



Sex and gender in schools: what government guidance needs to say

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Sex Matters is a human rights organisation campaigning
for clarity about sex in law, policy and language

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Summary

The past decade has seen a sharp increase in the number of school pupils who assert a gender identity that is different from their sex. In the face of significant disagreement concerning how this increase should be handled, the Department for Education needs to write clear guidance, with illustrative examples.

Without such guidance, decision-making will continue to be left to individual school leaders. The consequence will be inconsistent practice, with many schools influenced by flawed recommendations from activist groups setting policies that weaken child safeguarding and infringe other pupils' rights.

Failure to produce such guidance is a dereliction of the Secretary of State's statutory duty to ensure the smooth, cohesive and lawful functioning of the education system. This failure is exposing children to risk of harm, and leaving school leaders to make decisions they might struggle to defend in court.

This document analyses what the official guidance should say.

These are the ten principles against which the DfE's guidance should be judged.

1. Is it lawful?

A large body of laws and regulations guide and constrain schools' actions when it comes to issues of sex and gender. Nothing the government tells schools to do should lead to them failing to perform their statutory duties.

The DfE should analyse these laws as they pertain to biological sex, and to gender-distressed, gender-confused and trans-identified children. School leaders do not need to receive this full analysis; rather, it should be used to inform guidance that sets out best practice and their legal obligations.

2. Does it provide coherent, consistent guidance across the education system?

Individual schools are part of a system that educates cohorts of children from age four to 18 or 19. School leaders and governing bodies, local authorities, teachers and other staff, parents and pupils all need to share the same set of clear expectations.

3. Does it direct schools to collect sex-based data?

Schools should be reminded of their statutory obligations to record, store, use and share accurate information on the (biological) sex of all pupils.

Schools should be directed to avoid gathering information on children's self-declared "gender identity", since this is likely to qualify as "special category data", which is subject to strict controls on storage and dissemination, and has no relevant use case in education.

4. Does it support single-sex admissions?

The DfE should state clearly that single-sex schools are under no obligation to consider any application from a child of the opposite sex, and told that any case-by-case consideration of applications from members of the opposite sex on grounds of "gender identity" is a breach of the Admissions Code.

5. Does it uphold single-sex spaces?

Schools must be reminded of their statutory obligation to provide single-sex toilets, and when relevant single-sex showers, changing-rooms and sleeping accommodation, for the age groups set out in law. All pupils must be told that under no circumstances may they use facilities for the opposite sex. Where practicable, schools should seek to accommodate trans-identified children, for example in single-user unisex facilities.

6. Does it uphold single-sex sports?

Mixed-sex sports are acceptable when they do not disadvantage girls. But schools should be directed to separate girls and boys for sporting activities where girls would otherwise be disadvantaged. No child should be excluded from activities for their own sex because of a trans identification; and no child should be permitted to join activities for the opposite sex.

7. Does it support best practice in child safeguarding?

The DfE must be clear that accurate data on sex is essential for risk assessment and safeguarding. Children must not be subject to lower standards of safeguarding because they are trans-identified: their sex remains relevant for assessing risks posed to them and others.

Education professionals must be able to speak freely and accurately about children's sex in order to keep all children safe.

Schools and teachers should be reminded of their obligation to work with and share information with children's parents and guardians on all matters related to safeguarding, in line with their standard safeguarding policy. This includes any concerns relate to a child's declared gender identity.

It is a basic tenet of safeguarding that no adult should ever promise a child to keep a secret. This includes disclosures regarding trans identification.

8. Does it rule out full social transition in school?

It is impossible to treat any child as if they are a member of the opposite sex in a school environment. A clear analysis of the steps involved in full social transition reveals that to do so inevitably exposes the child to unacceptable safeguarding risks and infringes other pupils' rights.

9. Does it uphold freedom of belief and speech?

Schools should be told that their policies should not unduly restrict pupils' freedom to hold and express lawfully protected beliefs. These include religious and secular beliefs that require recognition of the material reality of the two sexes.

Inclusion and anti-bullying policies should require all children to treat each other with respect, but must not require children to pretend that a trans-identified classmate has changed sex.

10. Does it support all gender non-conforming children?

Schools should remove unnecessary sex-based distinctions from all policies and rules. This will help accommodate all children uncomfortable with the norms or expectations for their own sex, whether trans-identified or not.

Where sex-based rules are justified, they must apply to all children. If some children can be treated as exceptions, this suggests that sex-based distinctions were not, after all, justifiable.

Schools must make it clear to everyone that it is not possible to treat any pupil as if they were not a member of their sex. The right way to avoid gender-reassignment discrimination is to make reasonable accommodations to ensure that gender-distressed children are able to access education.

