

Sex and gender identity

Keep your pupils safe and
comply with the law

GUIDANCE FOR SCHOOLS IN WALES

*Written by Sex Matters and Transgender Trend
March 2023*

Contents

1	About this guide	3
2	Overview	4
2.1	Compliance	4
3	Legal principles	5
3.1	Contradictions	6
3.2	United Nations Convention on the Rights of the Child	6
3.3	Public sector equality duty (PSED)	7
3.2	Direct discrimination	8
3.3	Indirect discrimination	8
3.4	Sex-based exceptions	9
4	Admissions	10
4.1	Single-sex schools	10
5	Administration	11
5.1	Bullying	11
5.2	Name and pronoun changes	11
5.3	Relatives	12
5.4	Record-keeping	13
5.5	Uniform	13
6	Safeguarding	14
6.1	Gender-questioning pupils	14
6.2	Involving pupils in decisions	16
7	Facilities	18
7.1	Toilets and changing rooms	18
7.2	Sleeping accommodation	19
7.3	Consent	20
7.4	Sexual harassment	20
8	Teaching	22
8.1	Stereotyping girls and boys	22
8.2	Dividing girls and boys	23
8.3	Gender non-conforming pupils	23
8.4	Age-appropriate content	24
8.5	Beliefs	25
8.6	Sex and relationships	26
8.7	Sports	28
9	References	30
10	Resources	31
	Appendix A: Terms used in the Equality Act 2010	32
	Appendix B: Assessing Dan Squires QC's legal opinion	34
	Appendix C: Model policy for a school	36
	About Sex Matters and Transgender Trend	40
	Feedback	41

1 About this guide

This guide is about schools' responsibilities under the **Equality Act 2010** towards all boys and girls in relation to the protected characteristics of sex and gender reassignment. It includes a model policy that schools can adopt.

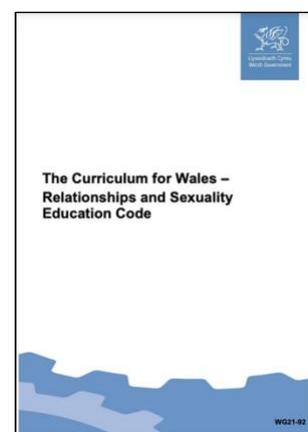
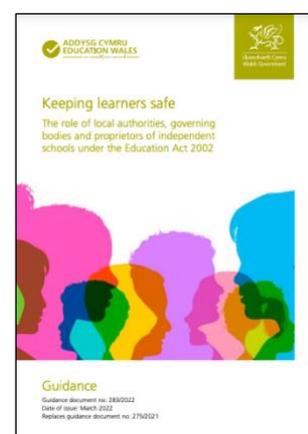
This guide takes into account the relevant framework for safeguarding in Wales, **Keeping Learners Safe** (2022), the **Curriculum for Wales: Relationships and Sexuality (RSE) Guidance Code** (2021) and the **Education Act 1996**.

We also draw on the recent guidance produced by the Equality and Human Rights Commission, and the interim report of the Cass Review. Although this review was commissioned by NHS England, Welsh gender-questioning and gender-distressed children are referred to and treated within those services since no services currently exist in Wales.

For links to all these, see the **References** section.

This guide is for:

- teachers, school leadership teams and governors in both state and private schools at primary and secondary levels
- parents and young people seeking to understand their rights
- local education authorities producing their own guidance
- some youth associations and sports clubs.



2 Overview

All schools have responsibility for their pupils, and teachers want the best for all the children in their care.

More and more children are experiencing distress about their sex. Our survey, carried out in England, Scotland and Wales by YouGov, found that 79% of teachers say that their school has at least one pupil who identifies as trans or non-binary; 85% say that this number has increased in the past three years.

Discussions of issues around sex and gender have become difficult, but they are discussions that we need to have. This guidance explains what the law says you should do about children who are gender non-conforming, gender-questioning, experiencing gender distress, identifying as the opposite sex or saying they are non-binary.

We have adopted the language of “gender-questioning children” and “children experiencing gender distress” used in the Cass Review, since the evidence shows that children often grow out of gender issues.

2.1 Compliance

This guidance will help you develop school policies which comply with the Equality Act 2010 and protect all children. This means that you should:

- adopt an approach that supports safeguarding, because safeguarding should always come first in any decision about a child
- review your policies and rules to avoid discriminating between boys and girls in general, as this will also make life easier for gender non-conforming children
- where school admissions, rules, facilities or lessons are separate for boys and girls, make sure that this can be justified
- apply rules fairly to all pupils.

[Sex Matters \(2022\): Most secondary schools now have trans-identified pupils: Sex Matters' new survey](#)



[Cass Review \(2022\): Independent review of gender identity services for children and young people: interim report](#)



3 Legal principles

All schools must comply with the **Equality Act 2010**, which covers all aspects of school life in relation to pupils, prospective pupils, parents, carers and employees. This means they should be fair and non-discriminatory, and not put individuals or groups of people with a protected characteristic at a disadvantage.

Under 'Relationships and sexuality education' the *Curriculum for Wales: summary of legislation* notes that it is mandatory for schools to comply with relevant requirements of the Equality Act 2010.

The Equality Act does not require that schools treat any pupil as if they were the opposite sex.

The protected characteristic of "gender reassignment" in the act means that children must not be excluded from or disadvantaged in education if they express gender distress – not that they must be treated as the opposite sex.

