



# **DRAFT NATIONAL GUIDELINES ON SCHOOL UNIFORMS**

*Call for comment by Department of Education (GG Notice 641 of 2005)*

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## **Introduction**

There is a contested debate around the world on many issues concerning school uniforms. These debates address whether children should wear school uniforms; the extent to which school uniforms should allow for the freedom of expression, and the freedom to express religious beliefs; the impact of school uniforms on achieving diversity within the school environment; and, the extent to which the purchasing of school uniforms may place additional economic burdens on indigent parents. Some of these issues have been litigated and have made recent news headlines in the United Kingdom, France and Turkey. Even the European Court of Human Rights has pronounced on some of these issues.

The South African Human Rights Commission ('the commission' or 'the SAHRC') welcomes the initiative by the Department of Education ('the Department') to set out National Guidelines on School Uniforms. These Draft National Guidelines on School Uniforms ('Draft Guidelines') raise many important human rights issues, which in some instances are made more complex in our society with its high levels of poverty. For this reason, the commission saw it fit to prepare this Comment.

It is important that the Guidelines are written from a rights-based perspective. It is clear from an initial perusal of the Draft Guidelines that the Department is already aware of many of the human rights issues that must be addressed. This comment will explore these issues and provide comments and suggestions as to how the Guidelines can be improved. It is hoped that the Guidelines will be subjected to extensive consultation with all necessary role-players, including: educators, parents, children and relevant government departments.

## **A. Mandate of the SAHRC**

The Constitution sets out the functions of the SAHRC. Section 184(1) states:

"The South African Human rights commission must-

- (a) Promote respect for human rights and a culture of human rights;

- (b) Promote the protection, development and attainment of human rights, and
- (c) Monitor and assess the observance of human rights in the Republic.”

It is within this mandate that the SAHRC monitors the legislative process at a parliamentary and government department level. Where necessary the commission will respond to requests for comments and submissions on proposed legislation, policies, and in this case, guidelines.

## **B. School uniforms and applicable rights**

There are a number of human rights, which the Draft Guidelines must be alive to. It is important that the Draft Guidelines do not infringe a learner’s rights. Rather the Draft Guidelines should seek to create a school environment in which the greatest expression can be given to these rights in order to promote and facilitate learning.

The most relevant rights from our Constitution that the Draft Guidelines must address include:

### ***Section 29 (1) (a) “Everyone has a right to a basic education, ...”***

Any school uniform policy must ensure that the imposition of a mandatory guideline does not exclude children by denying them access to the school. This includes overt exclusion by schools denying physical access to the school due to a learner not presenting him or herself in the stipulated school uniform. It also includes, the creation of a school uniform policy that indigent parents do not have the means to comply with and where this results in these parents not sending their children to school at all.

### ***Section 10 “Everyone has inherent dignity and the right to have their dignity respected and protected.”***

It is important that the Draft Guidelines promote the dignity of learners. This is particularly important when we determine the policy basis for choosing to have school uniforms. This policy basis must be affirming of children’s dignity by stating in a positive manner the benefits of school uniforms.

### ***Section 15 (1) “Everyone has the right to freedom of conscience, religion, thought, belief and opinion.”***

***And***

### ***Section 16 (1) “Everyone has the right to freedom of expression...”***

The Draft Guidelines must ensure that a learners right to express their religious beliefs is respected where these are expressed through clothing and attire.

This respect must also be extended to a learners right to express her or himself. “In Principle, every act by which a person attempts to express some emotion, belief or grievance should qualify as constitutionally protected ‘expression” (De

Waal & Currie, The Bill of Rights Handbook, p283). This however, is subject to the limitation clause (section 36).

**Section 31 (1)**

***“ Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community-***

***(a) to enjoy their culture, practice their religion and use their language...”***

The respect of this right must be recognised in the Draft Guidelines.

**C. General comment**

***The Draft Guidelines fail to clearly articulate a positive underlying principle for the wearing of school uniforms.***

In Paragraph 1, the Draft Guidelines state that:

“School uniforms serve an important social purpose and they should be retained in all public schools”.