Background

The past decade has seen a sharp increase in the number of school pupils identifying as trans, non-binary or another novel gender identity, and significant disagreement concerning how this increase should be handled in schools. School leaders and governing bodies have largely been left to muddle through when it comes to responding to pupils who want to be treated as if they were members of the opposite sex, with such requests sometimes coming directly from children and sometimes from parents.

Some schools are seeking to support and accommodate such pupils without pretending they have changed sex; others treat trans-identified children as if they are the opposite sex and allowed them to use facilities for the opposite sex (so-called social transition) – sometimes without getting parents' consent; sometimes without even informing them. Schools seeking information regarding their legal obligations have received contradictory advice from both local authorities and external pressure groups.

Schools and local authorities lack clear guidance on their statutory obligations, and what they should do to protect and support both these children and their peers. **Clear, practical, legally sound government guidance** is long overdue. Such guidance needs to set out how gender-distressed and gender-confused children can lawfully and compassionately be included in schools – without weakening child safeguarding or harming other pupils' rights.

The Secretary of State for Education has the statutory power and duty to oversee, coordinate and regulate schools. Education is a system, and not merely a marketplace of individual institutions. It is the Department for Education's role to set standards and provide guidance in areas where **consistent practice** is needed.

Individual schools cannot work out how to respond to children who do not wish to comply with sex-based rules on a case-by-case basis.

If they are left to do this, both the DfE and individual schools face legal risks. Without clear, comprehensive central guidance, schools are forced to make ad-hoc decisions that they might struggle to defend in court. The DfE should create a legal "safe harbour", enabling schools to fulfil their statutory responsibilities while minimising the risk of legal action.

Schools cannot rely on a vague commitment to "inclusion". They are governed by myriad laws and regulations, which enable the coherent operation of the education system. Individual school leaders should not have to waste their time and open themselves to legal risk by working through these issues individually and unsupported. If the DfE fails to provide clear guidance, it is failing in its own statutory duty to support schools to perform theirs.

Government guidance is also essential to protect pupils from the consequences of policies driven by an activist agenda rather than safeguarding principles and the law. Here is what Sex Matters thinks that guidance should say.

1. Laws and regulations

A considerable body of law and regulation guides and constrains school policies. Schools have a positive duty to have systems in place to ensure that all pupils' educational and other legal rights are met at all times. This duty protects all pupils. The DfE's guidance on trans issues needs to explain the relevant laws and regulations clearly and accurately, with illustrative examples.

The body of law and regulation includes:

- the Equality Act 2010, including the Public Sector Equality Duty
- the Children Act 1989
- the Human Rights Act 1998
- the Education Act 1998
- the School Standards and Framework Act 1998, including the Admissions Code
- the Pupil Registration (England) Regulations 2006
- the statutory guidance *Keeping children safe in education*.

In some laws, the word "sex" means biological sex. In others (such as in relation to marriage and pensions) it means sex as modified by the possession of a gender-recognition certificate, granted according to the provisions of the Gender Recognition Act 2004.

However, schools should be advised to understand the word sex as meaning biological sex, since under-18s are not eligible for a gender-recognition certificate. This straightforward biological meaning is also that in various education-specific laws and regulations.

Schools are required by the Pupil Registration Regulations to keep a roll of all pupils, which records their sex.

Parents are required to provide information on a child's sex part of the admission arrangements to their first school (they may be asked for a birth certificate). When a pupil moves from one school to another, this information must be transferred as part of a "common transfer file".

Schools are also required to submit individual pupil records annually to the DfE under Section 537A of the Education Act 1996. Schools do not need to obtain parental or pupil consent to the provision of information.

There is no provision in any of these Acts and regulations for schools to lie about a child's sex, or to misrecord it in their data. It must be made clear to schools that doing so would breach GDPR (the principle of accuracy) and their statutory obligations to keep accurate pupil data.

The Equality Act

Of the nine protected characteristics, five are particularly relevant to this guidance:

1. sex (male or female, as recorded on every baby's birth certificate)
2. gender reassignment (covering those who are proposing to undergo, are undergoing, or have undergone a process or part of a process to reassign their sex, with or without undergoing medical intervention)
3. sexual orientation (defined by reference to sex: attracted to the same sex, the opposite sex or both sexes)
4. religion or belief (both belief and lack of belief in most formal religions and many secular belief systems)
5. disability.

"Gender identity" is not a protected characteristic.

To avoid confusion and to comply with the law, schools should be told to avoid using "gender" and "gender identity" in their equality policies and other materials, and to use instead the terms "sex" and "gender reassignment" with their correct definitions. They also need to understand how the law regarding discrimination with respect to the relevant protected characteristics guides and constrains their actions with respect to trans-identified pupils.

