

Enrolled
House Bill 2052

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Education)

CHAPTER

AN ACT

Relating to the wearing of Native American items of cultural significance at public school events; creating new provisions; amending ORS 329.451; and declaring an emergency.

Whereas the State of Oregon is committed to fulfilling the unique and continuing trust relationship the state has with Native American people; and

Whereas the State of Oregon has the responsibility of promoting the health, safety and welfare of Native American people, including educating Native American children, preserving Native American cultural values and honoring Native American educational sovereignty; and

Whereas the State of Oregon is committed to working with Native American tribes and organizations toward the goal of ensuring that programs serving Native American children are of the highest quality; and

Whereas the State of Oregon is committed to providing for not only the basic elementary and secondary educational needs of Native American children, but also the unique educational and culturally related academic needs of those children; and

Whereas the State of Oregon is committed to ensuring that public education programs and policies are designed to support self-determination and are free from policies that may negatively affect the academic success of Native American children; and

Whereas this state, like other states around the nation, continues to see a graduation gap between American Indian and Alaska Native students and their peers and continues to see higher dropout rates and lower graduation rates for Native American students than for their white or Asian peers; and

Whereas every year, American Indian and Alaska Native high school students from across this state are given eagle feathers or other items of cultural significance to be worn at graduation ceremonies as a form of practice and an expression of spiritual and religious beliefs; and

Whereas the eagle feathers are given to recognize a student's leadership, academic achievement and maturity, to signify the achievement of this important educational journey, and to honor the graduate and the graduate's family, community and tribal nation; and

Whereas American Indian and Alaska Native high school students seek to express and practice their religious and spiritual beliefs, to celebrate their personal academic achievements and leadership, and to transition into adulthood by wearing an eagle feather or other cultural items of significance at their graduation ceremony; and

Whereas many tribal nations have viewed eagles and eagle feathers as sacred elements of their religious and cultural traditions; and

Whereas federal law and policy have long recognized the religious significance of eagles, eagle feathers and eagle parts to Native peoples; and

Whereas Congress exempted American Indians and Alaska Natives from the Bald and Golden Eagle Protection Act of 1962, which prohibited the taking, transporting and possessing of bald and golden eagles, and thus allowed tribal members to continue to include eagle parts in their religious ceremonies; and

Whereas according to many Native American religious and spiritual traditions, eagle feathers are given only on special occasions, are a symbol of great honor and often mark significant personal achievement; and

Whereas for many Native American students, receiving an eagle feather in recognition of high school graduation is as significant as earning a high school diploma; and

Whereas while most public high schools permit Native American students to wear eagle feathers or other items of cultural significance at graduation, recognizing that commencement ceremonies are an appropriate setting for Native American graduates to wear eagle feathers with dignity, some schools do not allow it; and

Whereas the Legislative Assembly intends to affirm inherent rights assured through tribal sovereignty and intends to respect the traditions and customs associated with certain items and objects of cultural or religious significance for Native Americans; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) “Native American items of cultural significance” means items or objects that are traditionally associated with a Native American or that have religious or cultural significance to a Native American.

(b) “Public school event” means a graduation ceremony, an award ceremony, a public meeting or any other public event held or sponsored by a school district.

(c) “School district” includes a school district, a public charter school, an education service district and the Oregon School for the Deaf.

(2) A school district may not prohibit a student from wearing Native American items of cultural significance at a public school event.

(3) Nothing in this section prevents a school district from prohibiting an item or object that:

(a) Is likely to cause a substantial disruption of, or material interference with, a public school event; or

(b) Replaces a cap or gown customarily worn at a graduation ceremony.

SECTION 2. ORS 329.451 is amended to read:

329.451. (1)(a) At or before grade 12, a school district or public charter school shall award a high school diploma to a student who completes the requirements established by subsection (2) of this section.

(b) A school district or public charter school shall award a modified diploma to a student who satisfies the requirements established by subsection (7) of this section, an extended diploma to a student who satisfies the requirements established by subsection (8) of this section or an alternative certificate to a student who satisfies the requirements established by subsection (9) of this section.

(c) A school district or public charter school may not deny a student who has the documented history described in subsection (7)(b) or (8)(b) of this section the opportunity to pursue a diploma with more stringent requirements than a modified diploma or an extended diploma for the sole reason that the student has the documented history.

(d) A school district or public charter school may award a modified diploma or extended diploma to a student only upon receiving consent as provided by subsection (6) of this section.

