

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 945 (Ramos)
Version: June 25, 2021
Hearing Date: July 6, 2021
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Pupils: adornments at school graduation ceremonies: task force

DIGEST

This bill establishes a task force to: (1) hear the testimony of Californians who have been denied the right to wear traditional tribal regalia or recognized objects of religious or cultural significance at high school graduations; and (2) make recommendations for policies and practices to ensure that such denials do not recur.

EXECUTIVE SUMMARY

High school graduation ceremonies celebrate academic achievement. For many students, it is also a moment to show gratitude for, and solidarity with, the community, ancestry, faith, and traditions that have nurtured the students along their journey. Graduates frequently express these sentiments by wearing some form of accessory or adornment, such as Kente cloth or eagle feathers, together with their caps and gowns. In response to multiple reports that school administrators were refusing to allow it, California enacted legislation in 2018 confirming the right of students to wear such adornments during high school graduation ceremonies unless the adornment is likely to cause a substantial disruption or material interference. According to the author and sponsor of the bill, however, that law has not successfully resolved the problem. Schools continue to restrict the adornments that high school students can wear to their graduation. This bill therefore proposes to convene a task force with the mission of listening to the experience of Californians who have not been permitted to wear cultural and religious adornments at graduation and making recommendations for policies and best practices that could be adopted to try to prevent these incidents from recurring.

The bill is sponsored by the American Civil Liberties Union of California and the California Department of Education. Support comes from civil rights organizations and tribal nations. There is no known opposition. The bill passed out of the Senate Education Committee by a vote of 7-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Holds that 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.” (*Tinker v Des Moines Ind. Community School District* (1969) 393 U.S. 503.)
- 2) Authorizes the governing board of any school district to adopt or rescind a reasonable dress code policy that requires pupils to wear a schoolwide uniform or prohibits pupils from wearing gang-related apparel, if the board approves the policy in a specified manner and determines that the policy is necessary for the health and safety of the school environment. A policy adopted pursuant to this provision shall not prohibit a student from wearing the uniform of a nationally recognized youth organization on days that the organization has scheduled a meeting. In addition, a reasonable dress code policy adopted pursuant to this provision is not a violation of (3), below. (Ed. Code § 35183.)
- 3) Prohibits, subject to certain exceptions, a school district operating one or more high schools, a charter school, or a private secondary school, from making or enforcing a rule subjecting a high school student 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 from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution. (Ed. Code § 48950.)
- 4) Provides, notwithstanding any other law, that a student shall have the right to wear a dress uniform issued to the student by a branch of the United States Armed Forces at the student’s high school graduation ceremony, so long as the student is otherwise eligible to participate and completed basic training for, and is an active member of, a branch of the United States military. (Ed. Code Sec. 35183.3.)
- 5) Authorizes a pupil to wear traditional tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies. (Ed. Code § 35183.1(a).)
- 6) Prohibits the authorization in (5), above, from being construed to limit a local educational agency’s discretion to prohibit an item that is likely to cause a substantial disruption of, or material interference with, the ceremony. (Ed. Code § 35183.1(a).)

This bill:

- 1) Makes a series of finding and declarations regarding the significance of Native American adornments within the context of high school graduation ceremonies; existing laws establishing the right of students to use such adornments during high school graduation ceremonies; and ongoing instances in which these rights are being violated.
- 2) Establishes the Task Force to Study and Develop Best Practices to Protect Pupil Rights to Wear Traditional Tribal Regalia or Recognized Objects of Religious or Cultural Significance as an Adornment at School Graduation Ceremonies (the task force), specifies how its members shall be appointed, and the procedures it shall follow.
- 3) Directs the task force to:
 - a) gather public comments from people impacted by noncompliance with Section 35183.1 of the Education Code;
 - b) develop information and report findings to the California Department of Education (CDE) and to the Legislature regarding continuing violations of the rights of pupils to wear traditional tribal regalia or recognized items of religious or cultural significance as an adornment at graduation ceremonies;
 - c) develop recommendations for best practices, protocols, proposed legislation, and other policies that will address how to comprehensively implement all aspects of Section 35183.1 of the Education Code; and
 - d) submit a report to the Legislature on or before April 1, 2023, that includes the information and recommendations described above.
- 4) Requires the CDE to convene the task force and provide staff support for required public meetings and the creation of the required report.
- 5) Requires the task force to hold its first meeting on or before April 1, 2022 and thereafter to conduct at least four public meetings annually at geographically diverse sites across the state.
- 6) Prohibits members of the task force from receiving compensation or any other payment for their service on the task force, but authorizes reimbursement for their actual and necessary expenses incurred in connection with attending task force meetings.