The law is clear that children remain boys and girls, male and female, whatever their feelings about gender or the decisions they may take as adults:

- a male child who identifies as a "trans girl" or "female" remains legally a boy and male, and would be treated as such under the Equality Act's sex-discrimination provisions
- a female child who identifies as a "trans boy" or "male" remains legally a girl and female, and would be treated as such under the Equality Act's sex-discrimination provisions
- a child who identifies as "non-binary" or any other gender identity remains both legally and physically the sex they actually are.

The Cass Review's interim report says that evidence does not support an "affirmative" – non-exploratory and unquestioning – approach to children experiencing gender distress. It also emphasises that "social transition" (treating a child as if they were the opposite sex) is a significant step:

Equality Act 2010

Welsh Government (2020):
*Curriculum for Wales:
summary of legislation*



Cass Review (2022):
*Independent review of
gender identity services for
children and young people:
interim report*

“It is important to view it as an active intervention because it may have significant effects on the child or young person in terms of their psychological functioning.”

The Welsh Government has not provided specific guidance for schools and teachers regarding approaches to support gender-questioning children and young people. In contrast, the Department for Education in England’s 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.”

Department for Education (2020): *Plan your relationships, sex and health curriculum*

The research evidence does not suggest that “puberty blockers” and cross-sex hormones improve children’s mental health. In fact, these medications often lead to young people being permanently medicalised. A child who follows this treatment pathway into adulthood is likely to be sterile and lacking normal sexual function.

Biggs, Michael (2019): *The Tavistock’s Experiment with Puberty Blockers*

3.1 Contradictions

The information provided for schools and teachers by the Welsh Government is contradictory and unclear. For example, the *Curriculum for Wales: summary of legislation* and the non-statutory guidance both use the words “sex” and “gender” interchangeably as well as listing sex and gender alongside one another and presenting “gender” as a protected characteristic, which it is not.

3.2 United Nations Convention on the Rights of the Child

The section ‘Relationships and sexuality education’ in the *Curriculum for Wales: summary of legislation* states:

“Children Rights under the UNCRC [United Nations Convention on the Rights of the Child] are central

to all of the Welsh Government’s work, in line with its commitments and duty to have regard to the UNCRC in all that it does.”

The United Nations
Convention on the Rights of
the Child

Promoting knowledge and understanding of Part 1 of the UNCRC is required. Article 2 of Part 1 is particularly relevant:

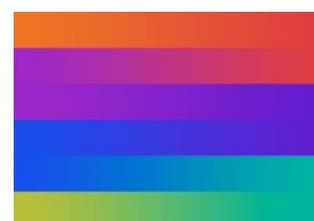
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.



3.3 Public sector equality duty (PSED)

The section ‘Relationships and sexuality education’ in the *Curriculum for Wales: summary of legislation* states:

“In particular, schools and settings should note that compliance with the public sector equality duty is a legal requirement for local authority maintained schools (including PRUs) in Wales and it makes good educational sense to comply with it. The public sector equality duty helps schools to focus on key issues of concern and how to improve outcomes for all learners.”

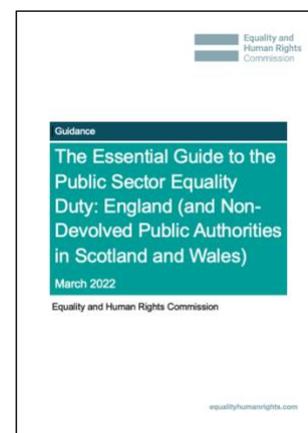


Welsh Government (2020):
*Curriculum for Wales:
summary of legislation*

The PSED came into force on 5th April 2011, as section 149 of the Equality Act and the additional Welsh Specific Duties. It applies to all maintained schools, and covers governing bodies, head teachers, special educational needs co-ordinators and staff.

“Those subject to the general equality duty must, in the exercise of their functions, have **due regard** to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.”



3.2 Direct discrimination

Direct discrimination means treating someone less favourably than someone else because they have a protected characteristic.

Direct discrimination is unlawful unless it is covered by one of the exceptions in the Equality Act. These exceptions include many ordinary situations – for example, schools discriminate based on age in their admissions, and single-sex facilities are allowed as an everyday exception to the law against sex discrimination.

3.3 Indirect discrimination

Indirect discrimination occurs when a “provision, criterion or practice” (such as a policy or rule) is applied in the same way for all, but puts people with a protected characteristic at a disadvantage. For example, holding staff meetings after school on Fridays would be indirect discrimination against orthodox Jewish staff who keep Shabbat (Sabbath).

Indirect discrimination is unlawful unless it can be shown that the treatment or practice is justified as a **proportionate means to a legitimate aim**. A primary-school policy requiring all children to wear trousers or shorts might indirectly discriminate against girls, for example, since it would be more likely to

conflict with their preferences and existing wardrobe. But it might be justifiable as a way of ensuring that all children are suitably dressed for boisterous play.

3.4 Sex-based exceptions

The Equality Act requires that mixed schools should separate the sexes only when objectively justified, for example:

- for bodily privacy when changing or using the toilet
- for fairness and safety in sports at the age when girls' and boys' bodies diverge.

See HM Chief Inspector of Education Children's Services and Skills v The Interim Executive Board of Al-Hijrah School

Under the positive action provisions in Section 158 of the Equality Act, schools can treat the sexes differently to advance equality of opportunity, such as:

- a programme to encourage girls into STEM subjects
- encouraging boys to consider careers in care.