1. Sex

As noted above, for all purposes relevant to schools this means biological sex as understood in common law. Boys are male. Girls are female.

2. Gender reassignment

A child who is gender-questioning or gender-distressed, identifies as transgender or non-binary, or asks to be treated as a member of the opposite sex is likely to be protected against discrimination based on both their (actual) sex and the protected characteristic of gender reassignment. Schools must ensure that pupils are not discriminated against because of this characteristic in accessing a full education and in safeguarding policy and practice.

Declining to treat children experiencing gender distress as if they are of the opposite sex is not gender-reassignment discrimination.

3. Sexual orientation

Tackling homophobic bullying requires clarity on this definition. Schools should be directed not to sweep such issues under the umbrella term "LGBT", since this is a conflation of two separate

protected characteristics: gender reassignment and sexual orientation. People with these characteristics have different needs and vulnerabilities, and schools need to consider them separately in order to fulfil their statutory duties.

4. *Religion or belief*

This protected characteristic covers both belief and non-belief in the construct of gender identity. “Gender-critical belief” – that sex is real, binary, immutable and important – is also covered. So are a wide variety of religions, some of which require adherents to take account of (biological) sex, such as Orthodox Judaism and most strands of Islam.

Schools need clear guidance on how to ensure that trans-identified children can access a full and equal education without adopting policies that discriminate against pupils who hold “gender-critical” or “sex-realist” beliefs, whether religious or secular.

5. *Disability*

If gender dysphoria (distress at the fact of one’s sex) is sufficiently severe, it may come under the protected characteristic of disability. Schools need guidance on what constitutes “reasonable accommodation”, both to ensure that gender-dysphoric pupils are not denied equal access to education, and to ensure that accommodations for these pupils do not unreasonably infringe the rights of other pupils.

For example, single-user unisex toilets to accommodate pupils uncomfortable in facilities for their own sex should not be provided by replacing single-sex facilities, which remain the most efficient way to provide for most pupils, including those with extra toileting needs such as diabetics. And school rules intended to prevent harassment and bullying of trans-identified children should not involve contorted speech codes such as compulsory “preferred pronouns” that place undue burdens on pupils with certain special needs, such as autistic-spectrum disorders.

Direct and indirect discrimination

Schools need clear explanations of these concepts as they relate to all five of these protected characteristics.

Direct discrimination is when one person is treated worse than another person because they have a protected characteristic, are perceived to have a protected characteristic, or are associated with someone with a protected characteristic. There can be no justification for direct discrimination unless it is permitted by an exemption in the Equality Act.

Indirect discrimination occurs when a policy applies in the same way to everybody but indirectly disadvantages a group of people who share a protected characteristic. Indirect disadvantage

may be justified as a proportionate means to a legitimate aim, or mitigated in ways that do not undermine that aim.

The concepts within indirect discrimination of provisions, criteria or practices (“PCPs”), disadvantage and comparison to others must be properly explained so that schools understand how they relate to the protected characteristics of sex and gender reassignment.

The Equality Act contains provisions that expressly allow clear sex-based rules, as exceptions to both direct and indirect discrimination on the basis of sex and gender reassignment, for certain purposes:

- single-sex school admissions (Schedule 11)
- sports (Section 195)
- toilets, showers and changing rooms (Schedule 3 Part 7)
- communal accommodation (Schedule 23)
- a requirement of an enactment (Schedule 22).

Worked examples are needed to illustrate the justifications for single- and separate-sex provision, and how, in some situations, failure to make such provision may be subject to challenge as constituting unlawful direct or indirect sex discrimination.

Schools must not discriminate against a child with the protected characteristic of gender reassignment, as compared with a child **of the same sex** without that protected characteristic:

- in admissions
- in the way it provides education for the pupil
- in the way it affords the pupil access to a benefit, facility or service
- by not providing education for the pupil
- by not affording the pupil access to a benefit, facility or service
- by excluding the pupil from the school
- by subjecting the pupil to any other detriment.

The Equality Act does not require schools to pretend a child is the opposite sex in any circumstances, or provide any justification for allowing a child to disregard sex-based rules.

Admission to single-sex schools

The exception to the prohibition on sex discrimination for admissions to single-sex schools (Schedule 11) means there can be no obligation on a school to consider admitting a child of the opposite sex.

Examples given in the notes to the Equality Act make this clear:

“If the daughters of certain members of staff at a boys’ school are allowed to attend, it is still regarded as a single-sex school.”