COMMENTS

1. Examples of suppression of high school graduates' right to wear religious and cultural adornment as part of the graduation ceremony

For many years, disputes arose between students and school administrators about whether the students should be able to adorn their graduation attire with cultural and religious icons. For example:

In 2014, district administrators at Lemoore High School in Lemoore, CA prevented eight Native American seniors from wearing eagle feathers at their commencement ceremony. This inspired parents and students to petition school administrators to grant an exception to the district's no-adornment policy. Hours before the ceremony, the administration relented, allowing graduates to wear eagle feathers.

In 2015, a member of the Pit River Tribe was told by school authorities that he would be unable to wear an eagle feather given to him by his father to wear at graduation. The Clovis Unified School District cited its dress code to justify their prohibition of this adornment. The student subsequently sought a temporary restraining order that would bar Clovis Unified's dress code from being enforced at graduation. Before the judge ruled, the district relented and allowed the student to wear his eagle feather at the ceremony.

In 2016, at Consumnes Oaks High School in Elk Grove, an African American student wore a Kente cloth, a fabric worn during important occasions in some African cultures, at his graduation. He said that he wanted to feel closer to his ancestors. As a result, the student was escorted off the graduation stage by police officers before he received his diploma. This student's decision to wear a cultural adornment unjustly precluded him from celebrating his academic accomplishment.

These incidents kept recurring in spite of strong constitutional and statutory protections for this sort of student expression. (*Tinker v Des Moines Ind. Community School District* (1969) 393 U.S. 503; Ed. Code § 48950.)

2. Legislative attempts to address the problem

In response to these incidents, the Legislature passed a bill in 2017 that would have confirmed the right of high school students to wear religious, ceremonial, or cultural adornments at high school graduation ceremonies, with that caveat that school administrators could still prohibit any item that was likely to cause a substantial disruption of, or material interference with, the proceedings. (AB 233, Gloria, 2017.) Then-Governor Brown vetoed the measure on the grounds that school administrators are in the best position to determine appropriate attire for an event such as a graduation.

The Legislature persisted, however, and passed a nearly identical bill the following year. (AB 1248, Gloria, Ch. 804, Stats. 2018.) On the desk of a new executive, Governor Newsom, the bill received a more favorable reception and was signed into law.

Thus, under the law today, for both constitutional and statutory reasons, California high schools cannot ordinarily stop students from wearing religious, ceremonial, or cultural adornments at graduation. Instead, school administrators can only do so if they can show a legitimate reason for believing that allowing the particular adornment will cause some significant problem at the ceremony.

3. Subsequent incidents indicate more action is needed

Although AB 233 has been on the books for three years now, its mandate does not seem to have fully taken root among California's high school administrators. As sponsor of the bill, the American Civil Liberties Union of California reports that:

Unfortunately, school districts continue to attempt to impose restrictions that interfere with students' right to wear tribal regalia at graduation. Native American students and their families report that some school districts still refuse to allow these students to wear traditional tribal regalia as an adornment at school graduation ceremonies. In Spring 2020, for example, the ACLU received a complaint from a member of the Amah Mutsun Tribal Band who was told by the San Bernardino Unified School District that he was not allowed to wear an eagle feather on his graduation cap. Tribal Nations also receive complaints from students and families each year, who are told by school administrators that students may not wear tribal regalia, or recognized objects of religious or cultural significance such as sashes with traditional designs, basket caps, beading and feathers, during commencement ceremonies.

