



Santa Barbara  
**SCHOOL DISTRICTS**

720 Santa Barbara Street, Santa Barbara, CA 93101  
Phone (805) 963-4338, Fax (805) 963-1877

Date: May 7, 2009  
To: Dr. J. Brian Sarvis, Superintendent  
From: Robin Sawaske, Associate Superintendent  
Subject: Military Uniforms at High School Graduation  
Action Item:  X

Background

The issue of students being allowed to wear military uniforms at graduation is being brought back to the board following the matter having been discussed on the conference agenda during the May 5<sup>th</sup> board meeting.

The districts' practice has been for all students to wear a cap and gown for graduation, based on the premise that the graduation ceremony is a whole class presentation and celebration.

Following the May 5<sup>th</sup> board meeting, staff found that there is a pending Assembly Bill, AB 1463, which addresses the same subject. Basically the pending bill specifies that students participating in graduation ceremonies must wear the prescribed cap and gown except where a student has completed the basic training required for and is an active member of any armed branch of the United States military, in which case the student has the right to wear the dress uniform issued to him or her by that military branch while participating in the graduation ceremony for his or her high school.

Recommendation

Based upon the board's discussion at the May 5<sup>th</sup> board meeting, we are recommending that the board decide whether to adhere to current practice, to grant an exception for this year, or to revise the current Board Policy 5127 in alignment with the pending AB 1463. Attached is a sample revised BP 5127.

<b>Attachment(s)?</b>	<b>X</b>	<b>Yes (please attach)</b>		<b>No</b>		<i>PowerPoint</i>		<i>Overhead</i>		<i>Consultant</i>
-----------------------	----------	----------------------------	--	-----------	--	-------------------	--	-----------------	--	-------------------

Adams Elementary School Cesar Chavez Charter School Cleveland Elementary School Franklin Elementary School	Harding Elementary School McKinley Elementary School Monroe Elementary School Open Alternative School	Peabody Charter School Roosevelt Elementary School Santa Barbara Charter School Santa Barbara Community Academy Washington Elementary School	Goleta Valley Junior High School La Colina Junior High School La Cumbre Junior High School Santa Barbara Junior High School	Dos Pueblos High School La Cuesta Continuation High School San Marcos High School Santa Barbara High School
---	--	--	--	--

# Santa Barbara School Districts

## Board Policy

BP 5127

### Students

#### GRADUATION CEREMONIES AND ACTIVITIES

High school graduation ceremonies shall be held to recognize those students who have earned a diploma by successfully completing the required course of study, satisfying district standards, and passing any required assessments. The Board of Education believes that these students deserve a public celebration that recognizes the significance of their achievement and encourages them to continue the pursuit of learning throughout their lives.

*(cf. 3260 - Fees and Charges)*

*(cf. 6011 - Academic Standards)*

*(cf. 6143 - Courses of Study)*

*(cf. 6146.1 - High School Graduation Requirements)*

*(cf. 6162.52 - High School Exit Examination)*

*(cf. 6146.4 - Differential Graduation and Competency Standards for Students with Disabilities)*

At the discretion of the Superintendent or designee, a student who will complete graduation requirements during the summer may participate in graduation exercises without receiving his/her diploma. When the requirements have been satisfied, a diploma shall be sent to the student.

High school students who have passed the California High School Proficiency Examination or the General Education Development Test must also meet district graduation requirements in order to participate in graduation ceremonies.

*(cf. 6146.2 - Certificate of Proficiency/High School Equivalency)*

Invocations, prayers or benedictions shall not be included in graduation ceremonies. The school or district shall not sponsor other ceremonies or programs for graduates that include prayer.

#### Disciplinary Considerations

In order to encourage high standards of student conduct and behavior, the principal may deny a student the privilege of participating in graduation ceremonies and/or activities in accordance with school rules. School rules shall ensure that prior to denial of the privilege(s), the student, and where practicable his/her parent/guardian, is made aware of the grounds for such denial and that the student is given an opportunity to respond to the proposed denial. If privilege(s) are to be denied, the student and parent/guardian shall receive written notice of the denied privilege and the means whereby he/she may appeal this decision.

*(cf. 5125.2 - Withholding Grades, Diploma or Transcripts)*

*(cf. 5144 - Discipline)*

*(cf. 6161.2 - Damaged or Lost Instructional Materials)*

## **Prescribed Dress**

Students participating in graduation ceremonies must wear the prescribed cap and gown.

A student who is eligible under this policy to participate in graduation ceremonies, and has completed the basic training required for and is an active member of any armed forces branch of the United States military, shall have the right to wear the dress uniform issued to him or her by that military branch while participating in graduation ceremonies.

*(cf. AB 1463 (proposed))*

## **Honors and Awards**

To honor superior academic achievement, graduation ceremonies may include recognition of valedictorian(s) and salutatorian(s). The Superintendent or designee shall establish procedures that ensure a fair determination of the valedictorian(s) and salutatorian(s).

*(cf. 5121 - Grades/Evaluation of Student Achievement)*

The Superintendent or designee may identify other school-sponsored awards which may be given during graduation exercises. A separate awards program may be held to recognize graduating students receiving other school and nonschool awards.