“A boys’ school which admits some girls to the Sixth Form, or which lets girls attend for a particular GCSE course not offered at their own school is still regarded as a single-sex school.”

Case-by-case consideration for admission to a single-sex school on the basis of “gender identity” is not compatible with the Admissions Code issued under Section 84 of the School Standards and Framework Act 1998. The code requires that places in maintained schools are allocated in an open and fair way:

“In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”

Schedule 11 (1) (1) states:

“Section 85(1), so far as relating to sex, does not apply in relation to a single-sex school.”

There can therefore be no possible claim of sex discrimination for not admitting a particular child of the opposite sex.

Athletics and sport

The Equality Act 2010 provides an exception to prohibitions against sex discrimination and gender-reassignment discrimination in relation to participation as a competitor in a “gender-affected activity”. (Note that “gender” is used here to mean “sex”.)

Section 195 (3): “A gender-affected activity is a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex as competitors in events involving the activity.”

Schools should be told that this means they are entitled to separate pupils by sex for competitive sport and games, not just for reasons of safety, but also for general fairness.

If an activity is sex-segregated for reasons under Section 195, there is no need to further objectively justify that it is sex-segregated.

The guidance should make clear that schools should not discriminate against children with transgender identities by excluding them from playing in sports **for their own sex**. It should also be explained that permitting trans-identified pupils to participate as members of the opposite sex may constitute indirect discrimination against girls, since girls are at a physical disadvantage compared with boys.

The Public Sector Equality Duty

This duty requires maintained schools, among other things, to seek to advance equality between the sexes. It also requires them to foster good relations between people with and without the protected characteristic of gender reassignment; and between those who do and do not hold the belief in “gender identity” as an innate characteristic.

The government should ensure schools understand that sex-realist beliefs, and lack of belief in gender identity, are protected in law. Schools must therefore avoid implying that these viewpoints are in any way harmful or hateful. It should also explain that allowing trans-identified pupils to use facilities for the opposite sex is likely to damage good relations between girls and boys, and between pupils with sex-realist beliefs and those with the protected characteristic of gender reassignment.

The Human Rights Act 1998 (HRA)

This law contains the Articles and protocols of the European Convention on Human Rights (ECHR) that apply to the UK. It sets out the fundamental rights and freedoms to which everyone in the UK is entitled. Some of these rights and freedoms are “qualified”, meaning that infringements may be acceptable if other considerations are more important. Some are “absolute”, meaning states cannot excuse any infringement by using such balancing arguments.

It is unlawful for schools and colleges that are public authorities (e.g. publicly funded schools) to act in a way that is incompatible with the Convention. To be lawful, the DfE’s guidance must be compatible with the Convention.

The Article rights that must be considered by the DfE in drawing up its guidance are:

Article 3: the right not to be subject to torture or to inhuman or degrading treatment or punishment. This is an absolute right. Degrading treatment can include being made to undress, and in particular being made to undress in front of members of the opposite sex. Treatment found to breach Article 3 has included strip-searching in front of an officer of the opposite sex (*Valašinas v Lithuania, 2001, § 117*).

Any school policy that results in pupils being forced to undress in front of someone of the opposite sex is vulnerable to legal challenge under Article 3. Such a situation may be caused by

allowing a pupil of one sex to use facilities intended for the opposite sex, especially if the school makes it clear either explicitly or implicitly that any pupil who objects will be accused of harassment, bullying or discrimination.

Article 8: the right to respect for private and family life. This is a qualified right. It is engaged when it comes to considering what to teach children regarding the belief in gender identity, and whether to inform parents if a child asserts a trans identity.

The European Court of Human Rights ruling in *Goodwin v UK [2002]*, which led to the Gender Recognition Act 2004, was based in part on Article 8 privacy rights. However, this ruling relates to the privacy of a post-operative transsexual in limited circumstances. Since such surgery is not carried out on minors in the UK, and the relevant circumstances (such as marriage and pensions) do not occur in schools, this aspect of Article 8 is not relevant to this guidance.

Article 9: freedom of belief. This is a qualified right. This article is engaged when schools consider their duties not to unduly suppress the expression of sex-realist beliefs, and not to mandate expressions of belief in gender identity. The right to believe that human beings cannot change sex is protected by Article 9 (*Forstater v CGDE [2021] EAT*). Schools should protect children with gender issues from bullying, but cannot lawfully force other pupils to pretend they believe that the child has changed sex.

Article 10: freedom of expression. This is a qualified right. It is engaged in the context of child safeguarding, which requires education professionals to be able to speak clearly and honestly about sex, and by policies on single-sex facilities, which should not silence pupils who do not wish to share such facilities with members of the opposite sex. It means that school policies intended to protect trans-identified pupils from bullying and harassment must not unduly restrict other pupils' speech or frame sex-realist viewpoints as hateful or wrong. The Forstater judgment included the right not merely to manifest but also to hold "gender-critical" beliefs.