The paragraph does not explain further what this social purpose is. However, further on in the document, (in the section General Principles) there are statements, which indicate what this social purpose may be. They include:

Paragraph 21

“In response to growing levels of violence in some of our schools, many parents, teachers, and school officials should see school uniforms as one positive and creative way to **reduce discipline problems and increase school safety.**”

Paragraph 22

“The adoption of a school uniform could **promote school safety, improve discipline, and enhance the learning environment.** The potential benefits of school uniforms include:

- (a) **Decreasing violence and theft** - even life threatening situations - among pupils over designer clothing or expensive footwear;
- (b) **Helping prevent gang members from wearing gang colours and insignia at school,**
- (c) **Instilling discipline in pupils,**
- (d) **Helping parents and pupils resist peer pressure,**
- (e) **Helping pupils concentrate on their work; and**
- (f) **Helping school officials recognize intruders who come to the school.”**

If the above paragraphs, in particular those parts that have been highlighted by the writer hereof, embody the “important social purpose” that school uniforms serve, then this should be stated explicitly.

It is suggested that the Guidelines contain a Principles section that is placed after the Introduction. This section must set out the basis upon which the decision has been taken by the Department to maintain a mandatory school uniform policy.

***The Guidelines promote principles that are the subject of dispute***

Many of the reasons given for the retention of school uniforms, such as instilling discipline and decreasing violence and theft have been debunked as myths in studies that have been conducted in other countries. Whilst these studies may not be applicable to the South African context we need to be alive to the fact that they are disputed. If there is no South African empirical research, which demonstrates that, these goals can be achieved, then as an initial point of departure the Guidelines should recognise that these are disputed issues. (Visit **School Uniforms A Critical Review of the Literature** by Dr. David L. Brunsmma, assistant professor of sociology at the University of Alabama ... [www.geocities.com/school\\_uniforms/](http://www.geocities.com/school_uniforms/) for a comprehensive review of the literature).

***The Guidelines fail to express a positive policy basis.***

The policy principles contained in Paragraph 21 and 22 of the Draft Guidelines do not provide a sufficiently positive rationale for the retention of school uniforms. Some of these principles imply that if our children do not wear school uniforms that they will be ill disciplined, commit crime and engage in gang activities. This does not send out a positive message to children. Rather, it implies to some extent that children cannot determine for themselves whether to engage in anti social behaviour. School uniforms thus become patronising towards children and associated with negative stigmas of the unfortunate social ills in our society.

***The Guidelines should set forth a positive policy basis.***

It would be far more preferable for the Guidelines to set forth a rationale for school uniforms that convey a positive social purpose. This would increase learner's dignity and sense of self worth. Such an argument could be firmly aligned to the important value of dignity that is both a founding principle of our constitutional democracy and a right enshrined in our bill of rights.

These principles could refer to:

- School uniforms as a symbol of conformity that re-enforces a sense of shared identity or association.
- School uniforms as increasing a child's sense of belonging, thereby increasing the child's sense of self worth and self-esteem.
- School uniforms can embody a sense of pride in being associated, through the uniform, to a particular school.

- School uniforms can contribute towards eliminating class distinctions to a certain extent, and allow learners to be associated with a particular institution without discernable references to class or social status.
- School uniforms resulting in less peer pressure being exerted on children to obtain material wealth
- School uniforms suggesting and signifying respect for a particular institution.
- School uniforms assisting in creating a school environment where children can participate freely without the interferences of the disempowerment of material wealth.

It is possible that a legal basis could be found for such arguments. The Notice issued by the Ministry of Education (Notice 641 of 2005) states that the Draft Guidelines are issued in terms of section 8(1) of the South African Schools Act, 1996, which empowers School Governing Bodies to maintain discipline in a school. It must be pointed out that section 8(1) state:

“Subject to any applicable provincial law, a governing body of a public school must adopt a code of conduct for the learners after consultation with the learners, parents and educators of the school.”

It is section 8(2) which refers to discipline:

“A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process.”

The Notice goes further to refer to two further legal provisions, these are:

Section 8(3) South African Schools Act, 1996:

“The Minister may, after consultation with the Council of Education Ministers, determine Guidelines for the consideration of governing bodies in adopting a code of conduct for learners.” and

National Education Policy Act, 1996 section 4(n) (not 3(n) as stated in the Notice):

“The Minister may determine policy concerning “control and discipline of students at education institutions.”

