

Date of Hearing: January 10, 2018

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 1248 (Gloria) – As Amended January 3, 2018

**[Note: This bill is doubled referred to the Assembly Judiciary Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]**

**SUBJECT:** Pupils: right to wear religious, ceremonial, or cultural adornments at school graduation ceremonies

**SUMMARY:** Specifies that students have the right to wear religious, ceremonial, or cultural adornments at school graduation ceremonies. Specifically, *this bill*:

- 1) States that a student shall have the right to wear religious, ceremonial, or cultural adornments at school graduation ceremonies.
- 2) Clarifies that nothing in this section limits a local education's authority to prohibit an item that is likely to cause a substantial disruption of, or interference with, the graduation ceremony.
- 3) Specifies that nothing in the act expands or diminishes student rights under current law regarding dress code policies or freedom of speech provisions.
- 4) Defines "adornment" as something attached to, or worn with, but not replacing, the cap and gown worn at school graduation ceremonies.
- 5) Defines "cultural" as the habits, practices, beliefs, and traditions of a certain group of people.
- 6) Defines "local education agency" as a school district, county office of education or charter school.

**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 deemed necessary for the health and safety of the school environment (EC 35183).
- 2) 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).
- 3) 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).

**FISCAL EFFECT:** This bill has been keyed as non-fiscal by the Office of Legislative Counsel.

**COMMENTS:**

***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 cultural traditions while celebrating their academic achievement. AB 1248 would protect a pupil’s right to recognize their cultural heritage at graduation ceremonies.”

***National action on this issue.*** In 2015, the National Congress of American Indians adopted a resolution in support of allowing Native students to wear eagle feathers at high school graduation ceremonies. Native American students are given eagle feathers to be worn at graduation ceremonies 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.

***Significance of high school graduation.*** The National Congress of American Indians contends that graduation from high school is an especially significant occasion for Native students, considering that the American Indian and Alaska Native high school graduation rate is 67 percent, the lowest of any racial or ethnic demographic in the U.S.

For the 2015/16 school year, the cohort graduation rate among American Indian or Alaska Native students in California was 74% versus the statewide graduation rate of 83.8% for all students.

***Students have been prohibited from exhibiting cultural adornments.*** According to California Indian Legal Services (CLIS), “every year, school authorities deny Indian students from wearing traditional and cultural regalia during their graduation ceremonies in violation of their right to freedom of expression. CLIS has successfully intervened in many of these cases as advocates for students, often resulting in the school’s retraction of its denial. Unfortunately not every Native American student can seek legal assistance. Those unrepresented youth encountered hostile results when school officials forcibly removed eagle feathers from their graduation cap at the moment the student received their diploma.”

A Native American student sued the Clovis Unified School District in 2015 as the district refused to let him wear an eagle feather to his high school graduation. The student wanted to mark his achievement and honor his heritage by wearing the eagle feather, an item that his tribe considered sacred and symbolic of a significant accomplishment. Eventually, the student reached agreement with the district and was permitted to wear the eagle feather to his graduation ceremony.

This issue is not limited to Native American students. For example, 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.

***Student dress as expression of views or beliefs.*** Courts have recognized that students clothing choices can communicate political or social stances as well as religious beliefs and that these actions may be protected under the First Amendment. Many school districts have implemented dress codes and/or school uniforms as a means of increasing discipline and schools safety. Federal judges in several states have upheld school uniform policies which have been challenged by students and parents.

***Arguments in support.*** Supporters, including representatives of numerous tribal organizations, note that wearing an eagle feather, traditional sash, beading adornment or other cultural, religious and traditional regalia on a graduation cap and gown instills pride and respect in Native American youth and recognizes the role their Native American heritage played in achieving high school graduation. Denying a Native American student the right to display his or her traditional, cultural, or religious regalia prevents the student from showing who they are and where they come from. High school graduation is an accomplishment that is revered by entire tribal communities. Family members, tribal community members, and tribal leaders take great pride in their students' accomplishments by honoring them with an eagle feather, traditional sash, or hand beading of their cap and gown.

***Arguments in opposition.*** In vetoing last year's AB 233 (Gloria) which contained substantially similar language, the Governor noted that principals and school boards were in the best position to make judgements on what a student can wear at school graduation ceremonies. The California School Boards Association (CSBA) notes that, although they support the ability of students to wear religious or tribal cultural adornments with their regalia, they oppose AB 1248 as they believe it would eliminate the ability of locally-elected boards to establish a cohesive graduation dress code that maintains the focus of the graduation ceremony on the academic and co-curricular achievements it is intended to recognize. CSBA notes that California's diverse student body includes a wide range of backgrounds and requiring all of these to be recognized at academic graduation ceremonies would detract from the achievements that are the very purpose of these ceremonies.

***Prior legislation.*** AB 233 (Gloria) of this session contained substantially similar language to this bill and was vetoed by the Governor. The Governor's veto message included the following:

“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.”

AB 2051 (Nakanishi and Cogdill) of 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. This bill failed passage in Assembly Education.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union of California  
Federated Indians of Grafton Rancheria  
Inaja Cosmit Band of Mission Indians  
Jamul Indian Village of California  
National Association of Social Workers – California Chapter  
Resources for Indian Student Education Inc.  
Santa Ynez Band of Chumash Indians  
Sycuan Band of the Kumeyaay Nation  
Tejon Indian Tribe  
Viejas Band of Kumeyaay Indians

**Opposition**

California School Boards Association

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