Protocol 1, Article 2: the right to education. This is a qualified right. The DfE must ensure that its guidance does not unduly restrict any group of pupils from accessing education. Relevant groups include both trans-identified children and those with sex-realist beliefs.

School Premises (England) Regulations 2012 and Independent School Standards

These impose statutory requirements for both maintained and independent schools to provide sex-separated toilets for pupils aged eight or over (apart from individual toilets in fully enclosed rooms), and sex-separated changing accommodation and showers for pupils who are aged 11 years or over at the start of the school year and who receive physical education.

The DfE should explain that admitting trans-identified pupils to facilities intended for the opposite sex is a breach of these statutory regulations. A child who identifies as the opposite

sex (or as non-binary or some other gender identity) does not actually change sex. That child is therefore still entitled to use toilets, changing-rooms and other spaces intended for their sex. They are not entitled to use spaces for the opposite sex.

Although these laws provide the framework for sex-based rules in education, school leaders should not need to consider them directly. Instead, the DFE should provide clear, simple model policies that schools can adopt which provide a “safe harbour” for legal compliance.

Our model policy is appended.

2. A cohesive education system

Schools are part of a statutory education system which covers all children. As set out in the Education Act 1996 (1):

“The statutory system of public education consists of **three progressive stages**: primary education, secondary education and further education.”

It is the DfE’s responsibility to act as central coordinator and ensure that this system is cohesive.

Its guidance must ensure that schools do not respond to demands for trans inclusion by failing in their statutory duty to keep and use information on a child’s sex.

There is nothing in UK law about the construct of “gender identity”. There is no obligation on schools to collect data about its pupils’ gender identities, or indeed about whether they believe in gender identities at all. Schools should be advised not to ask for such information, because:

- it is likely to constitute “special category data”, meaning it is subject to strict rules on storage, use and dissemination
- under the Data Protection Act, data should not be collected except for a well-defined and justifiable purpose.

3. Schools cannot lawfully accommodate full social transition

Without central guidance, schools are facing escalating expectations from children and parents, and making widely differing and ad hoc decisions regarding “social transition” – that is, treating trans-identified children as if they are members of the opposite sex for some or all school rules. But a child whose social transition is facilitated in one school is likely to expect it to be facilitated throughout their school career.

Criteria for social transition should therefore be consistent across the school system. Otherwise, any school that facilitates social transition is unilaterally making a decision that may run counter to policies in other schools.

Deciding which aspects of social transition can and should be accommodated in schools is properly a matter for the education system’s regulator. The DfE therefore needs to lay out clearly what schools must, and must not, do when asked for special accommodations by trans-identified children.

This requires the DfE to be very precise in analysing the steps that may be included in social transition. These steps vary in terms of who is responsible for them, how much they affect other people, and whether or not they can safely and lawfully be accommodated in a school environment. The DfE’s analysis must consider the impact of one child’s social transition on other pupils, as well as on the functioning of that school, other schools and the education system as a whole.

What may “social transition” involve?

Action	Is this lawful?	Are schools required to do it?	What else do schools need to consider?
Recording a child on the register as the opposite sex	No. Schools are required, by law, to record a child’s sex in their records.		
Requiring that teachers and other pupils act as if the child has changed sex	No. Other people have rights, and it is not consistent with safeguarding .		
Admitting a child to a single-sex school of the opposite sex, on the basis of gender identity	For maintained schools this would contravene the Admissions Code.	No. The Equality Act does not require this.	Admitting a child as if they are the opposite sex would be impractical and infringe other children’s rights.
Fulfilling a child’s request to change the name they are known by for day-to-day purposes	Yes. Schools may record “known by” names in addition to the child’s actual name.	No. There is no statutory requirement to do this.	Parents have a right to information a school holds on their child. This can be withheld where it might cause serious harm to the pupils’ physical or mental health.
Allowing a child to use opposite-sex facilities	No. Schools are required to provide separate-sex facilities.	No.	
Allowing a child to play in opposite-sex sports	Not explicitly unlawful. But could lead to discrimination against other pupils, and to health and safety risks.	No.	It is not a decision that is sustainable as a child and their cohort grow up.
Allowing a child to disregard other sex-based rules (such as uniform)	Not explicitly unlawful. But raises the question why the school has unnecessary sex-based rules.	No.	

