traditions while celebrating a personal milestone."
- 2) ***Significance of Eagle feathers and high school graduation.*** According to a 2015 National Congress of American Indians resolution, American Indian and Alaska Native high school students from across the country are given eagle feathers to be worn at graduation ceremonies as a form of practice and expression of spiritual and religious beliefs. The feathers are also given for the students' leadership and academic achievement, as a sign of maturity, to signify the achievement of this important educational journey, to honor the graduate and his or her family, community, and tribal nation. American Indian and Alaska Native high school students seek to express and practice their religious and spiritual beliefs and celebrate their personal academic achievement, leadership,

and transition into adulthood by wearing an eagle feather at their graduation ceremony. Moreover, according to many Native religious and spiritual traditions, eagle feathers are given only in times of great honor and often to mark significant personal achievement, and for many Native students, receiving an eagle feather in recognition of high school graduation is as significant as earning the diploma. Accordingly, the National Congress of American Indians resolution supports “the right of American Indian and Alaska Native high school students to practice and express their traditional religious and spiritual beliefs and honor their academic and other achievements by wearing an eagle feather at their commencement ceremonies” and urges “all schools to respect traditional tribal religious and spiritual beliefs by allowing Native students to wear an eagle feather at graduation.”

- 3) ***Overzealous enforcement?*** There is no question that school districts are empowered to enforce reasonable dress codes. However, as outlined in the Assembly Judiciary Committee’s analysis, a school cannot infringe upon student expression unless it would “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.” This bill is a response to arguably unnecessary strict enforcement of graduation ceremony dress codes. For example, in May 2015, Christian Titman, a Native American high school senior at Clovis High School, asked the school in April of 2015 if he could wear a single sacred eagle feather, about three to four inches in length, during his graduation ceremony. The school denied his request. With the help of California Indian Legal Services, the Native American Rights Fund, and the American Civil Liberties Union, Titman sought a temporary restraining order from the local superior court; however, Titman and the school reached an agreement before the judge issued the order. Additionally, many African American students wish to wear a Kente cloth, a colorful fabric sash, attached to or draped across their traditional high school graduation gowns. The kente cloth originated among the West African nations that were the primary source of persons who were forcefully carried from Africa to the New World in slave ships. As such, this cloth is an important cultural symbol for many African American students. In May of 2016, Nyree Holmes, a senior at Cosumnes Oaks High School in Elk Grove, California, refused to remove a kente cloth from his graduation robe. Officers escorted Mr. Holmes from the arena before the conclusion of the graduation ceremony. A spokesperson for Elk Grove Unified School District conceded that the incident was mishandled by the school and that the incident would likely cause the school to revise its policy, which it subsequently did, and it allows students to wear items of cultural importance, subject to review and approval of their principal. The district also changed its procedures for how it would handle situations like this in the future, making explicit that this type of violation does not call for intervention by school resource officers.

It is unclear to staff how these examples of religiously or culturally important items significantly disrupt graduation ceremonies. Moreover, many high school graduates are adults at the time of graduation, and hopefully most graduates will soon be attending college, an environment that generally lacks strict dress codes. It is also apparent that high school graduation is one of the seminal moments of a young person’s life. Preventing students from participating in such a momentous event because of something they choose to wear as part of their

graduation attire should be reserved for instances that are truly disruptive to the ceremony as a whole, which is a celebratory event, not an academic undertaking itself. It seems prudent in these circumstances to err on the side of participation and trust that the vast majority of graduates who want to add an important adornment to their graduation attire will do so sincerely.

- 4) **Identical bill vetoed.** This bill is identical to the final version of AB 233 (Gloria, 2017), which was vetoed by Governor Brown. AB 233 passed this committee 7-0 and was subsequently amended to clarify that its provisions applied to all school districts, county offices of education, and charter schools. AB 233 passed the Senate unanimously and received only 1 “no” vote on the Assembly floor. Governor Brown, in his veto message, stated:

“This bill provides that a student has the right to wear specific adornments at school graduation ceremonies.

