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## **School Uniforms In New Hampshire Public Schools: Hype or Hope?**

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\*This Policy Brief is not intended to offer legal advice. It is intended to be part of a discussion on how educators can confront the legal challenges of leading schools and school districts.

## School Uniforms in New Hampshire: Hype or Hope?<sup>1</sup>

Public school districts across the country have increasingly turned to the adoption of mandatory dress policies, sometimes referred to as ‘school uniforms policies,’ in an effort to focus student attention and reduce conflict.

*Jacobs v. Clark County School District*, 526 F.3d 419, 422 (9th Cir. 2008).

The morning ritual, or battle with parents, of what to wear to school has gotten easier in a growing number of school districts across the nation.<sup>2</sup> In these schools students look into their clothes closet and see khaki and blue, or khaki and red. Jeans, T-shirts, yoga pants, and shorts are found in the back of the closet or in a heap on the floor and are not up for consideration. Their morning clothing choice is now simple; quickly grab the shirt/pants or shirt/skirt school determined combo, and move on to your socks, shoes, and a minor accessory or two.

The argument advanced by U.S. Department of Education for requiring students to wear a uniform include:

- decreasing violence and theft—even life-threatening situations among students over designer clothing or expensive sneakers;
- helping prevent gang members from wearing gang colors and insignia at school;

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<sup>1</sup> I wish to acknowledge the contribution my colleague Professor Joseph J. Onosko made to the development of this brief. His insightful comments and suggestions are very much appreciated.

<sup>2</sup> Digest of Education Statistics (Table 233.50, Percentage of public and private schools with various safety and security measures, by school level: 2003-04, 2007-08, and 2011-12) *National Center for Education Statistics*

[http://nces.ed.gov/programs/digest/d13/tables/dt13\\_233.50.asp](http://nces.ed.gov/programs/digest/d13/tables/dt13_233.50.asp). School uniform adoptions in elementary schools (14.7% to 20.3%) showed greater growth than secondary schools (8.8% to 12.2%) for this period of time. *Id.*

- instilling students with discipline;
- helping parents and students resist peer pressure;
- helping students concentrate on their school work; and
- helping school officials recognize intruders who come to the school.<sup>3</sup>

However, this raises the question of whether a change of clothes actually brings about these effects. Dress for success is powerful slogan, but is it backed by evidence? Too often we have penchant for the quick and easy fix for difficult and complex problems. Changing schools and changing student attitudes and work habits involves heavy lifting. In short, is a change of clothes hype or hope for transforming our schools?

### **School Uniforms in New Hampshire Schools**

New Hampshire schools, as noted by Ted Comstock, Esq. Executive Director of the New Hampshire School Board Association, have not joined the national uptick in adopting school uniform policies, instead most have opted for “school dress codes that are quite general in scope.”<sup>4</sup> While we do not know why New Hampshire school districts have eschewed adopting school uniform policies, they may contemplate a change and consider whether the promise of school uniforms is delivered by such a policy. The question of adoption is important in that there is often a cost associated with implementing mandatory school uniform policies. What may be a simple choice of what to wear to school often goes beyond the clothes closet to the courts.

Students have brought lawsuits for violations of their freedom of speech when school districts seek to restrict their clothing choices through either instituting mandatory

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<sup>3</sup> <http://www2.ed.gov/offices/OSDFS/actguid/uniforms.html>.

<sup>4</sup> Email communication, Nov. 20, 2015, used with permission of Dr. Comstock. The communication is in the possession of the authors.

school uniforms<sup>5</sup> or school dress codes<sup>6</sup>, both of which restrict the clothing choices of students with students alleging that this policy unconstitutionally restricts their freedom of expression. “Dress codes restrict clothing options for students whereas mandatory school uniforms define the clothing options.”<sup>7</sup> Students often respond alleging that both policies unconstitutionally restrict their freedom of expression. It is important to note that dress codes seek to stop inappropriate clothing from being worn in classrooms and hallways, whereas, the argument for school uniforms is based on the transformative nature of wearing a uniform. This brief will be limited to an analysis of school uniforms in public school settings.