As this analysis demonstrates, schools cannot accommodate full social transition while fulfilling their statutory obligations. This is because:

- A child must continue to be recorded as their actual sex throughout their school career. This information is on the register and available to teachers and staff.
- A child and their family have personal autonomy when it comes to self-expression, but a school cannot require other children and teachers to pretend that a child has changed sex.
- Where a school has sex-based rules, there should be a good reason for them. If some children can be treated as exceptions (because of trans identification or for some other reason), that suggests the reason was not strong enough to justify sex-based distinctions in the first place.
- If treating children differently according to sex is justified, that justification does not disappear because a child identifies as trans. The sex-based rules will still apply to them.
- A school, at a single point in time, cannot possibly fully consider the impacts of a decision to socially transition both for that child and for other children across all their school careers. Staff at the school will not be medically trained.
- A school cannot explain to all teachers, other pupils and parents why it allows one child to be treated as the opposite sex and to breach sex-based rules, while not allowing another child. Any such attempt at explanation would involve disclosing details of a child's broader wellbeing, medical history and so on.
- It is unfair to place the responsibility for saying no to the requests of trans-identifying children on individual schools, instead of giving decision-makers in schools the protection of a clear rule which they must follow. There is a real risk that doing so will expose them to bullying.

It is the DfE's statutory responsibility to set this out unequivocally in its guidance, and to ensure that schools comply. Failing to do so would expose schools to litigation.

Among those who might seek to litigate against responsible bodies of schools are parents of pupils:

- for whom a school permits some aspects of "social transition" but not other aspects
- who are denied permission to socially transition at school when others are granted permission
- who have been transitioned at school without parents' consent, or perhaps even parents' knowledge
- who experience disciplinary action or discrimination because of issues arising from a classmate's social transition

- who are concerned that their child's special educational needs, disability or mental-health difficulties have not been adequately protected in the context of a school socially transitioning the pupil.

If the DfE fails to set out the reasons why full social transition should be barred in schools, it may be subject to litigation too.

4. Safeguarding and risk assessment

Child safeguarding requires rules-based systems. As past child-abuse scandals have shown, it is important that these rules cannot be set aside on a case-by-case basis to accommodate “exceptions”.

The DfE should explain to schools that being “trans inclusive” must not be permitted to weaken risk assessment and safeguarding. In the absence of central guidance, some schools have written policies that inadvertently make it harder to assess and act on risks that a pupil faces or poses to others, or for pupils to raise concerns.

Some have written policies that discriminate against trans-identified children by placing them outside standard risk assessment and safeguarding, and isolating them from their parents. Separation by sex in situations that involve undressing (partially or completely), physical contact or sleeping is a core element of safeguarding, since it reduces risk. Safeguarding is seriously weakened if some children are treated as exceptions to sex-based rules.

Schools should not attempt to diagnose mental-health problems, but instead should consider signs of mental distress and work with parents, and local authorities where appropriate, following their safeguarding policy.

Schools are required to teach children and young people about consent. The DfE should explain that this includes teaching all pupils that they have a right to privacy from the opposite sex when changing, washing or sleeping.

Failure to apply the normal standard of safeguarding to children who identify as trans is discrimination because of gender reassignment.

Safeguarding requires education professionals (teachers, designated safeguarding leads, school leaders, safeguarding experts in local authorities and so on) to share relevant information and concerns freely, subject to data-protection law. Any restrictions on speech that prevent them from being clear about every child’s sex (for example, a policy to record “gender identity” instead of sex or to refer to trans-identified children by their “preferred pronouns”) will hamper safeguarding, as well as potentially leaving schools vulnerable to legal challenge on free-speech grounds.

Safeguarding is a responsibility of adults, not of children. The DfE should tell schools that pupils should not be expected to help develop safeguarding policy or be involved in making decisions that might reduce their privacy or increase the risk of sexual harassment. Calls to “be inclusive” or “oppose bigotry” should not be used to pressure children into sharing toilets, changing rooms or sleeping accommodation with members of the opposite sex.

Any cohort of girls will include girls with religious beliefs, girls who have suffered sexual abuse and girls who are simply uncomfortable changing or showering with male people. Social expectations that girls should be kind and caring and put their own needs last may make it hard for them to say clearly that a “trans girl” is male, and that allowing male people into girls’ single-sex spaces makes them uncomfortable.

In the interim report of her independent review of gender-identity services for children and young people, Dr Hilary Cass explains that social transition is an “active intervention because it may have significant effects on the child or young person in terms of their psychological functioning”. She also finds that the evidence does not support an “affirmative” – non-exploratory and unquestioning – approach to children experiencing gender distress.

There is nothing in either her mandate or her recommendations that suggests schools cannot set rules that apply to all pupils based on their sex, or that they should treat trans-identified pupils as exceptions to such rules.