But it is **not** lawful to provide preferential treatment for a disadvantaged pupil group that exceeds these provisions.

Further details about the Equality Act are in **Appendix A**.

4 Admissions

4.1 Single-sex schools

4.1.1 Excluding the opposite sex

The Equality Act allows single-sex schools to admit pupils of only one sex without this being unlawful sex discrimination.

This means that girls' schools can exclude all boys (including those who identify as girls), and boys' schools can exclude all girls (including those who identify as boys). This is not direct discrimination based on gender reassignment.

There is no provision in law for a school's admission to be based on "gender identity" rather than sex.

Single-sex schools are allowed to admit the occasional child of the opposite sex but they are not obliged to. Using this provision to admit a gender-questioning child of the opposite sex is unlikely to be in their best interests, as it would be an extreme social transition that might prevent the child exploring their identity as they grow older.

4.1.2 Including the same sex

A single-sex school should not exclude a pupil of the appropriate sex because they have declared a transgender identity. This would be direct gender-reassignment discrimination. The child remains their actual sex and can be included in a single-sex school.

For example, members of the Girls' Day School Trust "seek to provide a supportive environment for students who are transitioning or exploring their gender identity", but still call themselves girls' schools and will not admit male children.

Equality Act 2010, schedule 11, part1

Equality and Human Rights Commission (2022). *What Equality Law means for you as an education provider in Wales*



Sex Matters (2021): *Clear rules and girls' schools*

5 Administration

Schools are obliged to protect the health, safety and welfare of all pupils and to ensure equality of opportunity.

The legal meaning of sex is the same as the ordinary meaning: male or female. Recent court cases and the Equality and Human Rights Commission (EHRC) has reiterated this. There is no need for complicated legal definitions or case law to understand the basic facts of life.

Some children are born with disorders of sexual development (sometimes called “intersex” conditions) which can affect their anatomy, but this is a private medical matter. These variations do not change the definition of the two sexes.

Equality and Human Rights Commission (2022): *Separate and single sex service providers: a guide on the Equality Act sex and gender reassignment provisions*

5.1 Bullying

Schools should make clear that everyone is included and valued. But an equality or anti-bullying policy that protects “gender identities” may inadvertently:

- put children at risk
- undermine safeguarding
- isolate children from their parents
- make it harder to assess and act on risks that a pupil may face or pose to others.

5.2 Name and pronoun changes

Social transitioning (such changing name and pronouns) is a significant intervention, as the interim report of the Cass Review highlights (see section 3, **Legal principles**). Schools should not attempt to diagnose mental health problems, but should consider signs of mental distress and work with parents, and local authorities where appropriate, following their safeguarding policy.

Schools should therefore not use a name or pronoun for a child that they keep secret from parents. Any concerns should be



Cass Review (2022): *Independent review of gender identity services for children and young people: interim report*

discussed with parents, with exceptions made only in line with normal safeguarding practices.

Not applying the normal standard of safeguarding to children who identify as trans is discrimination because of gender reassignment.

5.2.1 Name changes

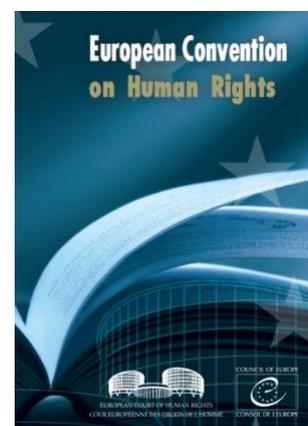
- If a child changes their name legally, the school should use the new name.
- If some pupils are allowed to change their names informally, then all pupils should be (within reasonable limits, such as that children cannot change names again and again).
- Children should not be limited to names associated with their sex.
- Changing a child's name does not mean that their sex has changed.

5.2.2 Pronoun changes

Staff and pupils should treat each other with kindness and respect, which includes not imposing counter-intuitive or dishonest language on others.

- Children should not be asked to lie about or keep secrets about sex.
- Imposing “preferred pronouns” on teachers or pupils denies their freedom of expression.
- No child should be admonished or disciplined for using ordinary sex-based pronouns for others.

Schools should respect the freedom of speech, religion and conscience of all pupils, including those with special educational needs and disabilities that make it hard to comply with counter-intuitive social rules.



European Convention of Human Rights, Articles 9 and 10

See for example *Lee vs Ashers* (2018)

5.3 Relatives

A child with a relative who identifies as transgender should not face bullying, and schools should deal sensitively with this. But

a child may have their own views about a parent or sibling's transition.

A school should not enforce the view that "trans women are women", since a child may continue to view their transitioning father as a man, or mother as a woman, and the child is entitled to their own perception and beliefs.

Excluding a child because their relative is transgender would be unlawful.

5.4 Record-keeping

Avoid "gender" as a euphemism for "sex" in equality policies and record-keeping, as it is confusing. Sex is a protected characteristic in the Equality Act and is recorded on birth certificates.

Schools should be clear that they record the sex (male or female) of all pupils. This is essential for protecting the health and welfare of all children, and for monitoring discrimination.