If someone wants to do well in school they will without the help of dull and useless pieces of cloth.<sup>8</sup>

Laura Wicki, responding to an online petition to stop Pinkerton Academy (Derry, New Hampshire) from adopting a school uniform policy

The *Portsmouth Herald*, (Portsmouth, New Hampshire) ran an Op-Ed on September 8, 2012 entitled “Dress codes help schools educate our children.”<sup>9</sup> The Editors, while not explicitly embracing school uniforms, wrote, “This is not a call for uniforms in public schools, but the positives of what a uniform dress provides can be effectively

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<sup>5</sup> DeMitchell, T.A. & Fossey, R. (2015). *The challenges of mandating school uniforms in the public schools: Free speech, research, and policy*. Lanham, MD: Rowman & Littlefield Publishers

<sup>6</sup> Fossey, R. & DeMitchell, T.A. (2014). *Student Dress Codes and the First Amendment: Legal Challenges and Policy Issues*. Lanham, MD: Rowman & Littlefield Publishers

<sup>7</sup> Todd A. DeMitchell, *Frudden v. Pilling: The School Uniform and Compelled Speech*, 312 Ed.Law Rep. 1, 10 (2015).

<sup>8</sup> See Change.org, Pinkerton Academy “Unified Dress Code” (Uniforms): Stop the Uniform Proposal (2013), available at <https://www.change.org/petitions/pinkerton-academy-unified-dress-code-uniforms-stop-the-uniform-proposal>.

<sup>9</sup> Editors, *Dress Codes Help Schools Educate Our Children*, PORTSMOUTH HERALD (Portsmouth, NH) September 8, 2012, A7.

reached by reeling in the extremes.”<sup>10</sup> What are the positives that the editorial references, and how do we know they exist as a result of students wearing a uniform to school?

A recently proposed school uniform policy in New Hampshire provides a window into how parents and students push against policies that they perceive as restricting their individual rights and prerogatives. The Pinkerton Academy proposed a “Unified Dress Code” in 2013. The new school attire policy, which essentially mandated school uniforms,<sup>11</sup> was expected to replace the existing dress code.<sup>12</sup> Students and parents responded. A petition, initiated by Savana Melanson, stated, “[A school uniform] takes away individuality. Also will not change study habits of students. Too much money for each child, parents do not have that type of money especially in this economy. We have the right to freedom of expression and would like to keep it that way.”<sup>13</sup> The responses supporting the petition to stop the proposed school uniform policy at Pinkerton reflect capture the broader debate across the nation about adopting mandatory school uniform policies.

The petitioners, many of them students, but some parents as well, based their arguments against school uniforms on three pillars—freedom of speech/expression, the cost of the uniforms<sup>14</sup> and the belief that the school uniforms will not solve school issues

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<sup>10</sup> *Id.*

<sup>11</sup> The school administrators at Pinkerton Academy did not characterize the unified dress code as a school uniform. Hunter McGee, “Derry’s Pinkerton Academy looks at narrowing dress code,” *New Hampshire Union Leader* (Sept. 22, 2013) available at <http://www.unionleader.com/article/20130923/NEWS04/130929754>.

<sup>12</sup> For a copy of the dress code, see PINKERTON ACADEMY 2013-2014 STUDENT PLANNER, at 4 <http://www.pinkertonacademy.net/resources/documents/Student%20Planner%202013-14.pdf>.

<sup>13</sup> Change.org, *supra* note 8.

<sup>14</sup> See this response from Solon Rawson: “One major problem is that the cost is simply unfeasible [not] for just the impoverished students and families, but for the middle class who is still hard-hit by the recession. It is exponentially more viable for families to buy their clothing second-hand, and

(behavior/student achievement) at the school.<sup>15</sup> The Academy’s final decision was to maintain the current “business casual” dress code rather than implement the proposed Unified Dress Code.<sup>16</sup>

While New Hampshire has so far resisted the national trend, it does not mean that school districts won’t consider adopting of a mandatory school uniform policy. I will briefly explore below some of the research and the challenges of adopting such a policy.

## Research

According to this *Policy Report*, research on the effects of dress code and school uniform policies is inconclusive and mixed. Some researchers find positive effects; others claim no effects or only perceived effects.

Education Commission of the States<sup>17</sup>

If school uniforms are sold on the basis of the positive changes they will bring about, it seems reasonable to expect that research would support such claims. The research on the effects of school uniforms is still nascent. The findings on the impact of school uniforms on student behavior, discipline, connection to the school, attendance, and academic gains is at best mixed. For example, a study of security measures in Texas

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making everyone wear the same thing would amplify the differences between ‘new’ clothing and ‘used’ clothing.” *Id.*

<sup>15</sup> See Lauren Finney, “I believe a healthy wholesome lunch would actually increase productivity exponentially more than a unified dress code, we need more broccoli and less mechanically separated chicken”; Michael Szekely, “I neither want uniforms, nor do I think it will solve any problems”; Carla Duarte, “Changing my clothes into something that makes me feel self-conscious and uncomfortable is not going to turn me into a better student.” *Id.*

<sup>16</sup> Glenn Ahrens, Dean of Students, Pinkerton Academy, Letter to families of students of Pinkerton Academy (April 4, 2014) available at <http://www.pinkertonacademy.net/announcements/April%204.pdf>.