(2)(a) In order to receive a high school diploma from a school district or public charter school, a student must satisfy the requirements established by the State Board of Education and the school district or public charter school and, while in grades 9 through 12, must complete at least:

(A) Twenty-four total credits;

- (B) Three credits of mathematics; and
- (C) Four credits of English.

(b) If a school district or public charter school requires a student to complete more than 24 total credits, as provided by paragraph (a)(A) of this subsection, the school district or public charter school may only require the student to complete additional credits for:

(A) Subjects for which the State Board of Education has established academic content standards under ORS 329.045;

(B) Courses provided as part of a career and technical education program; or

(C) Courses that provide, or qualify to provide, credit at post-secondary institutions of education.

(c)(A) A school district or public charter school that requires students to satisfy any requirements not specified by paragraph (a) of this subsection or by rule of the State Board of Education must grant to a student a waiver of the requirements established by the school district or public charter school if the student is or, at any time from grade 9 to 12, was:

(i) A foster child, as defined in ORS 30.297;

(ii) Homeless, as determined under rules adopted by the State Board of Education based on standards adopted by the Department of Human Services;

(iii) A runaway, as determined under rules adopted by the State Board of Education based on standards adopted by the Department of Human Services;

(iv) A child in a military family covered by the Interstate Compact on Educational Opportunity for Military Children, as determined under rules adopted by the State Board of Education;

(v) A child of a migrant worker, as determined under rules adopted by the State Board of Education; or

(vi) Enrolled in the Youth Corrections Education Program or the Juvenile Detention Education Program.

(B) For any student identified under subparagraph (A) of this paragraph, a school district or public charter school must accept any credits earned by the student in another school district or public charter school and apply those credits toward requirements specified by paragraph (a) of this subsection or by rule of the State Board of Education if the credits satisfied those requirements in that other school district or public charter school.

(3) A student providing work samples to demonstrate proficiency in Essential Learning Skills as may be required under subsection (2) of this section must be allowed to use accommodations described in the student's individualized education program or the student's plan developed in accordance with section 504 of the Rehabilitation Act of 1978, 29 U.S.C. 794. As used in this subsection, the term "accommodations":

(a) Includes, but is not limited to:

(A) Additional time to demonstrate proficiency.

(B) The ability to demonstrate proficiency in an alternative location that is secure and proctored.

(C) The use of text-to-speech or speech-to-text technology or other assistive technology.

(b) Does not include modifications that lower the proficiency standards or that are used solely to earn modified credit.

(4) A student may satisfy the requirements of subsection (2) of this section in less than four years. If a student satisfies the requirements of subsection (2) of this section and a school district or public charter school has received consent as provided by subsection (6) of this section, the school district or public charter school shall award a high school diploma to the student.

(5) If a school district or public charter school has received consent as provided by subsection (6) of this section, the school district or public charter school may advance the student to the next grade level if the student has satisfied the requirements for the student's current grade level.

(6)(a) For the purpose of receiving consent as provided by subsections (1)(d), (4) and (5) of this section, consent shall be provided by:

(A) The parent or guardian of the student, if the student:

(i) Is under 18 years of age and is not emancipated pursuant to ORS 419B.550 to 419B.558; or

(ii) Has been determined not to have the ability to give informed consent regarding the student's education pursuant to a protective proceeding under ORS chapter 125; or

(B) The student, if the student is 18 years of age or older or is emancipated pursuant to ORS 419B.550 to 419B.558.

(b) For the purpose of awarding a modified diploma or extended diploma as provided by subsection (1)(d) of this section or of awarding a high school diploma as provided by subsection (4) of this section, consent must be received during the school year for which the diploma will be awarded.

(7) A school district or public charter school shall award a modified diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma with reasonable modifications and accommodations. To be eligible for a modified diploma, a student must:

(a) Satisfy the requirements for a modified diploma established by the State Board of Education; and

(b) Have a documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers or have a documented history of a medical condition that creates a barrier to achievement.

(8) A school district or public charter school shall award an extended diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma with reasonable modifications and accommodations. To be eligible for an extended diploma, a student must:

(a) While in grade nine through completion of high school, complete 12 credits, which may not include more than six credits earned in a self-contained special education classroom and shall include:

(A) Two credits of mathematics;

(B) Two credits of English;

(C) Two credits of science;

(D) Three credits of history, geography, economics or civics;

(E) One credit of health;

(F) One credit of physical education; and

(G) One credit of the arts or a world language; and

(b) Have a documented history of:

(A) An inability to maintain grade level achievement due to significant learning and instructional barriers;

(B) A medical condition that creates a barrier to achievement; or

(C) A change in the student's ability to participate in grade level activities as a result of a serious illness or injury that occurred after grade eight.

