



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

REF: HRC-RES-EDU-DRESS CODE

Ms Barbara Conolly
Councillor, Ministry for Education
Government Administration Building, Box 108
Grand Cayman KY1-9000
CAYMAN ISLANDS

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Via Email: barbara.conolly@gov.ky

Dear Councillor Conolly,

Thank you for your email of 19 March 2018 in which you requested the Commission review the Ministry of Education's (the "Ministry") National School Uniform and Dress Code (the "policy") from the perspective of the Bill of Rights ("BoR").

The Commission congratulates the Ministry for proactively approaching the Commission to provide its feedback, and for developing a policy which already references the BoR along with other relevant legislation and policy.

This approach to the development of the Policy has resulted in a document which illustrates few areas of concern. However, areas which were of note to the Commission are outlined below:

General

1. The policy would benefit from clearly defined and consistently used definitions of the terms "uniform" and "dress code". Our interpretation is that the intention is for these two terms to be distinct, with "uniform" referring to required garments, with "dress" and "dress code" referring to overall appearance, including grooming, jewellery and hair. If this is the case, attention should be paid to how this terminology is used throughout the policy and amendments made where necessary (e.g. in the section referring to guidance on objections).
2. The Ministry may find the concepts of reasonable accommodation and undue hardship helpful in its next review of the policy. Whilst it is not written on the same subject, the Commission has previously published a report on Religious Accommodation that describes and explains these

concepts, which the Ministry may find to be of assistance. This report can be found on the Commission's website¹.

3. Various grammatical errors exist in the current document which should be attended to at the next review.

Policy Statement (page 2)

4. The jewellery and hair grooming requirements do not distinguish between genders, and so are assumed to apply equally to male and female students. This is appropriate.

Exemptions (page 4)

5. This section (especially when compared with the proceeding section on objection) is confusing and could benefit from being simplified. Specifically, the policy appears to contradict itself, or at least lack clarity, in its description of the procedure for considering and permitting exemptions from the uniform requirements. For example, the section states variously:
 - "School procedures for seeking a short-term exemption should be documented, such as a letter from parents or verbal communication with them..."
 - "...a centralised record of requested exemptions and modifications should be kept. Where patterns of exemptions and modifications are identified over a period of time they should be taken into account in a subsequent review of school uniform requirements."
 - "Some students and their families may have an aversion to applying for exemptions from wearing the uniform. In these cases it may be helpful to adopt informal processes to support compliance with the school uniform and dress code whilst being sensitive to the issues stated above."

Whilst the intention behind a flexible approach to gaining compliance is understandable, these statements taken together seem to muddle the process, or worse, present opportunities for abuse of the process and possible breaches of procedural fairness, as required under section 19 of the BoR – lawful administrative action. For example, how is verbal communication "documented"? Is it required to be logged by teachers/staff? What is an "informal process", and how might it be documented to support the reasoning of why a "centralised record" of requests for exemptions is being kept?

¹ http://www.humanrightscommission.ky/upimages/publicationdoc/HumanRightsCommission-GuidanceonReasonableReligiousAccomodation_201113_1470700114_1470700114.pdf

Appendix 2 – Anti-discrimination (page 7)

6. A suggested re-wording of the first paragraph in this section is as follows:

“The Cayman Islands Constitution makes it unlawful for schools to discriminate. The Bill of Rights defines discrimination as “affording different and unjustifiable treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, age, mental or physical disability, property, birth or other status.” Two forms of discrimination are defined below:...”

The definition of “direct discrimination” provided here should be amended. The European Convention on Human Rights defines direct discrimination as “a difference in the treatment of persons in analogous, or relevantly similar, situations, which is based on an identifiable characteristic.”² For ease of comprehension this definition could be simplified and adapted for the policy.

The Commission is encouraged that the Ministry is carefully considering policies to ensure compliance with the BoR and we thank you for taking the time to send this document to us for our comments. If we can be of any further assistance please do not hesitate to contact us.

Yours sincerely,



James Austin-Smith
Chairman

² http://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_EN.pdf, page 22.