The DfE should warn schools not to overstep their competence on such issues. Education professionals are not experts in healthcare, and schools are not medical facilities. They do not have the expertise to oversee, let alone direct, “social transition”. Attempting to do so is a serious safeguarding risk, and potentially leaves schools vulnerable to legal action.

5. Accommodating gender non-conforming and trans-identified children

The DfE's guidance should advise schools to ensure that their rules and policies avoid discriminating between boys and girls wherever possible.

Schools should:

- avoid traditional sex-based distinctions in the subjects pupils study, games they play, clothes they wear and names they use
- avoid sex-based rules at proms, dances and other social events about what girls or boys can wear (or expectations about who they partner)
- avoid rules about uniform, hairstyles, jewellery or make-up that differentiate by sex based on tradition and that do not meet a legitimate aim
- reduce situations and rules where children's sex is emphasised, for example girl-boy seating.

These steps will reduce the likelihood that schools commit unlawful discrimination on the grounds of sex or gender reassignment, and also make it easier to appropriately accommodate all children who chafe at the norms for their sex, whether or not they identify out of their sex.

No child should feel that they must act like a stereotypical girl or boy to fit in at school. Children should neither gain nor forfeit privileges or status for conforming or not conforming with the stereotypes associated with their own sex or the opposite sex.

As other DfE guidance states:

"While teachers should not suggest to a child that their non-compliance with gender stereotypes means that either their personality or their body is wrong and in need of changing, teachers should always seek to treat individual students with sympathy and support."

To avoid gender-reassignment discrimination, schools should seek to ensure that children experiencing gender distress are able to access education, including by providing reasonable accommodation (such as alternative unisex options where possible). Schools are not required to treat these children as members of the opposite sex.

The DfE's guidance needs to explain that schools should take a do-no-harm approach centred on child welfare. They should ensure that gender-distressed, gender-questioning and trans-identified children are included and supported in education, protected from bullying and covered by normal safeguarding procedures.

Schools cannot agree to requests to treat any child as if they were the opposite sex, since to do so would infringe other pupils' rights. The kindest and fairest approach to children experiencing gender issues is to explain this clearly.

Any other approach holds out hope that intransigence will lead to prolonged negotiation with individual pupils seeking to be treated as exceptions to sex-based rules. Lack of clarity is anything but kind, since it is likely to exacerbate and entrench gender distress and gender confusion, rather than helping it to resolve, as well as increasing the risk of complaints from parents and of legal challenges.

Appendix: model policy for schools

Purpose of this policy

1. The purpose of this policy is to set a framework for how [school] will support students in relation to gender-identity issues.
2. This policy forms part of our overall Equal Opportunities Policy in relation to students, and supports staff in meeting the requirements of the Equality Act 2010 (in relation to the protected characteristics of sex and “gender reassignment” in particular). It is also aligned with our Safeguarding Policy and responsibilities, and our Anti-Bullying Policies.

Scope of the policy

3. The policy applies to all pupils in relation to admissions, teaching and learning, pastoral provision, scholarships and awards, health and safety, personal conduct, and complaints and disciplinary procedures.
4. The policy clarifies the ways in which school rules, provisions, criteria and practices address the need to ensure that pupils who are gender non-conforming or gender questioning, or who identify as transgender or non-binary, are not treated less favourably than other pupils.

Guiding principles

5. The school values all its students and staff and aims to create an inclusive culture, workplace and learning environment that protect everyone from unjust or unfair treatment based on age, sex, race, disability, religion and belief, pregnancy and maternity, sexual orientation, gender reassignment or marriage and civil partnership.
6. The school seeks to establish and maintain an environment where children feel secure, are encouraged to talk and are listened to when they have a worry or concern.
7. The school aims to respond to children with complex needs or are going through a difficult period in their life, and to support their health, wellbeing and educational attainment.
8. The school aims to treat all pupils with dignity and respect.
9. The school does not support stereotypes about the appearance, behaviour or interests expected of girls and boys, or women and men.
10. Every child should be free to express their identity, but expressing an alternative gender identity or proposing to transition does not change a child’s sex.

Protection against harassment and bullying

11. Bullying is defined as behaviour by an individual or group, usually repeated over time, which intentionally hurts another individual or group either physically or emotionally.

12. Bullying includes name-calling, taunting, mocking and making offensive comments, offensive graffiti, excluding people from groups, gossiping and spreading hurtful or untrue rumours, kicking, hitting, pushing, taking belongings and cyber-bullying.
13. All pupils, staff and parents shall be encouraged to value and respect others. Incidents of bullying and harassment will not be tolerated, including those based on sex, sexual orientation, gender non-conformity and beliefs about gender.
14. The school works hard to ensure that all students know the difference between bullying, “falling out” and disagreeing.
15. Excluding children from facilities for the opposite sex is not bullying. Expectations will be stated clearly and respectfully by the school. Individual children will not be permitted to negotiate access to facilities for the opposite sex.

