
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 233 **Hearing Date:** June 14, 2017
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Version: April 3, 2017
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 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 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 school district'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."

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. In addition, Section 35183 of the Education Code affords school districts the discretion to adopt a policy that prohibits students from wearing "gang-related apparel", if the district's governing board determines that the policy is necessary to protect the health and safety of the school environment.

Several incidents involving Native American students being barred from wearing eagle feathers, an adornment symbolizing personal achievement, reveal that "no adornment" policies preclude students from recognizing their cultural traditions while celebrating a personal milestone.

Unfortunately, this issue is not unique to Native Americans. In 2016, an African American student from Consumnes Oaks High School in Elk Grove wore a Kente cloth, a fabric worn during important occasions in African culture. He said that he wanted to feel closer to his ancestors. Regrettably, police officers escorted the student off the graduation stage before he received his diploma.

These cases illustrate how school administrators have unjustly enforced no-adornment policies to construe innocuous cultural adornments as "gang-related apparel" and prevent students from wearing appropriate cultural adornments at graduation ceremonies.

AB 233 rectifies this problem by adding section 35183.1 to the Education Code, which protects a pupil's right to wear religious, ceremonial, or cultural adornments at graduation ceremonies. AB 233 does not rescind a school's authority to prohibit students from wearing clearly offensive or disruptive cultural adornments that could pose a threat to public safety.

California is a diverse state, comprised of students from different cultural background who deserve to acknowledge the families, communities, and cultural integral to their academic success. AB 233 enhances the diversity of California's schools by protecting a pupil's right to wear appropriate cultural adornments at graduation ceremonies."

- 2) ***Significance of Eagle feathers and high school graduation.*** According to a 2015 National Congress of American Indians (NCAI) 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 NCAI 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 adult'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. 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 do so sincerely.

- 4) ***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 Immigrant Policy Center
 California Indian Culture and Sovereignty Center at CSU San Marcos
 California Indian Legal Services
 California Teachers Association
 California Tribal Business Alliance
 Council on American-Islamic Relations
 Coyote Valley Band of Pomo Indians
 Jamul Indian Village of California
 La Posta Band of Mission Indians
 Mechoopda Indian Tribe of Chico Rancheria
 Mesa Grande Band of Mission Indians
 National Association of Social Workers
 North Fork Rancheria of Mono Indians of California

Pala Band of Mission Indians
Rincon Band of Luiseño Indians
San Luis Rey Band of Mission Indians
San Pasqual Band of Mission Indians
Shingle Springs Band of Miwok Indians
Southern California Tribal Chairmen's Association
Susanville Indian Rancheria
Sycuan Band of the Kumeyaay Nation
United Auburn Indian Community of the Auburn Rancheria
Viejas Band of the Kumeyaay Indians

OPPOSITION

None received

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