<sup>17</sup> *School Safety: Uniforms and Dress Codes*, available at <http://www.ecs.org/html/IssueSection.asp?issueid=101&subissueid=331&ssID=0&s=Selected+Research+%26+Readings>.

middle and high schools found that school uniforms were not effective in reducing school-based crimes.<sup>18</sup> However, another researcher wrote of her findings, “Nonetheless, the results suggest that uniforms may have a positive impact on school safety. Because they are low-cost interventions that are unlikely to do harm, it appears that they are worth considering.”<sup>19</sup>

If the purpose of mandating a school uniform is to increase student academic outcomes, the research findings are mixed, with studies using large-scale data sets finding a negative impact on academic outcomes.<sup>20</sup> Similarly, if the goal of a school uniform policy is make the school environment safer, once again the research is mixed. Some research found reductions in school violence while some found no statistically significant reduction in school violence. Interestingly, the view of impact of uniforms on school violence showed that educators described a positive influence on violence, while students reached the opposite conclusion.

DeMitchell and Fossey’s review of the research on school uniforms led to the following conclusion, “Currently, research does not support the belief that school uniforms lead to positive academic and behavioral outcomes in the school environment.”<sup>21</sup> While the research does not provide strong support for a school uniform it does not necessarily support the opposite position that a school uniform policy should not be adopted. However, it is instructive for policy makers to be aware of what research

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<sup>18</sup> Sutham Cherurprakobkit & Robert A. Bartsch, *Security Measures on School Crime in Texas Middle and High Schools*, 47 EDUC. RES. 235 (June 2005).

<sup>19</sup> M. Sue Stanley, *School Uniforms and Safety*, 28 EDUC. AND URBAN SOC. 424, 434 (1996).

<sup>20</sup> See, e.g., DAVID L. BRUNSMAN, *THE SCHOOL UNIFORM MOVEMENT AND WHAT IT TELLS US ABOUT AMERICAN EDUCATION: A SYMBOLIC CRUSADE* (2004). However, see Ann Bodine, *School Uniforms, Academic Achievement and Uses of Research*, 97 J. of EDUC. RES. 67 (2003).

<sup>21</sup> DeMitchell & Fossey, *supra* note 5, at 130.

exists to assist in deciding whether adopting a mandatory school uniform policy makes sense for a particular school district.

### **Considerations for Adopting a School Uniform Policy**

New Hampshire school districts considering adopting a mandatory school uniform requirement should, at a minimum, consider the following policy issues:<sup>22</sup>

**1. Enforcement of the policy.** School uniforms may require more administrative time to enforce than a simple student dress code because any change in the color scheme of the uniform stands out. Also, if there are waivers for religious or other reasons, each waiver must be reviewed.

**2. Waivers.** School uniform policies often allow for waivers for such reason as religion or other philosophical reasons. What constitutes a bona fide waiver is the initial question.

**3. Alternative Speech.** A line of U.S. Supreme Court cases have indicated that public schools with school uniform policies must provide students with some alternative methods of speech.

**4. Elementary, Middle, or High School: is there a difference?** Does the level of the school make a difference when implementing a school uniform policy? Is it easier to implement a school uniform at the elementary school level than at the high school level?<sup>23</sup>

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<sup>22</sup> See *Id.* at 123-28 for a more fulsome discussion of the challenges.

<sup>23</sup> Dennis L. Evans, *School Uniforms: An Unfashionable Dissent*, 80 NASSP BULLETIN 115, 116 (1996) (“To begin with, the programs that have gained parental support, media attention and thus, political advocacy are, for the most part, found in elementary schools where the age of the children dictates that the problems school uniforms allegedly solve do not exist to any significant degree in the first place. . . . [S]chool uniforms simply don't work at the high school level”).

5. **Uniform Free Days.** It is peculiar that so many of the schools that have school uniforms provide uniform free days. In some cases these days are billed as a reward. If uniforms result in certain positive behaviors, why is it that occasionally those good behaviors are not as important? Does dress down Friday mean we don't expect as much today from students on the last day of the school week?