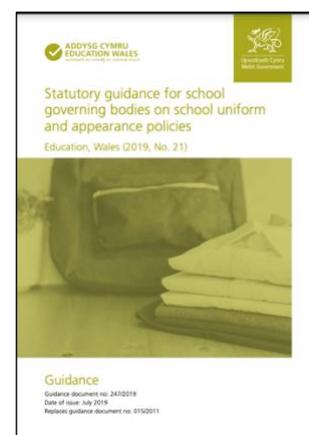
5.5 Uniform

Consider your obligations not to discriminate unlawfully (either directly or indirectly).

It is good practice not to have different rules about uniform, hairstyles, jewellery or make-up based on sex. These are often based on tradition and do not meet a legitimate aim.

There are exceptions: a girl who has reached puberty could not just wear swimming trunks with no top. But a uniform policy could allow children of either sex to wear trunks with a rash vest, to accommodate any child who prefers more coverage.

Dances, proms or other social events should not have sex-based rules about what girls or boys can wear (or expectations about who they partner).



Education Wales (2019):
Statutory guidance for school governing bodies on school uniform and appearance policy

6 Safeguarding

Schools must ensure that all the children and young people in their care are kept safe from harm.

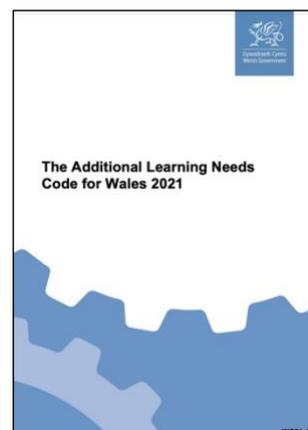
For children with complex needs, schools should collaborate with parents on any decisions, in line with the school's safeguarding policy. The Welsh Government's *The Additional Learning Needs Code for Wales 2021* states that:

A person exercising functions under the Act which relate to an individual child or young person **must** [footnote: section 6 of the Act] have regard to –

(a) the views, wishes and feelings of the child and the child's parent or the young person,

(b) the importance of the child and the child's parent or the young person participating as fully as possible in decisions relating to the exercise of the function concerned, and

(c) the importance of the child and the child's parent or young person being provided with the information and support necessary to enable participation in those decisions.



Welsh Government (2021):
*The Additional Learning
Needs Code for Wales 2021*

6.1 Gender-questioning pupils

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 protected under equality law against discrimination based on:

- their (biological) sex
- the protected characteristic of “gender reassignment”.

“Gender identity” is not a protected characteristic. It should not be used in equality policies in place of sex or gender reassignment, nor should a school agree to affirm a child's view that their declared gender identity is their sex.

Avoid actions that might entrench any identification at an early age, or risk discrimination or harm to other children.

You should take a do-no-harm approach centred on child welfare, and ensure that gender-questioning children are:

- fully included and supported in education
- protected from bullying
- covered by normal safeguarding procedures
- able to change their minds.

Schools must consider the best interests of both the gender-questioning child and their peers, taking into account that each cohort of children will grow up together.

6.1.1 Expectations

Schools should not agree to treat any child as if they were the opposite sex. This risks locking a child into an extreme form of social transition (see section 3, **Legal principles**).

Schools should teach pupils about consent and support good relations between people with different protected characteristics.

You should make clear to any child who identifies as transgender, and their family, that it is not an affront to their humanity or existence to:

- distinguish between biological sex and feelings of gender identity
- enable people of the opposite sex to maintain their boundaries and bodily privacy
- set school rules relating to sex that apply to everyone, without individual negotiation.

6.1.2 Information-sharing

Schools' training, culture and policies should not inadvertently discriminate against gender-questioning children by weakening risk assessment and safeguarding. For example, a child who tells a teacher that they are binding their breasts, or that they feel their body is "wrong" after talking to strangers online, is disclosing a safeguarding risk.

Education professionals can legally share information without consent if they are unable to get it or cannot reasonably be expected to. Nothing should get in the way of safeguarding.

6.1.3 Keeping sex a secret

There are no circumstances in which a school has a legal obligation to keep a child's sex secret from teachers, other pupils, or anyone who has responsibility for that child's health, safety or welfare.

Secrecy about a child's sex:

- isolates the child from peers and other sources of support
- may lead the child to believe that others who discovered their sex would wish them harm
- puts pressure on children as puberty approaches to take drastic physical measures such as breast-binding or seeking unregulated hormones online.

Secrecy about biological sex also puts children at risk of grooming. The NSPCC says:

“Groomers might also try and isolate children from their friends and family, making them feel dependent on them and giving the groomer power and control over them. They might use blackmail to make a child feel guilt and shame or introduce the idea of ‘secrets’ to control, frighten and intimidate.”

NSPCC (National Society for the Prevention of Cruelty to Children): *Types of grooming*

6.2 Involving pupils in decisions

Schools should not expect pupils to help develop safeguarding policies or be involved in making decisions that might reduce their privacy or increase the risk of sexual harassment.

Calls for “inclusion” or “against bigotry” should not be used to pressure children into sharing toilets, changing rooms or sleeping accommodation with members of the opposite sex. 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.

Remember that 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.

Everyone in a school should understand that all pupils are welcome and included, but that it is not “transphobic” to recognise that everyone is either male or female, and that sex does not change no matter how a person identifies. Being clear about this is essential for equality, safeguarding, sex and relationships education, and good relations.



Photo by CDC at pexels.com

7 Facilities

The Equality Act permits separate-sex services to meet legitimate aims such as privacy and dignity. Recent EHRC guidance makes clear that these exceptions relate to biological sex, not gender identity.