Drawing on section 8(3) of the South African Schools Act, the policy arguments set out above could be part of creating a “...purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process.”

The SAHRC recommends that a separate subsection be added which states explicitly the rationale upon which this Guideline is based. This policy basis should put forward affirming positive arguments for the adoption of a school uniform guideline.

***By failing to set out the Principle on which the Guidelines are based, they may not hold up to legal scrutiny***

The State may determine whether to implement a mandatory school uniform policy. However, it is important that the basis upon which the decision is taken is expressed clearly in the Guidelines. The underlying principle must be capable of holding up to legal scrutiny if challenged.

The SAHRC recommends that the Guideline state clearly the important social purpose upon which the Guideline is based.

**D. Specific comments**

***The overall layout of the Guideline is not logical.***

The Draft Guidelines contain many important statements, which could be set out in a more logical fashion. A background section, principles section, rights section, procedures sections and pro forma school uniform policy document should follow the introduction section.

*General Principles Section*

This section contains principles relating to different issues, such as: practical school uniform guidelines, (paragraphs 11, 14, 15 16, 17, 18, 19; & 20), rights issues (paragraph 12); discipline (paragraph 13); safety and security issues (paragraphs 20, 21 & 22); and, promoting South African and self production of uniforms as an alleviation of poverty mechanism (paragraphs 23 & 24).

*The Draft Guidelines should contain a Background section*

The SAHRC recommends that a Background section to the Guideline be added in which it records the history of school uniforms in South Africa, what the position is currently, and what conditions exist in our schools which warrant the wearing of school uniforms. This section should contain accurate data on the incidence of violence, theft, gansterism and intruders in schools. Further, a direct link must be made between these incidences and how the wearing of school uniforms will assist as one component in an overall strategy to combat such anti social activities.

*The Guideline should contain a Procedures section*

As the Guideline currently stands there are a number of paragraphs, which address procedures that schools must follow when determining matters, related to school uniforms. These paragraphs include: Guide to adopting a school uniform, (Paragraphs 25 & 26); Process for decision making (Paragraphs 27 & 28); and, Information to assist parents, teachers and school leaders (Paragraph 29). The Draft Guidelines do not expressly and neatly address in one section: who must determine the school uniform policy/guideline; what process must be followed; and what the core minimum of such a policy/guideline ought to be.

The SAHRC recommends that the Draft Guidelines should include in a Procedures section: a statement that each school must adopt a school uniform policy, that such policy must be adopted by the School Governing Body, that prior to the adoption of such a policy there must be an inclusive process in which the views of parents, children and school leaders are obtained, the manner in which alterations to the policy can be made, the substantive rights issues that the policy must recognise and incorporate, the procedure for the review of the policy, and an assistance plan for those who cannot afford school uniforms.

*Information to assist Parents, Teachers and School Leaders (Paragraph 29) needs to be reorganised*

Paragraph 29 contains important statements that need to be included in the draft Guidelines. However, the current heading of the section does not accurately reflect the nature of the information contained therein. Many of the sub-paragraphs, are more of the nature of directives or guiding principles than information statements.

The SAHRC recommends that Paragraph 29 (a), (b), & (c) (Get Parents Involved from the Beginning) would more appropriately be included in the Procedures section. The Department should expressly state that parents must be involved in the determining the school uniform policy. The manner of this involved and who must take responsibility for it in order to ensure that it occurs must also be stated.

**E. Freedom of religion**

It is welcomed that the Guidelines expressly recognise the right of freedom to religion.

Paragraph 29 (d) states:

“A school uniform policy must accommodate pupils whose religious beliefs are substantially burdened by a uniform requirement.”

Paragraph 29 (e) states:

“When wearing particular attire, such as yarmulkes and headscarves, during the school day is part of pupils’ religious practice, under the constitution schools generally may not prohibit the wearing of such items”

The SAHRC recommends that these provisions be incorporated in the Rights section and Procedures section that has already been proposed above. Paragraphs 29 (d) & (e) (Protect Pupils’ Religious Expression) should be first addressed in the Rights section where it is expressly recognised that a school uniform policy must respect the right of freedom to religious expression.

