

Lincolnshire Gender Identity Guidance

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Note:

This policy was reviewed in June 2023. However, the DfE plan to release guidance for schools in September 2023. When released, the LSCP and partners will consider whether this policy needs to be reviewed again in line with the new guidance.

Introduction

The purpose of this guidance is to assist education providers to meet the needs of children/young people who identify as being Trans. In doing so it signposts education providers to relevant legislation and statutory guidance. This guidance does not seek to provide an analysis of the complex factors underpinning a child/young person's preferred gender identity.

Transgender Identity

A transgender person feels that their external appearance (sex) does not match up with the way they feel internally about their gender identity.

The word transgender is an umbrella term that covers people whose gender identity or gender expression differs from the sex recorded on their birth certificate. It is sometimes used interchangeably with terms such as transsexual or gender variant but usually has a narrower meaning and different connotations from gender variant. The Equality Act (2010) uses the term "transsexual" which is considered to be outdated ; it is recognised that language and terminology develops with time. To ensure inclusivity the term 'trans' will be used as an Umbrella term for a variety of gender identities and gender expressions throughout this guidance.

Trans identities are diverse and some examples of the way trans people may define themselves are:

- Transgender (A person who identifies as a different gender to their assigned sex recorded on their birth certificate)
- Gender fluid (A person who may move between genders with a gender identity that fluctuates)
- Gender Queer (A person with a gender identity that does not follow binary gender norms. They may have two or more genders, no gender or identify as non-binary)
- Non-binary (A person who does not identify as either male or female gender, they may or may not identify as transgender or gender queer)

It is also important to consider that people who identify as trans are likely to have a preferred pronoun these may include:

- He/Him/His
- She/Her/Hers
- They/Them/Theirs

This list is not exhaustive, it is therefore advised that the voice of the child is upheld by listening to and acknowledging a preferred pro-noun when shared.

In this guidance, the term 'trans' will be used to refer to all of these definitions.

Underpinning Practice Principles

Monitoring and promoting the welfare of the child/young person

It is important to note that identifying as Trans is not an automatic safeguarding concern however, the underpinning principle of promoting and maintaining the welfare of all children/young people in the school remains. The needs and outcomes of all children are of equal importance. Adherence to LSCP safeguarding policies, including Early Help, must continue to be implemented where appropriate. Following a disclosure, unconditional confidentiality must not be promised to the child/young person, with the rationale for this being clearly explained to the child/young person where additional safeguarding concerns are present. In terms of information sharing, where there are no safeguarding concerns, the legal framework of GDPR and the Data Protection Act will be applicable with the appropriate legislation and organisational policy being adhered to. The Designated Safeguarding Lead for the education setting should be notified in the event of any safeguarding concerns noted.

Professional decision making

Have confidence in your pre-existing professional skills and understanding of professional boundaries when working with children/young people presenting with complex needs. It is advisable to ensure that you are aware of and able to apply the underpinning legislation and educational guidance applicable to this area of diversity, which should be incorporated into the school's working policies. This will also involve using an evidence based and collaborative approach that can withstand hindsight scrutiny. Schools may wish to reserve the right to reflect upon any requests,

made by children/young people or their parents/carers, which may result in changes to school policies, practices and procedures.

Be aware of and manage any potential conscious and/or unconscious bias

Steps should be taken to ensure that bias does not undermine professional decision making. This may be supported through ensuring that all equality, anti-bullying and safeguarding policies reference the needs of transgender children/young people, thus giving a clear and consistent approach. Effective guidelines will support teachers and other adults to maintain a fair, non-judgemental, professional and neutral approach to meeting the needs of trans children/young people; thus building on any good practice that is already in place.

Child centred decision making

Decisions made should ensure that the individual needs of children/young people are met and/or reasonable adjustments made where appropriate and possible. In doing so it must be recognised that not all Trans children/young people will have the same needs. When professionals make decisions these must be communicated in an open, honest and transparent manner to the child/young person and where applicable their parents/carers.

Legislation

Legislation that informs the participation of Trans (including gender variant) pupils and students in schools and colleges include the Human Rights Act 1998, Gender Recognition Act 2004 and the Equality Act 2010.

The Human Rights Act 1998

The following Articles from the [Human Rights Act 1998](#) support the rights and needs of Trans people to live their lives in their true gender.

- Article 8: right to respect for private life and family life
- Article 10: freedom of expression
- Article 14: the prohibition of discrimination

The Gender Recognition Act 2004

The Gender Recognition Act 2004 is mainly concerned with the process by which a person can get a Gender Recognition Certificate, and correct their original birth certificate to match their true gender. This can only occur after a person reaches 18 years of age but is something that many younger people may aspire to.

(See resources section for more information).

