

## TRANSGENDER PUPILS AND STUDENTS - GUIDANCE

### 1. Introduction and Purpose

The purpose of this guidance is to offer practical information to all staff in West Lothian Council schools in order to support young people who are or may be transgender. The guidance has been produced because staff in schools have requested help in understanding and supporting young transgender people.

Growing up and developing one's own identity can be a fraught process to negotiate for many young people. It can be made even more difficult when a young person's gender identity is one which is different from expectations. School staff should be able to signpost to organisations such as LGBT Youth, the Scottish Transgender Alliance and Stonewall, appropriate websites and resources, and become familiar with how to support young transgender people.

### 2. The Legal Framework

The **Equality Act 2010** ensures legal protection against discrimination (direct or indirect) for everyone under the nine protected characteristics defined in the Act, which will include transgender pupils. It is unlawful for schools to treat pupils less favourably because of their gender identity, transgender status or because they share the protected characteristic of gender reassignment. Pupils who are undergoing a social transition by, for example, going by a preferred name or pronoun are protected under the Equality Act.

It is West Lothian Council's expectation that schools will take a pro-active approach to ensure that transgender pupils can participate in lessons, activities and excursions. Consideration of any "adjustment" to be made to allow participation of a pupil with a protected characteristic may involve the following: the needs of the pupil; the resources available to the school; the effectiveness of the adjustment in avoiding discrimination; the practicability of the adjustment; health and safety requirements; the need to maintain academic, musical, sporting and other standards; and the interests of other pupils and prospective pupils.

In all decisions relating to transgender pupils, schools will need to consider possible direct and indirect discrimination in terms of the Equality Act 2010. In terms of indirect discrimination, schools need to ensure that their decisions are a proportionate means of achieving the legitimate aim of meeting the needs and ensuring the wellbeing of the child or young person. Schools should consider the circumstances of each case in order to ensure that should there be any claim of discrimination the school can demonstrate that it has considered clearly the advantages and any disadvantages to the child or young person of the action taken.

The principles of **Getting It Right for Every Child (GIRFEC)** will provide sound basic advice for addressing issues which may arise in this context. At the heart of the GIRFEC approach is an emphasis on early, proactive intervention in order to create a supportive environment and identify any additional support that may be required as early as possible.

"As children and young people, we have a right to be protected and be safe from harm from others" (Protecting Children and Young People: The Charter 2004 and the rights set out in the **United Nations Convention on the Rights of the Child**). The Charter includes 13 statements from children.

Children and young people can expect that those who have a responsibility to them will:

- Get to know them
- Speak with them

- Listen to them
- Take them seriously
- Involve them
- Respect their privacy
- Be responsible to them
- Think about their lives as a whole
- Think carefully about how information about them is used
- Put them in touch with the right people
- Use power to help
- Make things happen when they should
- Help them to be safe

The Charter also pledges that children and young people will:

- get the help they need when they need it
- be seen by a professional such as a teacher, doctor or social worker to make sure they are alright and not put at more risk;
- be listened to seriously, and professionals will use their power to help them;
- be able to discuss issues in private when, and if, they want to;
- be involved with, and helped to understand, decisions made about their lives;
- have a named person to help them.

Those helping children and young people will:

- share information to protect them;
- minimise disruption to other parts of their life;
- work together effectively on their behalf;
- be competent, confident, properly trained and supported;
- rigorously monitor services to continually improve how and what is done to help them.

*In meeting the needs of transgender children and young people, the starting point should always be to treat them as you would other children or young people of the gender with which they identify. Particular consideration must be given, however, to some of the issues outlined in this guidance. In every case, schools should be sensitive to the individual circumstances of each case and have discussion with the young person, and parents/carers where appropriate, to identify a solution, taking into account their needs and views, their legal capacity to make decisions, and the interests of others.*

A child of twelve and over is presumed to have legal capacity.

### 3. Definitions

**Gender** - Refers to the attitudes, feelings and behaviours that a given culture associates with with the sex assigned to a person at birth. The terms girl/woman, boy/man have many socially constructed expectations, standards and norms that can limit and oppress people's gender expression. Terms such as 'sex at birth' and 'biological sex' can be offensive to transgender people as they suggest that a transgender person is not their actual sex.

**Sex** - The noun refers to physical differences between male and female bodies, including primary and secondary characteristics. Sex is most commonly divided into the categories of male and female, however biological sex is much more diverse (see Intersex definition). Terms such as 'sex at birth' and 'biological sex' can be offensive to transgender people as they suggest that a transgender person is not their actual sex.