6. **Political Heat** School uniform policies generate a fair amount of political heat. School districts would be well advised to seek community and educator input early and often before implementing a school uniform policy.

7. **Adult Uniforms.** Anticipate the question that First Amendment ombudsman, Paul McMasters advanced. He stated, "If school officials think that school uniforms are such a great idea, then they should wear uniforms also."<sup>24</sup>

### **Political Considerations<sup>25</sup>**

A. Expect resistance; almost any change is threatening to some school constituents and schools should expect at least some parents to consider school uniforms to be a threat to family's right to make their own decisions about what their children wear to school.

B. Involve parents early and throughout the process. Do not leave the public out of this public education decision.

C. Make sure that you have worked with the faculty, staff, and administrators to answer their questions, listen carefully to them and be informed by their comments and questions, and look for advocates within the schools. What exactly are the problems that school uniforms are intended to address and why do you think, beyond mere speculation

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<sup>24</sup> David L. Hudson, Jr. *The Silencing of Student Voices: Preserving Free Speech in America's Schools* (Nashville, TN: First Amendment Center 2003) p. 62.

<sup>25</sup> See DeMitchell & Fossey, *supra* note 4, at 128.

and hope, that wearing a school uniform will appropriately and adequately address those concerns?

D. Keep your school board advised at every stage of the school uniform adoption process. School board members will face the same type of public scrutiny and heat as the school administration. Are board members supportive of the proposed policy? If not, address their concerns before going too far down the implementation road. What do they need to know? Make sure school board members can publically articulate an educational justification for mandating school uniforms.

The many issues summarized above are not meant to imply that I am opposed to student uniforms in public schools,<sup>26</sup> however, school authorities should take these issues into account before adopting a student uniform policy. Given that school uniform policies generate robust debate within the community and that they can result in legal challenges, charting a prudent course is critical.

The benefits of school uniforms seem attractive but are difficult to prove.

“Uniforms for Learning” *The Learning Curve* (2014)<sup>27</sup>

Deep school change is difficult to achieve. School uniforms purport to provide a path to deep change through an improved climate, better attendance, less violence, and improved student concentration with higher academic outcomes. The research is

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<sup>26</sup> However, I write, “My concern is that mandatory school uniforms, while not harming students, may mask the hard work that is needed for the public schools to meet their important goals. Changing clothes is a quick visible fix. Consequently, a mandate involving what to wear is too easily substituted for the hard labor of building long term capacity.” Todd A. DeMitchell, *School Uniforms: There Is No Free Lunch*, TEACHERS COLLEGE RECORD 3-4 (Dec. 14, 2006)  
<http://www.tcrecord.org/content.asp?contentid=12891>.

<sup>27</sup> Pearson, [http://thelearningcurve.pearson.com/articles/article/uniforms-for-learning#\\_ftn3](http://thelearningcurve.pearson.com/articles/article/uniforms-for-learning#_ftn3).

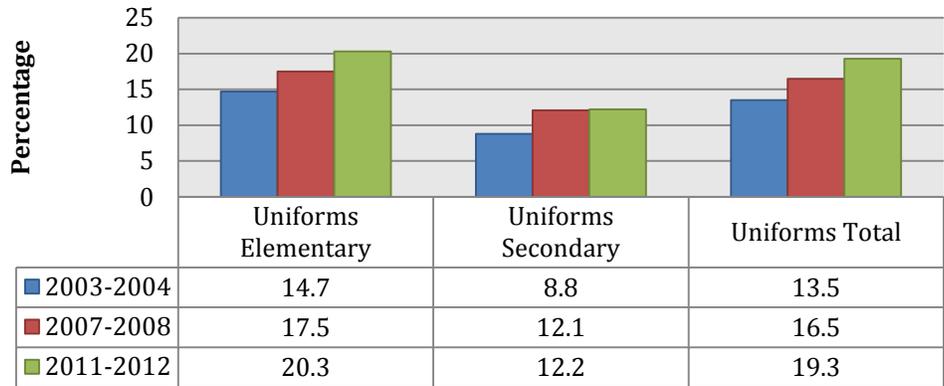
conflicted. Mixed findings do not mean that schools should not implement such policies.<sup>28</sup> It does mean that educators must be clear about the purpose(s) for adopting school uniforms and how they will measure over the next few years whether or not any anticipated positive effects have accrued from the implementation.

While school uniforms may be more than “the emperor’s new clothes,” they are not likely to be transformative. The holy grail of school reform will never be lodged in the fabric students wear but rather the “fabric” of information, ideas, values, and skills students acquire through the exemplary efforts of teachers and the leadership of school administrators.