The Equality Act 2010

The Equality Act 2010 ensures legal protection against discrimination (direct or indirect) for everyone under the nine protected characteristics defined in the Act, one of which is Gender Reassignment (also known as Transgender). [Chapter 1 of Part 6 of the Equality Act 2010](#) specifically refers to Schools and young people.

The Equality Act 2010 (2:1:7) states that:

A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex. The act applies to employment, education and a range of other areas where discrimination may take place. In order to be protected under the Act, a pupil will not necessarily have to be undergoing a medical procedure to change their sex, but they must be taking steps to live in the opposite gender, or be proposing to do so.

The Equality and Human Rights Commission provides a useful [overview of definitions](#) of direct and indirect discrimination on the grounds of gender reassignment.

[Technical Guidance](#) is available which *outlines the requirements of the Equality Act 2010 for schools in relation to the provision of education and access to benefits, facilities or services, both educational and non-educational. It provides an authoritative, comprehensive and technical guide to the detail of the law* (Equality and Human Rights Commission).

Public Sector Equality Duty

The new [Equality Duty](#) supports good decision making – it encourages public bodies to understand how different people will be affected by their activities so that policies and services are appropriate and accessible to all and meet different people's needs. By understanding the effect of their activities on different people, and how inclusive public services can support and open up people's opportunities, public bodies are better placed to deliver policies and services that are efficient and effective. The Equality Duty therefore helps public bodies to deliver the Government's overall objectives for public services. The Equality Duty is set out in section 149 of the Act (Government Equalities Office, 2011).

Educational Guidance

OFTSED

The Education Inspection Framework (Ofsted, 2019) states that:

- The framework is intended to be a force for improvement for all learners. The framework and remit-specific criteria are clear that the expectation is that all learners will receive a high-quality, ambitious education.

- Inspectors will assess the extent to which the provider complies with the relevant legal duties as set out in the Equality Act 2010, 10 including, where relevant, the Public Sector Equality Duty and the Human Rights Act 1998.

Additional guidance which supports the Education Inspection Framework specifically in relation to the application of the Equality Act 2010 can be found by reading [The Education Inspection Framework equality, diversity and inclusion statement](#) (OFSTED, 2019)

Keeping Children Safe in Education (DfE, September, 2019)

Safeguarding and promoting the welfare of children is everyone's responsibility. Everyone who comes into contact with children and their families has a role to play. In order to fulfil this responsibility effectively, all practitioners should make sure their approach is child-centred. This means that they should consider, at all times, what is in the best interests of the child.

Dos and Don'ts (Directly from the voice of young people in Lincolnshire)

Do

- Be kind and accept people for who they are. Be open minded.
- Support people the best you can and if you see someone on their own or being alienated – tell someone.
- Ask which pronoun they would prefer you to use.
- Apologise if you use the wrong pronoun by mistake, and try not to worry if you do accidentally use the wrong pronoun.
- Have an open dialogue between teachers/leaders and students/young people.
- Provide LGBT Q + safe spaces.
- Try to make information about transgender and transitioning easily accessible to young people.
- Let the young person control who and what they tell others about their identity.
- Provide training for staff and volunteers where needed.

Don't

- Question their choices and never say that you didn't expect that or see it that coming.
- Make assumptions – always ask.
- Use the wrong pronoun on purpose.
- Call them by their old name (dead name) if they have asked not to be – ensure registers or lists with their old name are updated.
- Use insensitive jokes or transphobic language.

Resources

The external links listed below are not an exhaustive list of resources that are available to support young Trans people. They are merely a guide to the range of resources available and should at all times be assessed and screened for their appropriateness and validity.

It should be noted that the content of external websites and other resources, sometimes vary over time. Therefore the content of these resources may need checking periodically to ensure that they are current and remain suitable.

Department for Education: Equality Act for Schools	https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools
Equality & Human Rights Commission	https://www.equalityhumanrights.com/en
Gender Recognition Certificate	https://www.gov.uk/apply-gender-recognition-certificate/changing-your-gender
Department for Education: Keeping Children Safe in Education 2019	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835733/Keeping_children_safe_in_education_2019.pdf
True Vision Online Crime Reporting	http://www.report-it.org.uk
Barnado's LGBTQ homepage	http://www.barnardos.org.uk/what_we_do/our_work/lgbtq.htm
NHS, HPV vaccination	https://www.nhs.uk/conditions/vaccinations/who-should-have-hpv-cervical-cancer-cervarix-gardasil-vaccine/#the-hpv-vaccine-for-girls
House of Commons Briefing Paper: Provisions to Support Transgender Children in Schools	https://researchbriefings.files.parliament.uk/documents/CBP-9078/CBP-9078.pdf

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