**Gender Identity** - A person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned to them at birth.

**Gender Expression** - The way a person expresses their gender identity, including through their behavior, dress and/or appearance. Usually defined as connected to masculinity or femininity, however some people express their gender out with these traditional notions.

**Transgender** - An umbrella term for those whose gender identity differs in some way from the sex assigned to them at birth and conflicts with the 'norms' expected by the society they live in. Included in the overall transgender umbrella are transsexual people, non-binary people and people who cross dress.

**Transsexual** – This is often considered an outdated term, though some transgender people prefer to think of themselves as transsexual rather than transgender. Transsexual people may have medical treatment, such as hormone treatment or surgery to bring their physical appearance more into line with their gender.

**Gender Binary** - The traditional system of regarding gender as having only two options: men (with generally traditional notions of masculinity) and women (with generally traditional notions of femininity).

**Non-Binary Gender** - Gender identities that are not exclusively male or female are identities which are outside of the gender binary. People may identify themselves as having both male and female elements, or as existing between male and female categories, neither or their gender may be more fluid (i.e. unfixed and changeable over the course of time).

**Cross-dressing** - Wearing clothing commonly associated with a different sex.

**Intersex** - A person whose primary and secondary sex characteristics vary in some way from what is traditionally considered clearly male or female in terms of biological sex. This may be apparent at birth or become apparent later in life - often at puberty, or in the case of some women, when they try to conceive.

**Transphobia** – The fear, dislike or prejudice or discrimination against transgender people or those that are perceived to be. Transgender people can also experience homophobia when in same-sex relationships or for not conforming to gender norms.

#### **4. Confidentiality and Information Sharing**

Sharing information may put the child or young person at risk amongst their peers or in their home or force them to 'come out' to others before they are ready to do so. Where information is shared it should be on a confidential basis, proportionate, and should only occur where there is a reason, and following discussion and agreement with the child or young person, and their parents/carers where appropriate, to identify a solution, taking into account their needs and views.

The consequences, including legal consequences, of sharing, or not sharing, information must be considered. Where a school is informed that a pupil is transgender, it should be made clear that it may be in the child or young person's interest for some information to be shared, on a proportionate and confidential basis, to ensure that the pupil's needs are met, and well-being protected. Examples of this may be where participation in sporting events or overnight excursions increases the risk of a child or young person transgender status being revealed to other pupils. If relevant staff are made aware of the situation, it may help to minimize this risk.

Being transgender is not a child protection concern, and therefore information about the child or young person should not be shared unnecessarily with others for this reason. Although it is

important to understand the specific confidentiality concerns for transgender children and young people, child protection procedures still apply whenever a child or young person appears to be at risk, regardless of their gender identity.

## 5. Parents and Carers

Schools must focus on the best interests, rights and protection of the pupil. Schools should be supportive to parents and carers, and aim to develop an agreed approach that is guided by the young person's needs and well-being. If, for example, a pupil's wish to be known by a different name is not supported by the parents/carers, then the best interests of the pupil, and their legal capacity to make decisions, should be the determining factors.

## 6. Pronouns

It is extremely important that the correct pronoun and any chosen change of name are used when addressing or discussing transgender people. Young people should be asked and then always be addressed in their preferred identity. Gender-neutral pronouns such as 'xe' or 'they' can also be used, particularly for those who identify with a non-binary gender identity.

## 7. Changing Names and Exam Certificates

Recorded information should be updated, and staff made aware of changes where appropriate with due regard to confidentiality, in discussion with the child or young person, and their parents/carers where appropriate. It is not necessary to change historical records and reports; it is sufficient to annotate the records with a statement about the young person's new gender identity. At present there is no gender option other than 'male' or 'female' available on SEEMIS.

Where a child or young person, or their parents/carers, requests information from a school to support, for example, a job application, the school should, if requested, ensure that information provided does not result in a young person being identified as transgender against their will. In such cases, changing historical records and reports may be appropriate.

SQA regard any change to name and gender as the responsibility of schools as this will not affect the SQA candidate number. Schools should support young people to obtain new certificates, where there is concern that existing certificates will result in a young person being identified as transgender against their will.

In every case, schools should be sensitive to the individual circumstances of each case and have discussion with the young person, and parents/carers where appropriate, to identify a solution, taking into account their needs and views.