(9) A school district or public charter school shall award an alternative certificate to a student who does not satisfy the requirements for a high school diploma, a modified diploma or an extended diploma if the student meets requirements established by the board of the school district or public charter school.

(10) A student shall have the opportunity to satisfy the requirements of subsection (7), (8) or (9) of this section by the later of:

(a) Four years after starting grade nine; or

(b) The student reaching the age of 21 years, if the student is entitled to a public education until the age of 21 years under state or federal law.

(11)(a) A student may satisfy the requirements described in subsection (7), (8) or (9) of this section in less than four years if consent is provided in the manner described in subsection (6)(a) of this section.

(b) The consent provided under this subsection must be written and must clearly state that the parent, guardian or student is waiving the time allowed under subsection (10) of this section. A consent may not be used to allow a student to satisfy the requirements of subsection (7), (8) or (9) of this section in less than three years.

(c) A copy of all consents provided under this subsection for students in a school district must be forwarded to the district superintendent.

(d) Each school district must provide to the Superintendent of Public Instruction information about the number of consents provided during a school year.

(12)(a) A student who qualifies to receive or receives a modified diploma, an extended diploma or an alternative certificate shall:

(A) Have the option of participating in a high school graduation ceremony with the class of the student; and

(B) Have access to instructional hours, hours of transition services and hours of other services that are designed to:

(i) Meet the unique needs of the student; and

(ii) When added together, provide a total number of hours of instruction and services to the student that equals at least the total number of instructional hours that is required to be provided to students who are attending a public high school.

(b)(A) The number of instructional hours, hours of transition services and hours of other services that are appropriate for a student shall be determined by the student's individualized education program team. Based on the student's needs and performance level, the student's individualized education program team may decide that the student will not access the total number of hours of instruction and services to which the student has access under paragraph (a)(B) of this subsection.

(B) A school district may not unilaterally decrease the total number of hours of instruction and services to which the student has access under paragraph (a)(B) of this subsection, regardless of the age of the student.

(c) If a student's individualized education program team decides that the student will not access the total number of hours of instruction and services to which the student has access under paragraph (a)(B) of this subsection, the school district shall annually:

(A) Provide the following information in writing to the parent or guardian of the student:

(i) The school district's duty to comply with the requirements of paragraph (a)(B) of this subsection; and

(ii) The prohibition against a school district's unilaterally decreasing the total number of hours of instruction and services to which the student has access.

(B) Obtain a signed acknowledgment from the parent or guardian of the student that the parent or guardian received the information described in subparagraph (A) of this paragraph.

(C) Include in the individualized education program for the student a written statement that explains the reasons the student is not accessing the total number of hours of instruction and services to which the student has access under paragraph (a)(B) of this subsection.

(d) For purposes of paragraph (a)(B) of this subsection, transition services and other services designed to meet the unique needs of the student may be provided to the student through an interagency agreement entered into by the school district if the individualized education program developed for the student indicates that the services may be provided by another agency. A school district that enters into an interagency agreement as allowed under this paragraph retains the responsibility for ensuring that the student has access to the number of service hours required to be provided to the student under this subsection. An agency is not required to change any eligibility criteria or enrollment standards prior to entering into an interagency agreement as provided by this paragraph.

(13) A school district or public charter school shall:

(a) Ensure that students have on-site access to the appropriate resources to achieve a high school diploma, a modified diploma, an extended diploma or an alternative certificate at each high school in the school district or at the public charter school.

(b) Provide literacy instruction to all students until graduation.

(c) Annually provide, to the parents or guardians of a student who has the documented history described in subsection (8)(b) of this section, information about the availability of a modified di-

ploma, an extended diploma and an alternative certificate and the requirements for the diplomas and certificate:

(A) Beginning in grade five; or

(B) Beginning after a documented history described in subsection (8)(b) of this section has been established.

(14) A school district or public charter school shall allow a student to participate in the high school graduation ceremony with the class of the student and to wear:

(a) Native American items of cultural significance as provided by section 1 of this 2021 Act; or

(b) A dress uniform issued to the student by a branch of the Armed Forces of the United States if the student:

[(a)] **(A)** Qualifies to receive a high school diploma, a modified diploma, an extended diploma or an alternative certificate under this section; and

[(b)] **(B)** Has completed basic training for, and is an active member of, a branch of the Armed Forces of the United States.

SECTION 3. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House March 9, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 12, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State