*(cf. 5126 - Awards for Achievement)*

Foreign exchange students may receive honorary diplomas during the graduation ceremony. (Education Code 51225.5)

*(cf. 6145.6 - International Exchange)*

## **Elementary/Middle School Promotion Exercises**

The Board desires that each elementary and middle school provide age-appropriate promotion exercises to recognize students who have completed the school's course of study.

*Legal Reference:*

### EDUCATION CODE

38119 *Lease of personal property; caps and gowns*

48904 *Liability of parent or guardian; withholding of grades, diplomas, transcripts*

51225.5 *Honorary diplomas; foreign exchange students*

51400-51403 *Elementary school diploma*

51410-51412 *Diplomas*

### COURT DECISIONS

*Cole v. Oroville Union High School District, (2000, 9th Cir.) 228 F.3d 1092*

*Santa Fe Independent School District v. Doe, (2000) 530 U.S. 290*

*Lee v. Weisman, (1992) 112 S.Ct. 2649*

*Sands v. Morongo Unified School District, (1991) 53 Cal. 3d 863*

*Lemon v. Kurtzman, (1971) 403 U.S. 602*

*Management Resources:*

CDE PROGRAM ADVISORIES

*0615.89 Granting credit for passing GED, SPB:88/89-11*

WEB SITES

*CDE: <http://www.cde.ca.gov>*

Policy: **SANTA BARBARA SCHOOL DISTRICTS**

Adopted: November 25, 2008 Santa Barbara, California

# *GRIFFITH & THORNBURGH, LLP*

## *MEMORANDUM*

**TO:** Robin Sawaske, Associate Superintendent of Education  
Santa Barbara School Districts

**FROM:** Joseph M. Sholder, Esq.

**SUBJECT:** Restricting Dress at Graduation Ceremonies to Prescribed Cap and Gown and,  
Under Delineated Circumstances, Military Uniforms

**DATE:** May 8, 2009

---

This memorandum discusses whether the Board may limit students to wearing a prescribed cap and gown or, under the circumstances specified in the proposed revision to BP 5127, a military uniform.

Nothing requires the Board to permit students to wear all manner of apparel at a graduation ceremony. To the contrary, the United States Supreme Court has recognized that "at a high school graduation, teachers and principals must and do retain a high degree of control over. . .the dress, and the decorum of the students." *Lee v. Weisman*, 505, U.S. 577, 597 (1992). So, as a general matter, the Board has great leeway to impose a graduation ceremony dress requirements. The Board's power in this area allows it to easily dispense with student requests to wear inappropriate clothing -- e.g., a bathing suit or a Viking helmet -- that the Board reasonably determines is inconsistent with the decorum and dignity of the graduation ceremony.

A more serious issue is whether, in authorizing a graduating student to wear a military uniform, the Board is permitting certain types of symbolic speech -- e.g., a patriotic message -- and is thus required to permit other students to wear clothing that expresses a different or contrary political viewpoint. For the foregoing reasons we do not believe the Board would need to do so.

As a general matter, the "constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." *Morse v. Frederick*, 551 U.S. 393, 127 S.Ct. 2618, 2626 (2007). This is because the Supreme Court has consistently recognized "the special characteristics of the school environment." *Id.* at 2626-27. Consequently, schools can restrict student speech where the restriction is "reasonably related to legitimate pedagogical concerns." *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988). For example, the Supreme Court upheld a school district's suspension of a student who displayed a banner that could reasonably be interpreted as promoting drug use at a school-sanctioned event because the school had a strong interest in preventing illegal drug use, even though similar speech would be protected in a non-school setting. *Id.* at 2629. Further, a school district was permitted to prohibit vulgar and lewd remarks made at a school government nominating assembly. *Bethel School Dist. No. 403 v. Fraser*,

475 U.S. 675, 686 (1986). A school district has also been permitted to regulate the content of articles that appear in the official school newspaper because, in that context, the articles bore the imprimatur of the district. *Hazelwood School Dist. v. Kuhlmeier*, supra, 484 U.S. at 273. And even political speech can be prohibited in the school setting where that speech might reasonably "materially and substantially disrupt the work and discipline of the school." *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 513 (1969).

A school district exceeds its power to regulate student speech where the district imposes regulations that aren't viewpoint neutral: that is, it allows speech professing one viewpoint but prohibits speech offering an opposing or different point of view. *Rosenberger v. Rectors and Visitors of the University of Virginia*, 515 U.S. 819, 882-30 (1995). This rule is an analog to advice we have previously given the Board regarding allowing school premises to be used by a political group to hand out leaflets: once the Board allows one group to do so, it can't prohibit other groups having different views from doing so.

These cases suggest that if the Board is disinclined to permit other variations from the current graduation ceremony dress requirements it should stress that it is limiting the forms of acceptable dress to those it finds are consistent with the dignity and decorum of the graduation ceremony, something over which the Board has great control. The Board should also emphasize that the rationale for allowing a military uniform exception for qualified students has nothing to do with the Board promoting a political viewpoint, but rather that the Board finds that the military uniform is consistent with the dignity and decorum of the graduation ceremony. The Board's rationale would be supported by the fact that the State Assembly has pending AB 1463 which would permit the wearing of a military uniform at a graduation ceremony on the same terms as provided for in the proposed revision to BR 5127.