



"Leadership in Public School Governance"

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TO: Members, 2022 Special Committee on State-Tribal Relations Education  
FROM: Dan Rossmiller, WASB Government Relations Director  
DATE: September 27, 2022  
RE: Comments on K-12 Education-Related Bill Drafts Under Committee Consideration

The Wisconsin Association of School Boards (WASB) is a voluntary membership association representing all 421 of Wisconsin's locally elected public school boards.

We appreciate the opportunity to comment on the four bill drafts that are before the committee for its consideration. Our commentary follows.

***LRB-0012/PI, relating to pupils wearing traditional tribal regalia at a high school graduation ceremony.***

This bill would explicitly prohibit school boards and charter schools from prohibiting a pupil who is a member of, or eligible to be enrolled in, a federally recognized American Indian tribe or band in this state from wearing traditional tribal regalia at a high school graduation ceremony. For purposes of this prohibition, "tribal regalia" would mean the traditional dress or recognized objects of religious or cultural significance, including symbols, beads, and feathers, of a federally recognized American Indian tribe or band in this state.

It is our understanding that several states, including Arizona, Montana, North Dakota, Oregon, and South Dakota, have enacted similar prohibitions. In some cases, these statutes are quite specific, referring to the "wearing of an eagle feather, eagle plume, or an appropriate beaded graduation cap," as in the South Dakota statute. California's Education Code takes a different, permissive, approach, stating: "A pupil *may* wear traditional tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies." (Emphasis added)

As noted in the memo prepared for the committee, Wisconsin law does not explicitly protect an American Indian student's right to wear traditional tribal regalia at a graduation ceremony. We note, as alluded to in that memo, that under s. 115.28 (31), Wis. Stats., the state superintendent is required to promulgate rules to provide for the reasonable accommodation of a pupil's sincerely held religious beliefs with regard to all examinations and other academic requirements. This has been done through existing Chapter PI 41, Wisconsin Administrative Code, which requires that each school board "shall develop policies providing for the reasonable accommodation of a pupil's sincerely held religious beliefs with regard to all examinations and other academic requirements." Graduation ceremonies, however, are arguably neither an examination nor an academic requirement.

In the absence of a statutory framework to the contrary, school officials would likely be advised to utilize a First Amendment forum analysis regarding graduation dress codes or attire worn at graduation ceremonies. In general, dress code rules should generally be content-neutral (i.e., no adornments other than those approved by the schools). Further, if districts permit students to express themselves at graduation (such as by decorating their graduation caps), they would be advised that any restrictions on that expression should be viewpoint neutral (i.e., must allow students to express potentially contrary views on a subject) or the content must fall outside the First Amendment's protections regarding student speech.

This bill would direct that as school boards establish any graduation dress codes or policies about student expression at graduation, they *may not* prohibit a pupil who is a member of, or eligible to be enrolled in, a federally recognized American Indian tribe or band in this state from wearing traditional tribal regalia at a high school graduation ceremony.

In the absence of more specific definitions of “traditional tribal regalia” we presume that an understanding might need to be reached on a case-by-case basis between students and their school district, subject of course to the recognition that school districts would be limited in raising objections. It is hard to know what if any limits might apply under this broad definition. For school officials, the more narrowly defined the bill language could be, the better.

We wonder whether the passage of this specific prohibition might open the door to non-American Indian students with a variety of religious or other views insisting that they also be permitted to express themselves via graduation attire or adornments to their caps or gowns. This will pose questions of how schools should respond to non-American Indian students who depart from graduation dress codes. School boards would like to see this discussed more thoroughly. It would seem likely that the broader the exception/allowance for American Indian students, the more likely it is that non-American Indian students may also seek broad exceptions to graduation attire and will point to the broad exception language. What are the limits, given the board language of this bill draft? Perhaps the Legislative Council attorneys could address these concerns through an additional memo.

One suggestion for the committee is to consider adding language to the bill draft stating that a school board may require a student who wishes to modify their graduation attire to contact the school principal or a designee a specified period of time in advance of the graduation ceremony in order to inform the school official of the student's intent to wear certain traditional tribal regalia in a manner that would require an accommodation under the school's rules or standards for graduation dress. This would be especially helpful if the board language of the bill draft is not changed.

