



Commissie **Gelijke** Behandeling

**Advisory opinion of the Dutch Equal Treatment Commission on  
Niqab and headscarves in schools**

CGB advisory opinion/2003/01  
16 April 2003

## Niqaabs and headscarves in schools

Much attention has been paid recently to schools prohibiting their pupils from wearing veils covering the entire face - known as niqaabs - or headscarves. Discussions of the issue have shown that the conditions which equal treatment legislation attaches to this type of clothing regulations are not very well known. Therefore, the Equal Treatment Commission ('the CGB') will first state briefly what is and what is not allowed pursuant to the Equal Treatment Act.

## Prohibition of headgear and niqaab

The competent authority of a school may by way of policy lay down a dress code, but must be aware that some clothing regulations may affect persons adhering to a specific religion. This latter situation occurs when a general dress code does not make an exception for religious headgear or face-covering clothing known as niqaab. Prohibiting niqaabs, headscarves and other headgear worn for religious reasons (such as a turban) may be at odds with equal treatment legislation, because such a prohibition results in discrimination on the grounds of religion. Unlike wearing a baseball cap or a balaclava, wearing a headscarf, turban or niqaab is a manifestation of religion and a prohibition will in particular affect the adherents of the religion in question. This means that in such cases there is indirect discrimination on the grounds of religion (Section 1, subsection c of the Equal Treatment Act). This is not altered by the fact that not all persons adhering to a specific religion consider this manifestation to be obligatory. Because the courts and the CGB (so the Supreme Court has ruled) may not review differences of opinion on theological doctrines, they will only examine whether a manifestation *may* constitute a manifestation of religion. In principle, therefore, it is not permitted to prohibit headscarves and niqaabs. There are some exceptions to this general rule.

## Direct and indirect discrimination

The Equal Treatment Act prohibits both direct and indirect discrimination. Direct discrimination is prohibited, unless the Act itself makes an exception. Indirect discrimination is permitted only if there are good grounds (an 'objective justification') for such discrimination.

### Direct discrimination

If a school refuses admission to students or refuses to employ teachers on the grounds of the religion of these persons, this constitutes direct discrimination. An exception to the prohibition of direct discrimination is made for **denominational education**. A denominational educational establishment may impose requirements which, having regard to the establishment's aim, are necessary for the fulfilment of its principles (Section 7, subsection 2 of the Equal Treatment Act). This means that the competent authority of e.g. a denominational school, for example a Protestant school, may prohibit manifestations in students or teachers which are incompatible with the school's principles (such as a headscarf or a niqaab) if it believes this to be necessary for the fulfilment of the school's principles. The competent authority must in such cases pursue a consistent admission or employment policy based on the school's principles. The competent authority must also act consistently in enforcing the school's clothing regulations policy.

The exception made for denominational education does not apply to **public schools**. This means that public schools may not require that teachers and students do not wear headscarves. They are allowed, though, to require teachers to show an attitude of neutrality consistent with the school's public nature when performing their duties. If a teacher wears a headscarf this does not necessarily mean, however, that she is unable to teach in a manner that is in accordance with the public nature of the school (opinion 1999-18).

### **Indirect discrimination**

If a school refuses students or teachers on the grounds of an apparently neutral rule which has the result of affecting mainly the adherents of one religion, there is indirect discrimination. This is the case, for example, if there is a rule prohibiting all clothing which covers the head. Indirect discrimination is permitted only if it is objectively justified. Prohibiting headscarves in gym classes may be objectively justified, for example, because a headscarf creates dangerous situations because it may get caught on something.

### **Objective justification**

The law imposes stringent conditions on the objective justification which makes indirect discrimination permissible. First of all the aim of the rule must be sufficiently important and non-discriminatory. Secondly, such a rule must be appropriate and necessary to achieve that aim. This means that the rule will actually serve to achieve the aim and that the rule in question must be reasonably proportionate to the aim. Moreover, it must be clear that the aim cannot be achieved with another rule, which is less injurious to the affected group. This means that the school must prove that it is impossible to make another rule which does not result in adherents of one religion being affected. It is only when all these conditions have been satisfied that an objective justification can be said to exist.

### **Objective justification in actual practice.**

The CGB has examined clothing regulations by these criteria more than once. Recently, it issued an opinion on a school which prohibited students from wearing niqaabs. The reasons which the school put forward for the prohibition was that a niqaab was an obstacle to good communication and that students wearing a niqaab could not be identified, which would enable unauthorized persons to be in the school building. The CGB held the opinion that in this case the discrimination was justified (opinion 2003-40). In another case the CGB held that the school had stated insufficient arguments to substantiate its allegation that wearing a niqaab caused a problem (opinion 2000-63). These opinions are available on the web site of the CGB ([www.cgb.nl](http://www.cgb.nl)).

### **The law**

To be perfectly clear: the above rules apply to both teachers and students. The legislature has opted to base the Equal Treatment Act on a system of laying down detailed descriptions of specific exceptions in the Act itself and imposing stringent requirements on the test of objective justification. If there should be objections against the statutory rules or a need for more exceptions, this can only be changed by amending the law.

## **Further examination**

In order to prevent misunderstandings it is advisable to lay down the general policy on clothing (niqaabs) and headgear in writing and make it available to all concerned. Anyone, including organisations of education, may ask the CGB to examine their clothing regulations against equal treatment legislation. In addition, schools may ask the CGB (in an accelerated procedure, if so desired) to review their clothing regulations, even if no conflict has arisen (yet). The CGB determines case by case whether the regulations are in conformity with the law.

Please apply to the CGB if you have any further questions as a result of this document, at:

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