In the Procedures section, reference should be made to the inclusion of a rights section in the Policy and should outline the procedure to be followed by those parents who wish to apply for an exemption from the General School Uniform Policy. Such a procedure could provide for example that the parents depose to an affidavit stating that the request is necessary for the practice of their religion and that support for such a practice is obtained from a recognised religious institution. The SAHRC has received a number of complaints concerning religious attire being in conflict with the school uniform policy and has successfully resolved these matters in this manner.

#### **F. Freedom of expression**

It is welcomed that the Draft Guidelines recognise the right of freedom of expression, Paragraphs 29 (f) & (g) (Protect Pupils' Other Rights of Expression and Do Not Require Pupils To Wear a Message). As with the Right of Freedom of religion it is recommended that broad recognition of this right be included in a Rights section and that a Procedures section set out clearly how this right will be recognised.

Specific Guidelines should be given on the interpretation of this section. Procedures should be included on the manner in which decisions that are taken to exclude freedom of expression may be challenged. For example, whilst it may be argued that the wearing of gang insignia may be disallowed due to its potential to cause violence and harm and hence repugnant in terms of section 16(2) of the constitution, there is no consensus or common reference for what gang insignia are. Such gang insignia may also change from time to time. Thus there is the potential for dispute over what forms of expressions are gang insignia and which are not.

By their very nature, school uniforms are a violation of the right of freedom of expression. A School Uniforms Guideline must therefore provide a rational basis for the limitation of this right. The extent of the limitation must also be clearly identified. As the Draft Guideline currently stands, it is unclear. It is recommended that more attention be given to this paragraph and that the Draft Guideline clearly outline what forms of freedom of expression are allowed or alternatively, what forms of freedom of expression are expressly prohibited. It would be preferable that matters of freedom of expression be dealt with in a similar manner to that of freedom of religion. Schools on an individual basis could determine what expressions are allowable, such as the wearing of the HIV/AIDS ribbon and thereafter set out a procedure for those parents or learners who wish to deviate from the general policy.

#### **G. School uniforms instil discipline and contribute towards safety.**

Paragraphs 29 (h), (i) & (j) (Treat School Uniforms As Part Of An Overall Safety Programme) should be included in a Policy section that sets out the foundational



principles upon which the Draft Guidelines are guideline is based. Paragraph 29 (h) specifically states that school uniforms contribute towards discipline and safety. The legal basis for the Draft Guidelines, as was set out previously herein, are based on provisions in the South African Schools Act and the National Education Policy Act which allow for the Minister to draft Guidelines concerning discipline in schools.

It must be pointed out again that it is a disputed assumption that school uniforms contribute towards a disciplined environment. Should it be included in the Guidelines, it may be the subject of dispute.

Paragraph 29 (h) is unclear when it states that “.... They can be one positive contributing factor to discipline and safety. If the Draft Guidelines are stating that the lack of discipline leads to an unsafe environment then it must be stated more clearly what the nature of this unsafe environment is. However, on a plain reading of the Paragraph it could be argued that issues of discipline and safety are being conflated. The link between school uniforms and safety needs to be made more clearly. If school uniforms contribute towards safety by identifying more easily intruders on the school property then this should be stated. However, it is not an acceptable argument that rights should be limited because of the inability of the school to adequately protect the children during school hours.

#### **H. The alleviation of poverty**

##### ***The right not to be denied education due to an inability to purchase a school uniform***

This right is encapsulated in the Draft Guidelines in a couple of paragraphs. These paragraphs should be stated expressly as rights in a rights section in the Draft Guidelines. For example, paragraph 3 states that an express purpose of the Draft Guidelines is to reduce the cost of school uniforms in order that obtaining uniforms does not deter attendance or participation in school programmes. Also, Paragraph 12 states clearly that:

“No child may be refused admission to a school because of an inability to obtain or wear a school uniform.”

##### ***Assist Families That Need Financial Help***

It is welcomed that the Department has specifically addressed the economic burden that the purchasing of school uniforms places on the poor in South Africa. This should be stated specifically in the Draft Guidelines and also, that practical guidance will be given on the manner in which this burden can be alleviated. The Draft Guidelines should address issues of poverty alleviation in a separate section.

Paragraphs 29 (k) & (l) should be included in the section that addresses poverty alleviation strategies. Should the Department decide that each school must have an assistance plan, then it must also be stated in the Procedures section that the

school's uniform policy must contain a section addressing such an assistance plan.