The purpose of this would be to avoid last-minute controversies regarding a student's plan for the student's attire at graduation--which may also help with non-tribal-related requests to reflect a student's personal religious beliefs and/or cultural background or heritage. That is, school officials will not be trying to sort out dress code deviations on the day of the ceremony.

***LRB-0014/P1, relating to requiring school districts to report information related to American Indian children attending school in the school district.***

This bill would require each school district to include in its annual school district report the numbers, ages, and tribal affiliation of American Indian children attending school in the school district. For purposes of this requirement, “American Indian” means an individual who is: 1) a member of a tribe, band, or other organized group of Indians or a descendant in the first or second degree of any such member; 2) considered by the federal government, on May 22, 1980, to be an Indian for any purpose; 3) an Eskimo, Aleut, or other Alaska native; or 4) determined to be an Indian under DPI rules promulgated by the state superintendent of public instruction.

As is noted in the memo prepared for the committee, some Wisconsin school districts have begun voluntarily reporting information of the type required to be reported under this bill to the DPI. This bill would make such reporting mandatory for all districts without providing any additional resources, which may be seen as an unfunded mandate by some school boards.

Although the bill seems relatively straightforward, we have some questions about how this information is to be gathered and reported—i.e., is only information that is voluntarily reported by students or their parents or guardians to be included in the report or is information gathered, obtained from, or supplied by other sources to be included? Perhaps this can be clarified through the DPI rulemaking contemplated by the bill draft.

***LRB-0265/PI, relating to Indigenous Peoples' Day.***

The WASB Delegate Assembly, comprised of one school board member from every WASB member school board and each Cooperative Educational Service Agency (CESA) in the state, is the policy-setting body for the WASB. It meets annually in January at the state education convention in Milwaukee.

In January 2019, the WASB Delegate Assembly adopted a resolution stating, “*The WASB supports legislation to add Indigenous Peoples' Day to the list of public school observation days in Wisconsin.*” The resolution took no position on whether the recognition of Indigenous Peoples' Day should replace the recognition of Columbus Day as a special observance day. We have left that question up to the legislative authors of a bill on this subject.

WASB resolutions, once adopted by the Delegate Assembly, remain in effect until amended or repealed. Considering this resolution and barring any change in the language of this resolution at a future Delegate Assembly, the WASB supports this draft legislation.

***LRB-0011/PI, relating to model academic standards related to American Indian studies, informational materials related to a school board's obligation to provide instruction on American Indians, and the American Indian studies requirement for teacher licensure.***

This bill draft would require the Department of Public Instruction to incorporate American Indian studies into the model academic standards, to develop instructional materials for school boards related to school board obligations to provide instruction on American Indians, and to change the instruction related to American Indian studies that is required for an initial teaching license.

In general, the WASB has preferred legislation adding specific content areas to the state model academic standard over an approach that simply legislatively mandates instruction on those specific content areas. The WASB is represented on the state academic standards advisory council and appreciates that it has an opportunity to offer input on proposed model academic standards language. The WASB also appreciates that the bill draft does not mandate that individual school districts must adopt the standards.

Under the bill draft, the DPI must develop informational materials related to the Act 31 requirements for distribution to school boards annually. The bill requires DPI to develop and post these materials on DPI's website by September 1, 2024. DPI must update the materials in response to any changes to a school board's obligation to provide instruction related to American Indians. The bill also requires that, beginning in the 2024-25 school year, school boards annually provide the informational materials to school board members, school district administrators, certain individuals responsible for curriculum or staff development, principals, and social studies teachers.

Given the existence of the Act 31 requirements in statutes since 1989, it is difficult to quarrel with a requirement to educate school board members, school administrators and staff about those requirements. Not knowing how voluminous the notification materials might be, some clarity on the method of notification would be appreciated. It would be nice for school districts to avoid having to print and distribute large volumes of material. We ask that this notification be permitted to be accomplished by providing this information electronically by a direct link to the DPI posting required by the bill draft.

WASB members recognize that instruction required by Act 31 has not been as robust as it could be in all districts. In January 2021, the WASB Delegate Assembly adopted a resolution that states: “*The WASB calls upon the DPI to provide sufficient curricular resources and professional development opportunities for teachers to assist all school districts in fulfilling the requirements of 1989 Wisconsin Act 31, including initiatives that promote increased student academic competency regarding 1989 Wisconsin Act 31.*”