Students in California have a well-established right to express their views through symbolic acts under the state Education Code and the Free Speech Clause of the First Amendment. See Tinker v. Des Moines Independent Community School Dist. (1969) 393 U.S. 503, 506. Under these precedents, student expression is clearly protected.

To the extent that there is a dispute about what a student can wear at school graduation ceremonies, I believe those closest to the problem -- principals and democratically elected school boards -- are in the best position to make wise judgments.”

As noted above, this bill is identical the vetoed version of AB 233. Given the Governor’s veto message leaves little room for a different approach, as it appears to be a fundamental disagreement with the bill’s intent, *the committee may wish to consider* whether it wishes to approve an identical second attempt at the same issue that does not address any of the Governor’s stated concerns.

- 5) **Arguments in opposition.** The California School Boards Association (CSBA) opposes this bill. CSBA’s concerns include concerns over religious viewpoint discrimination, vague terminology, and disruption of graduation ceremony. Specifically, CSBA claims that the bill “effectively opens the graduation ceremony from a ‘closed’ or ‘limited’ open forum, to a wide ‘open’ forum. Administrators would need to make quick decisions on what additions to the cap and gown constitute a threat of ‘substantial disruption’ religious endorsement, or viewpoint discrimination. Such ‘split second’ decisions before the graduation procession themselves could prove quite disruptive and subject school districts to litigation.” For example, CSBA asks: “How is the administrator presiding over the ceremony going to distinguish between students wearing leis, or any other cultural flower arrangement, for protected heritage or inappropriate celebratory purposes?”

Would the cultural category include adornments not tied to ethnicity, for example, referencing the confederate flag?”

The Assembly Judiciary Committee’s analysis concluded that

“...both proponents and opponents may overstate the likely impact of this bill. Existing constitutional case law already permits schools to limit student speech that is likely to create a substantial disruption, and case law since Tinker is generally deferential to the school's determination; that same case law also already gives a student a right to challenge the school's determination if the disruption is not substantial enough to justify repression of student speech. This bill, if enacted, would not change that. However, as the proponents reasonably argue, this bill might clarify school responsibilities.”

This bill has been double-referred to the Senate Committees on Education and Judiciary. The Senate Judiciary Committee will conduct its own analysis regarding these constitutional concerns, but it should be noted that the Senate Judiciary Committee approved AB 233 (Gloria, 2017) 7-0.

- 6) **Other previous legislation.** AB 2051 (Nakanishi and Cogdill, 2004) specified that a governing board of a school district that adopts a standard dress appearance policy include within the policy one of the following provisions: a parent or guardian may choose to exempt their son or daughter from the standard dress appearance policy; or if a school principal demonstrates that the exemption of a pupil from the standard dress appearance policy would result in safety concerns for pupils and staff at the school, the only way a parent or guardian may exempt their pupil from the standard dress appearance policy is by demonstrating an objection based on a religious or philosophical tenet. AB 2051 failed passage in Assembly Education.

SUPPORT

American Civil Liberties Union
 Barona Band of Mission Indians
 Cahuilla Band of Indians
 California Indian Culture and Sovereignty Center at CSU San Marcos
 California Nations Indian Gaming Association
 California Teachers Association
 California Tribal Business Alliance
 Federated Indians of Graton Rancheria
 Inaja Cosmit Band of Mission Indians
 Jamul Indian Village of California
 Habematolel Pomo of Upper Lake
 National Association of Social Workers – California Chapter
 Resources for Indian Student Education, Inc.
 Rincon Band of Luiseño Indians
 San Manuel Band of Mission Indians
 Santa Ynez Band of Chumash Indians

Sycuan Band of the Kumeyaay Nation
Tejon Indian Tribe
Tribal Alliance of Sovereign Indian Nations
United Auburn Indian Community of the Auburn Rancheria
Viejas Band of the Kumeyaay Indians
Wilton Rancheria
Yocha Dehe Wintun Nation

OPPOSITION

California School Boards Association

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