Schools require clear rules and policies, not negotiation with individual children. That a child wants to use facilities intended for those of the opposite sex is not sufficient reason to allow them to do so, since they would intrude on the privacy of other children. Allowing some male pupils to change and shower in female facilities, or vice versa, undermine the aims of sex-separated facilities.

Make it clear that gender-questioning children must be welcomed in facilities for children of their sex. A boy who wears a dress to school, or a girl who chooses a boy's name, should not be teased or bullied in the toilet facilities, changing room, or sleeping quarters shared with other children of their sex.

If a gender-distressed child feels unsafe in the appropriate facilities, single-occupancy unisex facilities, where feasible, would be an appropriate alternative for them and for other children who need extra privacy.

It would not be appropriate to allow gender-questioning children to use the facilities for the opposite sex.

Equality and Human Rights Commission (2022): *Separate and single sex service providers: a guide on the Equality Act sex and gender reassignment provisions*

7.1 Toilets and changing rooms

School toilets in Wales are covered by the Education (School Premises) 1999 regulations, which clearly state:

“Except as provided in regulation 4(3), washrooms for male and female pupils who have attained the age of 8 years shall be separate.”

The Education (School Premises) Regulations 1999

Regulation 4 (3) refers to the provision of facilities for disabled staff and pupils.

There is no ambiguity in the Welsh regulations: schools must provide separate male and female toilets for pupils over the age of eight.

Some schools in Wales, however, have implemented mixed-sex toilets, in breach of the legislation.

If you provide **only** separate-sex communal facilities, this could constitute indirect discrimination against a pupil experiencing gender distress, who may be covered by the characteristics of “gender reassignment” or disability protected by the Equality Act.

If a child is severely distressed by having to change with other children of their own sex, you might be able to arrange for them to change at a different time or, for an offsite sports event, to change at home. The EHRC suggests:

“A suitable alternative might be to allow the pupil to use private changing facilities, such as the staff changing room or another suitable space.”

Unisex accessible toilets and changing rooms can be used as gender-neutral facilities (and severe gender dysphoria may meet the criteria for a disability). But you should ensure that there is sufficient overall capacity and that there is no negative impact on other pupils who need these facilities.

7.2 Sleeping accommodation

The Equality Act permits schools to arrange single-sex communal accommodation (including linked facilities such as toilets and showers) for reasons of privacy, for example on school trips or in boarding schools.

It is not appropriate to put children of the opposite sex in single-sex communal accommodation, since the accommodation would then be mixed-sex. Gender-questioning children should not be made to feel unsafe or unwelcome sharing accommodation with children of the same sex as them, but they might feel more comfortable in a single room.

Any teacher organising a trip away will also have to consider histories of bullying, disability and special needs, behavioural and other vulnerabilities for all children when allocating sleeping arrangements.

Schools should not breach their policies on single-sex accommodation or risk assessment for sleep-away trips just because gender-questioning children are involved.

7.3 Consent

It is not appropriate to compel girls to accept male children in spaces that are designated female-only, and tell the girls who feel uncomfortable to use a separate facility, as has been claimed in some schools guidance.

Schools must teach children and young people about consent – saying yes or doing things because you choose to, not because someone is pressuring you to.

All pupils should understand that they have a right to privacy from the opposite sex when changing, washing or sleeping. They should not be made to feel that insisting on such privacy is unkind, or that to be inclusive or “celebrate difference” they should ignore their own discomfort and allow people to cross their boundaries.

You should make sure that children who identify as trans or non-binary understand that they have no right to cross other children’s boundaries by using facilities for the opposite sex.

7.4 Sexual harassment

The Equality Act defines sexual harassment as unwanted behaviour of a sexual nature which:

- violates your dignity
- makes you feel intimidated, degraded or humiliated
- creates a hostile or offensive environment.

Allowing a male teenager to use the girls' toilets, showers or changing facilities could fall under this definition, even if that is not the intention.



8 Teaching

Safety, fairness and bodily privacy justify sex-based rules in toilets, sports, changing facilities and overnight accommodation.

But treating boys and girls differently based on gender stereotypes or tradition is likely to result in sex discrimination.

Explicitly highlighting sex, or dividing children by sex, may also cause distress to gender-questioning children, and may result in indirect discrimination based on the protected characteristic of “gender reassignment”.

The *Curriculum for Wales summary of legislation* states:

“Under the provisions of the Equality Act, schools must not unlawfully discriminate against learners on the basis of their age, sex, race, disability, religion or belief, gender reassignment, pregnancy or maternity, marriage or civil partnership, or sexual orientation. Schools must also make reasonable adjustments to alleviate disadvantage.”



Welsh Government (2020):
*Curriculum for Wales:
summary of legislation –
Relationships and sexuality
education*

8.1 Stereotyping girls and boys

No child should feel that they must act like a stereotypical girl or boy to fit in at school.

Schools should avoid traditional distinctions between boys and girls when determining the subjects that pupils study, the games they play, the clothes they wear and the names they use.

In general, children should neither gain privileges or status, nor suffer stigma or punishment, for conforming or not conforming with stereotypes associated with their sex or the opposite sex.