Confidentiality

16. The school is not able to admit a child on the condition that their sex must be kept confidential from other students and staff, or that staff will lie about their sex. We believe that keeping secrets about sex is inappropriate, makes the child themselves vulnerable, and prevents the school from fulfilling its duty of care to all pupils.
17. Records about health and welfare are kept separate from pupils’ academic files in a secure place and marked “Strictly Confidential”.
18. The school will respect the confidentiality of all students and will not reveal sensitive personal information without the prior agreement of the individual, except to protect their vital interests, in line with our safeguarding policy.

Pastoral care

19. Students who have any concerns about their own wellbeing or the wellbeing of another student should feel free to approach their form tutor or head of year, whether that concern is to do with academic studies, health, relationships with other students, issues at home or any other matter.
20. Parents are welcome to contact the school at any time to discuss their child’s welfare and progress or relevant medical or social issues. Such enquiries should be directed, in the first instance, to the child’s Head of Year. Appointments can also be made with other members of the Leadership Group, including the Head Teacher.

Safeguarding

21. A child disclosing gender-identity issues must not fall outside of normal safeguarding practice, as outlined in our Safeguarding Policy, including the commitment to work in partnership with parents.

22. Staff should be aware that children experiencing gender-identity issues may also raise safeguarding concerns, such as significant changes in behaviour, performance or attitude, mental-health issues, self-harm, self-medication, emotional or sexual experiences in which they may have been significantly harmed, or relationships that put them in danger.
23. If any member of staff is concerned about a child, they must inform the Designated Senior Person and record information regarding the concerns on the same day.
24. If a child confides in a member of staff or volunteer and requests that the information is kept secret, it is important that the member of staff or volunteer tells the child in a manner appropriate to the child's age and stage of development that they cannot promise complete confidentiality. Instead, they must explain that they may need to pass information to other professionals to help keep the child or other children safe.
25. Any proposed action in relation to child-welfare concerns should be undertaken with prior discussion with the parents, unless to do so would place the child at risk of harm.

Uniform

26. All items of school uniform and dress code apply equally to children of either sex. Any item that can be worn by a boy can also be worn by a girl, and vice versa.
27. Clothing requirements are based on sex only where this is needed for health, safety and dignity, such as athletic protectors for boys and appropriate coverage of swimwear for girls.

Names and pronouns

28. Children may ask to be called by a different forename than that in their official records (for example a familiar or shorter version, a middle name or a complete change of first name, including a name associated with the opposite sex).
29. Pupils who want to change the name they go by in daily use can do so by filling in a form available at student services, and this will be added to the register alongside their legal name. A confirmation will be sent to their parents.
30. If a child's name is legally changed by deed poll, parents should bring this information to the school office and records will be updated.
31. If a child is taking external examinations, there is the option of having the male/female flag removed from qualifications systems by exam boards. Please contact the school office at least three months before the exam to enable this request to be granted.
32. Pronouns are words that other people use to refer to a person (generally he/him or she/her). Pupils may request that teachers and peers use "preferred pronouns" for them, but they cannot compel this. The school will not agree to use different pronouns when talking about a child to their parents and during the school day.

Sports

33. Not all sporting activities at school are segregated by sex, but where they are this is for safety and fairness, particularly of female participants, or for “positive action” (such as encouraging girls to take up football).
34. In considering whether a sport, game or other activity should be offered separately to girls and boys, we take into account the age and stage of development of the year group, not of each individual.
35. Where sports are organised separately for girls and boys, this is by sex, not gender identity.
36. All pupils are welcome to play in mixed sports and in sports with others of the same sex.

Trips away

37. Trips away are an important enrichment of school life. We plan them with full risk assessment and seek to make them accessible to all.
38. Children and parents with any concerns or anxiety about trips away should contact the organiser in advance to discuss particular needs.
39. Sleeping arrangements are organised by sex, not gender identity.

Toilets and changing rooms

40. Single-sex facilities are the simplest way of providing privacy for girls and boys over the age of eight.
41. Our toilets and changing rooms are segregated by sex, not gender identity.
42. All pupils are welcome to use the single-sex facilities that correspond with their sex.
43. We recognise that some children will not feel comfortable in single-sex facilities and will endeavour to provide alternatives for those who would feel more comfortable with greater privacy (such as single-occupancy unisex facilities).

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