The **Gender Recognition Act 2004** enables transgender people to apply to the Gender Recognition Panel to receive a Gender Recognition Certificate. If a person is granted a full Certificate they will be considered in the eyes of the law, from the date of issue, as the affirmed gender. This can only be applied for from the age of 18 so should not affect the majority of pupils. Non-binary gender identities are not recognized in law and so the Gender Recognition Act does not allow all transgender people to have their gender recognized in law.

## 8. School Uniform and Dress Codes

Transgender pupils, like all others, are expected to conform to the school's dress code including any rules on make-up, hair styles/colour and appropriate dress. The transgender child or young person should be able to wear the uniform of their expressed gender identity. Where appropriate, schools may allow transgender pupils to choose the most appropriate option from available uniform items within the school and should be sensitive to the individual circumstances of each

child or young person. It would be anticipated that there would be discussion with the young person, and parents/carers where appropriate, to identify an appropriate solution.

During physical education, the transgender child or young person should be able to wear the sportswear of their expressed gender identity, where appropriate. Particular consideration must be given to swimwear options. As well as traditional swimwear, skirted swimsuits, baggy shorts, short wetsuits or modest swimwear often used by young people from particular faith groups could be considered as alternatives. Schools should be sensitive to the individual circumstances of each case and it would be anticipated that there would be discussion with the young person, and parents/carers where appropriate, to identify a solution, taking into account their views and the interests of others.

## **9. Use of Toilets and Changing Facilities**

It is now the norm for new schools, and refurbished areas to feature unisex toilets, but separate 'male' and 'female' toilets remain in the majority of schools. In relation to these separate facilities, where possible, transgender children and young people should use the toilet and changing facility that aligns with their gender identity and this should be considered in discussion with the child or young person, and their parents/carers where appropriate, considering each of the points set out below.

Some transgender young people may have concerns for their personal safety. In that case, an assessment of any risks to the young person should be carried out. Assessments should be reasonable and measured and should consider the actual likelihood of risk.

There are other options such as using a 'Disabled Toilet' and renaming it as 'Toilet' or 'Toilet & Changing Facility'. Significant consideration should be given to the attention this action may draw to the child or young person, but also the consequences of not using separate changing facilities in terms of maintaining confidentiality.

Arrangements which are age and stage appropriate must be put in place to ensure the wellbeing of all children and young people concerned.

Where schools are involved in competitions against other schools, it is worth checking with the group leader in advance if any action or support is required in order to ensure that appropriate toilet/changing facilities are made available to any transgender children or young people participating. It could be uncomfortable or distressing for a child or young person if the good arrangements made in their own school are not available to them.

## **10. Overnight/Residential Excursions**

In planning overnight/residential excursions, schools must ensure that the needs of all pupils are met, and that the excursion is as inclusive as possible.

Where possible transgender children and young people should be allowed to be with the group of their affirmed gender, if that is what they wish. All arrangements for overnight/residential excursions should be considered in discussion with the child or young person, and their parents/carers where appropriate to identify a solution, taking into account their needs and views. Some transgender young people may have concerns for their personal safety, including emotional wellbeing. In that case, an assessment of any risks to the young person should be carried out. Assessments should be reasonable and measured and should consider the actual likelihood of risk.

Consideration will need to be given to,

- Toilets and changing facilities.

- Sleeping arrangements. If separate sleeping arrangements are necessary, any extra costs must not be met by the pupil in question.
- Supervision arrangements.
- Laws and cultural differences in any foreign countries to be visited.

## **11. Sport and Physical Education**

Transgender young people should be able to participate in school sport and physical education. Schools should consider any issues of physical advantage or disadvantage arising from participation in sport and physical activity, and manage the situation sensitively in discussion with the pupil, and parents/carers where appropriate. Where there is an issue of physical risk, for example in contact sports where the physical strength of participants is a factor, this must be assessed, and managed appropriately in discussion with the pupil, and parents/carers where appropriate.

With regard to competitive sport, schools should seek the advice of the competition organizer, ensuring the rights and interests of the pupil are protected as far as is possible. Where an organization seeks to exclude a transgender pupil, the school should withdraw from participation.

## **12. Work Experience and Volunteering Opportunities**

The Council has a duty of care to ensure that an organization providing work experience or a volunteering opportunity is a safe, welcoming and learning-focused environment for the young person. This should include an assessment of how inclusive the environment will be, having regard to the protected characteristics and gender identity or transgender status.