If an activity, behaviour, hairstyle or item of jewellery or clothing is acceptable for a girl, it should generally be acceptable for a boy, and vice versa. If a girl enrolls in a school wearing trousers and with short hair, or a boy wants to wear a school-uniform

skirt and grow his hair long, this should not be remarked upon, and nobody should be asking “what pronouns to use”.

8.2 Dividing girls and boys

Schools should reduce situations where children’s sex is emphasised, for example:

- girl-boy seating
- calling young people Miss Smith and Master Brown
- requiring girls and boys to play separate roles at school events
- indicating a child’s sex on their drawer or hanger, or on an exam schedule.

Mix the sexes but do not, for example, demand boy-girl pairs in science or split the class into boy-girl teams for quizzes, as this encourages stereotypes about boys and girls.

8.3 Gender non-conforming pupils

Schools should not discriminate against children because they are gender distressed, gender questioning or gender non-conforming.

- A child should not be barred from being a prefect or going on a school trip because they identify as trans.
- A child who identifies as non-binary should not be treated less favourably in class, for example by not being called on.
- A boy wearing a dress should not be excluded from the school photograph if the rules allow pupils to wear dresses.
- A gender-questioning child should not receive less robust safeguarding protection than other children. For example, keeping a name change secret from a child’s parents would be a breach of safeguarding best practice.

Children who identify as “trans girls” are boys with particular needs. Children who identify as “trans boys” are girls with particular needs.

8.4 Age-appropriate content

The information that all children receive about sex should be accurate and age-appropriate.

The RSE Code states:

“The Act requires that the RSE schools provide must be developmentally appropriate for learners. This means schools and settings must take account of a range of factors including the learner’s age; knowledge and maturity; any additional learning needs and anticipating their physiological and emotional development. RSE must be developmentally appropriate for each learner, meaning that learners’ needs of similar ages may differ.”

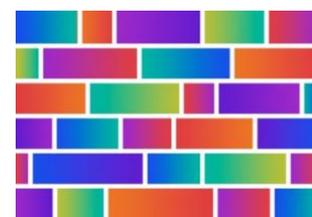
In all schools and settings teaching should reflect the law (including the Equality Act 2010) as it applies to relationships, so that learners clearly understand what the law allows and does not allow, and the wider legal implications of decisions they may make.

This does not mean that the Equality Act itself needs to be taught, or that protected characteristics such as sexual orientation and gender reassignment need to be introduced in ways that are not age-appropriate.

Some schools have been encouraged to teach children that gender identity overrides sex. Several local authorities have withdrawn such guidance when challenged.

The Cass Review’s interim report highlights concerns about:

- the influence of social media
- the need to consider the information and support that children and young people access from various sources
- the importance of showing children and young people a range of different narratives, experiences and outcomes
- the need for open, non-judgmental discussions about differing perspectives.



Welsh Government (2020).
Cross-cutting themes for designing your curriculum:
RSE Code



Cass Review (2022):
Independent review of gender identity services for children and young people:

8.5 Beliefs

Schools must not discriminate against pupils because of their beliefs or those of their families.

The *Curriculum for Wales: summary of legislation* states:

“In all schools and settings, RSE must be objective, critical, and pluralistic as to its content and manner of teaching (see the case of ‘Dojan and Others v. Germany 2011 application no. 319/08’). By pluralistic we mean that that where questions of values are concerned, schools and settings must provide a range of views on a given subject, commonly held within society. This also means providing a range of factual information on RSE issues. In all schools, where they explore specific beliefs or views, this must include a range of other faith and non-religious views on the issue.”



Welsh Government (2020):
*Curriculum for Wales:
summary of legislation –
Relationships and sexuality
education*

*Dojan and others v Germany
(2011)*

Some people believe in “gender identity” as a person’s innate sense of what sex they are, and that gender identity is more important than biological sex. They may manifest their beliefs by referring to people as “assigned male at birth” or “assigned female at birth”, and use the term “cis” for those they think have a gender identity that matches their sex. Remember that not everyone shares such beliefs or uses such language.

The courts have found that the belief that there are two sexes and that sex is immutable is protected under the Equality Act, and is not inherently bigoted or transphobic – indeed, it reflects English and Welsh law.

*Forstater v CGDE and others
(2021).*

Forcing pupils or staff to deny the material reality of sex (for example, by asking them to agree with the statement that “trans women are women” or labelling their refusal to do so “transphobic”) is likely to be discrimination. It will also make it impossible to set clear school policies based on sex.

That sex in humans is binary and immutable is a fact that should be taught in science and relationships.

Neither your curriculum nor your policies should enforce particular beliefs about the idea of “gender identity”.

Although some children may say they feel they have a “gender identity”, nobody should assume that all children feel like this. Children’s understanding of the difference between biological sex and gendered appearance develops with age. In law and material reality, a girl is a girl because she is female, not because she is assumed to feel a gender identity, or because she conforms to gender stereotypes about clothing or interests.

8.6 Sex and relationships

When sex is covered in science or relationships and sexuality education (RSE) lessons, schools should avoid materials from external groups that undermine factual, age-appropriate teaching about sex with ideas about gender identity, or promote changes in the law.

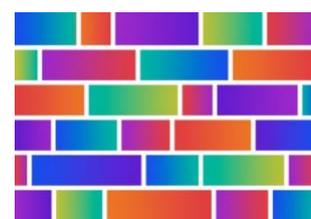
The RSE Code states:

“The phases have been designed to give practitioners an understanding of what is likely to be developmentally appropriate. For example, in phase 1 and 2, learners will be taught about the principles of general consent as pre-requisites for learning about sexual consent at the developmentally appropriate time in phase 3. In practice, this means learners in phases one and two developing an awareness of asking for permission to share materials, for example toys; or learning about respecting personal boundaries.”