### ***The assistance plan***

The Draft Guidelines demonstrate an appreciation for the situation that poor parents are placed in when they are unable to afford to purchase school uniforms for their children. The Draft Guidelines provide a number of avenues that can be explored in order that all children can be provided with school uniforms. The SAHRC welcomes the broad principle behind the drafting of paragraphs 29 (k) and (l) of the Draft Guidelines.

Paragraph 29 (k) states:

“ Schools with uniforms should make provisions for pupils whose families are unable to afford uniforms. Each school must develop an assistance plan for families that cannot afford to buy uniforms”

Paragraph 29 (l) gives examples of the types of assistance, these include:

- “ (i) The school provides uniforms to pupils who cannot afford to purchase them;
- (ii) Community and business leaders provide uniforms or contribute financial support for uniforms;
- (iii) School parents work together to make uniforms available for economically disadvantaged pupils; and
- (iv) Used uniforms from out going pupils are made available to incoming pupils on a charitable basis.
- (v) Grants secured from a local foundation or bequests from deceased estates could cover the cost of uniforms for families that cannot afford to buy them.”

These two paragraphs aim to protect a learners' dignity by ensuring that a child will not not have a school uniform due to poverty.

It is welcomed that the Draft Guidelines are sensitive to the predicament of poor parents who cannot afford to purchase school uniforms. It is encouraged that such assistance plans be contained in the Guideline and that they are an integral part of all School Uniform Policies that each school draws up. It must be ensured that the Assistance Plan is practical and feasible. There are a few very practical issues that immediately come to mind when considering the types of assistance that are suggested in the Draft Guidelines, these include:

- Who will provide / pay for the school uniforms that are provided to pupils who cannot afford them?
- Who will bear the responsibility of approaching community and business leaders to provide uniforms or make financial contributions?
- Who will bear the responsibility of coordinating parents to work together to make uniforms for economically disadvantaged pupils? Who will provide the material and the equipment to produce the uniforms?

- Will there be an indigency test to determine which pupils are entitled to access to the assistance plan?
- Who will secure grants from local foundations?

These concerns become even more relevant when addressing the needs of poor rural schools. Essentially the suggestions contained in the Draft Guidelines promote fund raising amongst parents to provide school uniforms in schools that are already poor and where parents cannot afford to pay school fees. How will these parents assist other parents in the school to purchase school uniforms? Accessing community and business leaders, and approaching foundations and obtaining bequests from estates take time, skill and resources. It is questionable whether many of the school governing bodies in economically deprived areas will be in an economic situation to conduct these activities.

The SAHRC is concerned that the Draft Guidelines as they currently stand may not be practical in addressing the realities of poverty in our country. If we wish to give effect to the right not to be denied education due to poverty then we need to challenge ourselves to become more creative.

It is suggested that the Department give further and serious attention to this issue. Other African countries have addressed the issue through providing state purchased cloth to parents to sew their own school uniforms for their children. This occurs in countries such as Kenya and the Gambia (and also further afield in Sri Lanka). We need to consider if this could be a possible option in the South African situation. Do we have a nation in which there is a culture of sewing garments? Or, is there the potential for skills development programs to equip people with the necessary skills? Can local projects be developed that produce school uniforms? It is suggested that the Department of Education engage with other relevant government department in order to determine possible and feasible projects that can assist poor communities.

Another alternative would be for the Department to purchase and provide school uniforms. If the Draft Guidelines are implying this in any manner, then this should be stated explicitly.

#### **I. Additional Comments**

***The Guideline should contain an Annexure that sets out a Pro Forma school uniform policy***

#### **Conclusion**

The SAHRC is of the view that a positive policy basis can be developed which supports a mandatory school uniform policy in South Africa. School uniforms can instil a sense of pride and a sense of belonging. This can assist in building a child's self-confidence and self esteem. In turn this can promote a school

environment that is more conducive to learning and thereby increase the performance of learners.

The Department is urged to consult further on this important Draft Guideline. In particular, the policy and legal basis for the Guidelines needs to be carefully considered and then set out boldly in clear and unambiguous terms. The Department is further encouraged to take on the challenge of exploring further creative and practical solutions of providing school uniforms to those learners whose parents and caregivers cannot afford to provide them with school uniforms.