4. The solution proposed by this bill

In recognition that legislation alone has not been sufficiently effective to ensure high school students' right to wear religious, ceremonial, or cultural at graduation ceremonies, this bill proposes the formation of a task force assigned to delve further in to the problem and come up with additional solutions. The task force would be composed of 10 members: nine representatives of the state's Native American tribes drawn from different geographic areas of the state, and one appointee of the state School Superintendent. The task force's mission would unfold in three steps. First, the task force would conduct a series of listening sessions, to be held in different geographic regions throughout the state. These listening sessions would provide a forum for affected students and community members to speak out about their experience and the impact that the denial of their rights had on them. Hopefully this process would be both

informative and at least somewhat cathartic for those testifying. Second, based on its own expertise and the knowledge gained during the listening sessions, the task force would put together a series of recommendations for best practices, protocols, proposed legislation, and other policies that could promote full respect for the rights of students to wear religious, ceremonial, or cultural adornments at graduation ceremonies. Finally, by no later than April 1, 2023, the task force would submit a report to the Legislature, documenting both the testimony heard during the listening sessions as well as the task force's recommendations for further action to promote full respect for the rights of students to wear religious, ceremonial, or cultural adornments at graduation ceremonies.

5. Arguments in support of the bill

According to the author:

For many years, Tribal Nations, community-based organizations and civil rights groups including the ACLU have received complaints from Native American students and families regarding school administrators who refused to let students wear Tribal regalia during graduation ceremonies. [...] AB 945 will create a Task Force to examine this ongoing problem and to find the best way to ensure that school districts do not deny students their right to wear tribal regalia or other objects of cultural or religious significance at graduation. By requiring that nine of the ten Task Force members be representatives of California Native American Tribes from across the state, and that the Task Force collect information from people who have been affected by the lack of compliance with existing law and other members of the public, the bill is intended to ensure that the voices of those harmed by this problem are centered in the process towards finding a solution.

As sponsor of the bill, the American Civil Liberties Union of California writes:

Graduation ceremonies of are of great meaning to students, families, and entire tribal communities, marking an important milestone in children and youths' lives and a moment for people to come together to recognize and celebrate significant achievement. Wearing tribal regalia allows tribal members to honor their traditional culture and tradition in an educational system that often otherwise erases and invisibilizes them. AB 945 is an important step towards ensuring that students are able, consistent with their constitutional and statutory rights, to participate in graduation ceremonies wearing the adornments that their cultures use on such occasions.

In support, the Yocha Dehe Wintun Nation writes:

The Yocha Dehe Wintun Nation believes it is important to establish policies with due consideration of the rights, needs, and interest of students and families who are Native American. Given the obstacles that appear to stand in the way of exercising basic rights of expression, it is unfortunately necessary for a task force to evaluate the problem and find way to ensure that our youth are not prohibited from wearing an eagle feather, traditional sash, beading adornment, or any other culturally significant adornment on a graduation cap and gown. Tribal adornments and regalia hold deep and spiritual meaning for many Native people, instilling a sense of pride and belonging in our youth. The moment they graduate, proudly displaying their tribal affiliation, will be a part of their personal history beyond any graduation ceremony.

SUPPORT

American Civil Liberties Union of California (sponsor)
California Department of Education (sponsor)
American Indian Community Council
Anahuacalmecac International University Preparatory of North America
California Native Vote Project
Empowering Pacific Islander Communities
Fernandeño Tataviam Band of Mission Indians
Indigenous Education Now
John Burton Advocates for Youth
Pukuu Cultural Community Services
UCLA American Indian Studies Center
UCLA Human Rights in Action Clinic
Yocha Dehe Wintun Nation
Yurok Tribe

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 516 (M. Dahle, 2021) adds “for the purpose of participating in a cultural ceremony or event” to the list of justification that will support an excused absence from school attendance. AB 516 is pending consideration before the Senate Appropriations Committee.

Prior Legislation:

AB 1248 (Gloria, Ch. 804, Stats. 2018) authorized a student to wear tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies.

AB 233 (Gloria, 2017) was nearly identical to AB 1248. In his message vetoing AB 1248, then-Governor Brown wrote: “[s]tudents 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. [...] 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.”

PRIOR VOTES:

Senate Education Committee (Ayes 7, Noes 0)

Assembly Floor (Ayes 78, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

Assembly Education Committee (Ayes 7, Noes 0)