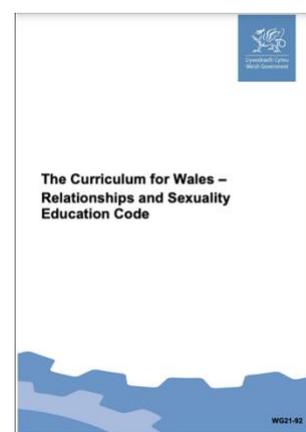
8.6.1 Phases 1 to 3

Human reproduction is covered by Relationships and sexuality education (RSE), which is compulsory.

The Welsh Government has issued statutory guidance on RSE. Included in what the learning outcomes are –



Welsh Government (2020).
Cross-cutting themes for designing your curriculum:
RSE Code



Welsh Government (2021).
The Curriculum for Wales – Relationships and Sexuality Education Code (WG21-92)

For Phase 1 (from age three):

“Ability to act with kindness, empathy and compassion in interactions with others immediate to them including family, friendship and peers relationships.”

and

“Recognising learners’ rights to be treated fairly, kindly and with respect.”

For Phase 2 (from age seven):

“Knowledge and understanding of how reproductive organs develop in a human body. This includes understanding fertility and the processes of reproduction, including what supports menstrual health and well-being. Recognising the process of pregnancy and birth.”

For Phase 3 (from age eleven):

“Understanding how the law and human rights secure freedoms around sex, gender and sexuality and how these can differ in other countries and over time.”

8.6.2 *Separating boys and girls for RSE lessons*

Schools can separate boys and girls for certain RSE lessons that discuss puberty. This is justified, as it allows children of both sexes to talk freely, without embarrassment, about their bodies.

To place a male child who identifies as female in the girls’ group (or vice versa) would be embarrassing for the girls and potentially upsetting for the male child. It would therefore be inappropriate. A male child experiencing gender distress should not be excluded from the boys’ lesson (or a female child from the girl’s lesson), but this should be discussed sensitively beforehand. They may need to be excused from group sessions and supported individually to access this part of the curriculum.

8.7 Sports

When assessing fairness and safety to determine whether sports should be mixed-sex or single-sex, schools must take into account both age and physical development. But it is **not** necessary to assess children individually.

Single-sex competitive sports are permitted by the Equality Act if the physical strength, stamina or physique of the average girl would put her at a disadvantage in competition with the average boy (or vice versa). For example, it would be legitimate to separate girls and boys for athletics, even in training, since boys' greater speed and strength is likely to damage girls' motivation.

Girls-only sport sessions may also be justified on health and safety grounds. For example, a 16-year-old boy playing contact rugby with girls, even in training, would pose a safety risk.

Sports programmes for one sex only are also permitted if they address a disadvantage, a different need or low participation by one group. For example, if your mixed football training is dominated by boys, it would be legitimate to also have a girls-only training session.

The Sports Councils Equality Group (composed of members of the five major sports councils) published *Guidance for Transgender Inclusion in Domestic Sport* in 2021, based on a review of research evidence. It found that:

“Categorisation within the sex binary is and remains the most useful and functional division relative to sporting performance. This categorisation acknowledges the broad-ranging and significant performance differences between the sexes. Hence, sports should retain sex categorisation, along with age and disability (and weight as appropriate) categories.”

Sports Councils Equality Group (2021): *Guidance for Transgender Inclusion in Domestic Sport*

8.7.2 Gender-questioning pupils

Gender-questioning pupils should not be discriminated against in participating in single-sex sport or PE lessons, or

representing the school in sporting competitions, with those of the **same sex** as them.

If you have decided that an activity should be separated by sex in order to ensure safety or fair competition, no further justification is required for excluding any male child, even one who identifies as a “trans girl”, from girls’ sport.

Including male children in girls’ sports on an individual basis is unfair on both the girls and the male child.

In primary school it may seem unproblematic, since male and female physiques do not differ much before puberty. But it is not a sustainable decision, since over time the male child will diverge from female peers.

The Sports Councils Equality Group found that case-by-case assessment:

- is unlikely to be practical or verifiable for entry into “gender-affected” sports (those where greater strength or stamina confer an advantage)
- lacks scientifically validated parameters of physical capacity or ability to allow males to identify into the female category safely or fairly
- may fall outside of the provisions of the Equality Act, which is based on average advantage, not individual advantage, and may be based on criteria which cannot be lawfully justified.