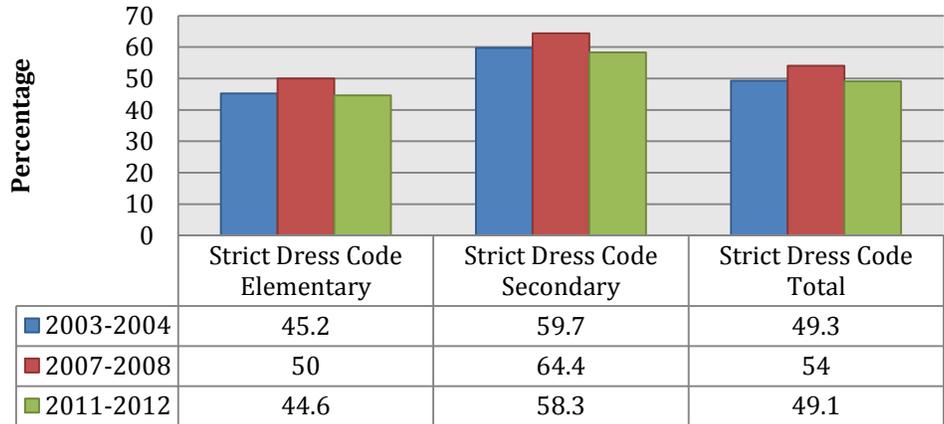
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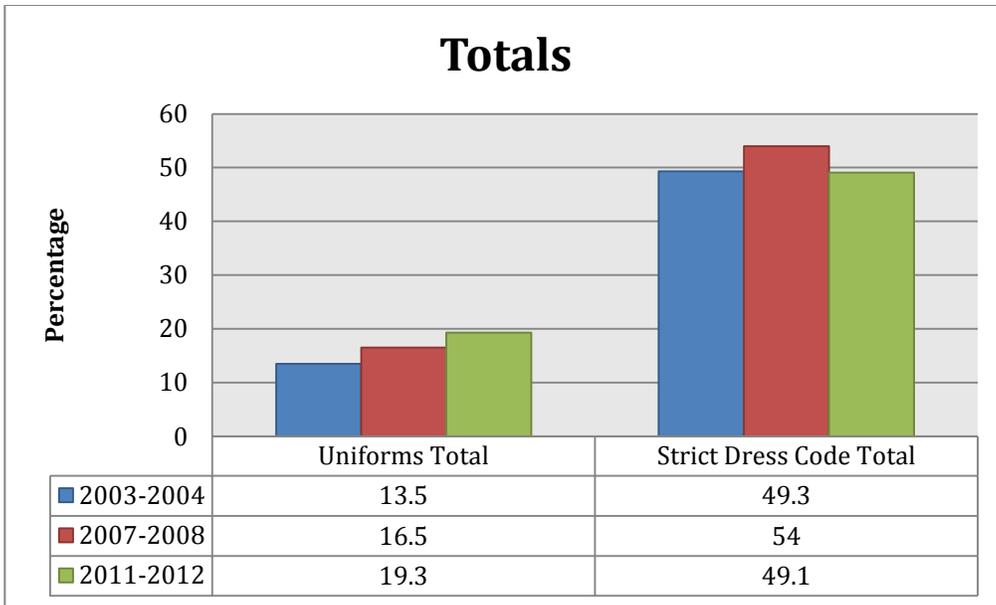
<sup>28</sup> For a discussion of a four-year implementation of a school uniform policy in Brockton, Massachusetts, see Emily Sweeney, *More Public Schools Try Out Student Uniforms*, BOSTON GLOBE (Feb. 20, 2014) (quoting the school principal as stating, “Overall, I’d say its been a tremendous success. I can’t imagine not having a uniform [policy] in place in school.”) <https://www.bostonglobe.com/metro/regionals/south/2014/02/20/uniforms-for-public-school-students-the-debate-continues-they-become-more-popular/btIYoFLoizOkFpXrdEUScK/story.html>.

## School Uniforms



## Strict Dress Codes





Digest of Education Statistics (Table 233.50, Percentage of public and private schools with various safety and security measures, by school level: 2003-04, 2007-08, and 2011-12) *National Center for Education Statistics* [http://nces.ed.gov/programs/digest/d13/tables/dt13\\_233.50.asp](http://nces.ed.gov/programs/digest/d13/tables/dt13_233.50.asp).