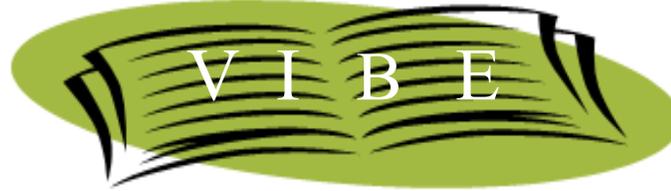


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**VIRGIN ISLANDS BOARD OF EDUCATION'S  
POSITION STATEMENT ON ITS  
STUDENT DRESS CODE UNIFORM GUIDELINES**

The VI Board of Education's (VIBE) policies seek to enhance the learning environment and to avoid discriminatory practices based on sex, race, religion, or gender.

In March 2022, the Board was asked by the Department of Education to take a hard look at its Dress Code Policy, which required girls to wear skirts and boys to wear pants. These are considered gender-based policies that the Supreme Court has cast substantial constitutional doubt on, because they create gender-based classifications that rest on assumptions about how females and males should look, act, or conduct themselves. The Department received several complaints from parents who found the policy discriminatory, prohibitive, especially to girls, and unreasonably based on outdated stereotypes. The policy was most discriminatory against girls who found skirts to be restrictive and non-functional. Moreover, the Board's policy proposed a strict penalty for those who violated the dress code to include suspension. The Board also received a complaint from a parent whose child had to either be forced to wear a skirt or not be allowed in school.

The gender-based policy had become enough of a problem that the Board had to suspend its policy until it could take a closer look at the issue. The Board thereafter worked with the Department to come up with a gender-neutral policy for all public-school students. With advice from legal counsel, the Board had to consider that given the strong possibility of a challenge, its policy likely could not withstand a constitutional challenge.

**MISSION STATEMENT**

The mission of the Virgin Islands Board of Education is to provide leadership and oversight, set policy and advocate for continuous improvement of the Public Education System of the Virgin Islands of the United States.

**VISION STATEMENT**

Each child is provided with the best quality education which guarantees academic excellence, promotes our history and culture, and builds strong local and global communities.

The Board had to face the hard cold reality that its gender-based dress code policy arguably violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and various other federal laws prohibiting discrimination based on sex and would be easily struck down by the courts. Because it was gender-based on its face, it would have to undergo “intermediate scrutiny” which requires that a gender-based classification is unconstitutional unless it “serve[s] important governmental objectives and . . . [is] substantially related to achievement of those objectives.” The Board would likely not meet this difficult standard as it could not offer any important governmental objectives for forbidding girls to wear pants if they choose to do so. Any justification for keeping a gender-based policy would have to be “exceedingly persuasive” and the traditional notions about how girls should act would not pass constitutional muster. We knew we could not argue truthfully that the skirts made girls safer or that their safety required them to wear skirts. In fact, the opposite could be true. On the other hand, a gender-neutral policy will be subject to rational basis, the most lenient standard of constitutional review.

The Board also looked at other jurisdictions where students had challenged similar policies. The Board was particularly persuaded by the August 9, 2021 decision in the case of *Peltier vs. Charter Day School, Inc.* Although the policy in that case that requires girls to wear skirts or jumpers but no pants was upheld because the school in question was a private school not a state actor, using the same constitutional analysis, the Board’s policy would be struck down because it is clearly a state actor. The court also found that students could challenge a dress code under Title VI which prohibits sex discrimination in education by schools receiving federal funds. The Court ultimately remanded to the district court to determine if girls were denied any privileges or treated more harshly and would therefore violate Title IX.

This Board could no longer justify its gender-based policy or the fact that its policy was discriminatory and possibly harmful toward any Virgin Island student Supreme Court precedent and substantial notions of fairness dictated the change. This Board took the same precautionary measure as many other school boards to make its policy inclusive and gender-neutral to ensure that Virgin Islands public schools have the same privileges as other students across the United States and remove inequity among our students, and better allow students/faculty to focus on learning . The policy update removes the restriction that limited girls to wearing skirts from the outdated policy and now aligns policy with practice.

To provide feedback on board policies, please do not hesitate to email the Executive Director, Dr. Stephanie Berry at [sjberry@myviboe.com](mailto:sjberry@myviboe.com).

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