This may require a risk assessment to be completed in order to ensure that a transgender young person will not be subject to any undue risks or discriminatory practice and that the environment within which they will be placed meets the standards of this guidance, with particular reference to toilets and changing. Any discussions with potential placement providers are subject to the young person's right to privacy and therefore personal details such as gender identity should only ever be disclosed in discussion with the child or young person, and their parents/carers where appropriate.

A discussion with the transgender young person, and their parents/carers where appropriate, should be held in order to identify suitable placement opportunities as well as some of the concern areas that the young person may have and the support that will be available to help overcome these.

## **13. Changing School**

In some situations transgender children/young people and their families may consider changing to a new school to allow a fresh start in their expressed gender identity. This may have benefits, but also drawbacks. The impact on existing friendships and support should be discussed with the child or young person.

If the decision is made to move, sensitive management of information and good communications are essential. It is the responsibility of the new establishment to ensure that preparations covering the issues identified in this guidance take place. Discussion with the previous establishment should take place to maintain continuity of approach as far as this represents best practice, and meets the developing needs of the pupil.

## **14. Absence from School**

Children and young people who are transitioning may require to be absent. Such absences

should be recorded as authorised and not as periods of sickness. Regular and supportive communication between the school and the child/young person, and their parent/carer where appropriate, should be maintained during any such periods of absence.

Absences should be recorded as follows:-

- Absences relating to medical appointment - record as 'P - Medical or Dental Appointment.'
- Absences relating to arranged meetings with support services such as LGBT Youth - record as 'O – Other Attendance out of School.'(These absences will not affect the student's overall percentage attendance rate.)
- Absences for family/personal issues: Record as 'A - Other Authorised Absence.'

## **15. Bullying**

LGBT Youth Scotland's research shows that 77% of transgender young people experience bullying. The Anti-bullying Policy will be applied by schools in all such cases. Schools may consider it good practice to put in place preventative strategies.

## **16. Recording**

A record of all discussions with pupils, and their parents/carers where appropriate, regarding the issues covered by this guidance should be kept in a confidential file. It is good practice to inform the pupil, and their parents/carers where appropriate, of the outcome of all discussion in writing.

## **17. Other General Advice**

### Gender-neutral books, toys and games

There is a significant move amongst publishers to abandon gender-specific children's books. Books which provide a positive view of transgender people should be sourced. Schools could encourage staff and children to take part in an investigation of the stock of resources and to question any which might stereotype or focus unnecessarily on one particular gender. Younger children and parents/carers could be encouraged to work in teams to design and create gender-neutral toys or games.

### Campaigns to eliminate offensive language

In order to support the development of emotional literacy for all children and young people, schools could plan an all-day or part-week campaign to record any incident of offensive language as it happens. This would work well as part of a wider focus to increase understanding, empathy and good relationships. It need not be confined to transphobic language and could include homophobic and racist insults and words that are particularly hurtful to people with disabilities.

### Gender-based career aspirations

As well as creating an inclusive ethos for transgender children and young people, further benefit is gained by exploring with younger children what their future career assumptions might be and to introduce possibilities and role models that are not based on traditional gender roles. This can begin in the early years.

### Gender-specific roles and awards

Schools should review the need to have gender specific boy and girl roles and awards and should be aware of the impact these may have on a pupil or student who is transgender. For example, head boy and head girl may be replaced with terminology such as head prefect. Equally, separate lines for boys and girls may be replaced by different means of grouping such as by year, class or house. Awards linked to gender grouping may exclude transgender pupils.

Schools should be sensitive to the individual circumstances of each case and it would be anticipated that there would be discussion with the young person and parents/carers where

appropriate to identify a solution, taking into account their views and the interests of others. This will not, however, protect transgender pupils who are not out, and so reviewing the need for gender specific roles and awards should be the preferred option.

#### Whole school approach to Relationships, Sexual Health and Parenthood

Schools are also reminded of the progressive pathway of curricular materials relating to Relationships, Sexual Health and Parenthood which was developed and circulated in June 2016. The focus of the programme is to develop in pupils an understanding of what constitutes a healthy relationship and cultivate respect and tolerance as an integral part of the school ethos. The framework is progressive and will build this understanding from nursery pupils through to the end of the Broad General Education. This can be access on the Moving Forward in Learning Sharepoint (Curriculum – Curriculum Documents – Health and Wellbeing – Progression Pathways).

This approach will create a climate in the school that is supportive to meeting the needs of transgender pupils.