

CLIENT NEWS BRIEF

New Law Entitles Students To Wear Tribal Regalia Or Recognized Objects Of Religious, Ceremonial Or Cultural Significance As An Adornment At School Graduation Ceremonies

Effective January 1 2019, a new law in California establishes students' right to wear tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies.

Background

Generally speaking, federal and state law permits school districts, county offices of education and charter schools (local educational agencies, or LEAs) to develop and enforce reasonable dress code policies. Existing law has been understood to permit LEAs the discretion to adopt "no adornment" policies at graduation ceremonies, as a way to maintain traditional graduation decorum. Under a "no adornment" graduation attire policy, LEAs could prohibit students from adorning the required cap and gown attire for commencement ceremonies with other attire or garb beyond that approved for the ceremony (such as approved sashes signifying certain school-related accolades). The primary legal basis for LEA control in this area is that the required graduation attire for commencement ceremonies is not a matter of student expression, but rather "school speech."

Assembly Bill (AB) 1248, however, adds section 35183.1 to the Education Code, and changes the rules when it comes to graduation ceremony dress codes. AB 1248 aims to ensure that students are permitted to adorn the required graduation cap and gown so that they may express themselves through their recognized cultural traditions, while simultaneously celebrating their educational achievements. For example, AB 1248 makes clear that Native American students are now permitted to wear an eagle feather at graduation ceremonies, as an expression of their cultural and spiritual beliefs.

While students will now have the right to wear "religious, ceremonial, or cultural" adornments at their school graduation ceremony, LEAs still retain the authority to prohibit an item that is likely to cause a substantial disruption of, or interference with, the graduation ceremony. This continuing LEA authority should give LEA officials the flexibility to impose size and other limits on student adornments, so that such adornments do not cause disruption of the ceremony. Additionally, it is important to note that the new law defines "adornment" as "something attached to, or worn with, but not replacing, the cap and gown customarily worn at school graduation ceremonies," and defines "cultural" as "recognized practices and traditions of a certain group of people." The definition of "cultural" appears to signal that the new law is not intended to permit students to merely adorn their graduation cap and gown with any expression of their choosing. Yet, ambiguity in the law in this respect will require LEAs to be thoughtful on how they align their policies and practices in this area, and risks school officials needing to act as arbiter of what student adornment satisfies the definition of "cultural" and what does not.

Takeaways

LEAs should review their policies and practices related to graduation and in particular the required dress codes. Among other options for LEAs to consider

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is to require students to obtain advance approval from school officials before being permitted to wear adornments at graduation ceremonies. By implementing such a policy, schools can make advanced determinations as to whether a student's adornment request is likely to cause a substantial disruption, or interference with, the graduation ceremony.

If you have any questions about AB 1248 or about student issues generally, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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