[Sports Councils Equality Group \(2021\): Guidance for Transgender Inclusion in Domestic Sport](#)



[Photo by Pixaby at pexels.com](#)

9 References

9.1 Legislation and guidance

- Equality Act 2010 at legislation.gov.uk
- Education Act 2002 and Education Act 1996
- Education (School Premises) Regulations 1999

Safeguarding framework

- Education Wales (2022). *Keeping Learners Safe: The role of local authorities, governing bodies and proprietors of independent schools under the Education Act 2002*
- HM Government (2018). *Working together to safeguard children, a guide to inter-agency working to safeguard and promote the welfare of children*

Welsh Government advice

- Welsh Government (2021). *The Curriculum for Wales: Relationships and Sexuality (RSE) Guidance and Code*

Official guidance for schools in Wales and England

- Department for Education (2014). *The Equality Act 2010 and schools, departmental advice for school leaders, school staff, governing bodies and local authorities*
- Department for Education (2018). *Gender separation in mixed schools*
- Equality and Human Rights Commission (2014). *What equality law means for you as an education provider: schools*
- Equality and Human Rights Commission (2022). *Separate and single-sex service providers: a guide on the Equality Act sex and gender reassignment provisions*

9.2 Other documents

- Sports Councils Equality Group (2021). *Guidance for transgender inclusion in domestic sport*
- The Cass Review (2022). *Independent review of gender identity services for children and young people: interim report*
- The case of *Miller v College of Policing*
- Employment Appeal Tribunal decision in the case of *Forstater v CGD*
- Legal opinion from Dan Squires QC (commissioned by the Good Law Project)
- Survey of teachers undertaken by YouGov for Sex Matters

10 Resources

Transgender Trend (third edition): *Supporting gender-diverse and trans identified children in school*

Transgender Trend: *Schools Guidance – Safeguarding concerns*

Safe Schools Alliance [factsheets](#) including:

- [Advice Note on Social Transitioning by Schools](#)
- [How to Complain to your Child's School](#)
- [Equality and Diversity 'Red Flags'](#)
- [Single Sex Toilets and Changing Facilities](#)
- [Sexism in Secondary Schools](#)

Appendix A: Terms used in the Equality Act 2010

Protected characteristics

Schools have legal obligations under the Equality Act not to discriminate against pupils because they have, or are perceived to have, or associate with someone who has, a protected characteristic. Everybody has some protected characteristics such as age, race and sex. The protected characteristics around sex and gender likely to be relevant to schools are:

- **Sex.** Everyone is either male or female. There is no provision for a person under 18 to change their legal sex. As the EHRC states in its 2022 guidance:

“Under the Equality Act 2010, ‘sex’ is understood as binary, being a man or a woman. For the purposes of the Act, a person’s legal sex is their biological sex as recorded on their birth certificate.”¹
- **Gender reassignment.** People who propose to transition to live as if they were a member of the opposite sex have the protected characteristic of gender reassignment. It is not clear whether a gender-questioning child can be said to have meaningfully proposed to make such a life-changing decision, but children should not be discriminated against for being perceived to have made such a decision, or for considering it.
- **Disability.** Children experiencing severe gender dysphoria (a state of anxiety, discomfort or distress because of mismatch between their perceived identity and their sex) may also be covered by the protected characteristic of disability if anxiety prevents them undertaking normal day-to-day activities, such as using school toilets or changing rooms. Children presenting with gender distress may also have other special educational needs and disabilities (SEND) that are relevant.
- **Sexual orientation.** This is defined by the Equality Act as meaning orientation towards persons of the same sex, persons of the opposite sex, or persons of either sex. Children who have not yet understood and experienced their sexuality as mature adults may think that being gender non-conforming or feeling attraction to the same sex means that they have an opposite-sex identity.²
- **Belief.** Beliefs about sex and gender identity are covered by the protected characteristic of “religious or philosophical belief”. It has been confirmed by the Employment Appeal Tribunal that the Equality Act 2010 provides protection against

¹ Equality and Human Rights Commission (2022). *What the Equality Act says about the protected characteristics of sex and gender.*

² 4thWaveNow (2016). *The surgical suite: Modern-day closet for today’s teen lesbian.*

discrimination and harassment of people with the belief that there are two sexes and people cannot change sex.³

Proportionate means of achieving a legitimate aim

This is a form of words used throughout the Equality Act. It means that a “policy, criterion or practice” can be objectively justified, even if it results in detriment to a group who share a protected characteristic.

This is probably the most misunderstood aspect of the Equality Act in relation to sex and gender. For example, the charity Mermaids, which has advised many schools and local authorities, states: “The term ‘a proportionate means of achieving a legitimate aim’ is not a blanket rule and cannot be applied as a matter of policy. It is intended solely in respect to the impact of one individual by another individual in that specific situation at any given moment in time.” This is a misinterpretation of the Equality Act. The Equality and Human Rights Commission says that to prove objective justification:

- the aim must be a real, objective consideration, and not in itself discriminatory (for example, ensuring the health and safety of others would be a legitimate aim)
- the importance of the aim must outweigh any indirect discriminatory effects
- there must be no alternative measures available that would meet the aim without too much difficulty and would avoid such a discriminatory effect: if proportionate alternative steps could have been taken, there is unlikely to be a good reason for the policy.

However, a school should consider its overall policy in relation to children with all different kinds of vulnerabilities and special needs.

³ *Forstater v CGDE and others* [2021] UKEAT/0105/20.

Appendix B: Assessing Dan Squires QC’s legal opinion

In March 2022 the Good Law Project published legal advice by Dan Squires QC which considered many of the same questions as this guide, in relation to the Equality Act 2010 (he did not consider safeguarding or child development).

The conclusions of this limited analysis concur with much of our guidance, although he disagrees with us on one important point – how simple and straightforward it should be to apply and communicate single-sex rules to protect and meet the needs of all children.

Question	Sex Matters / Transgender Trend answer	Dan Squires’ answer
Should schools allow children to change their names?	Yes, if that is the same rule for all (including, for example, telling parents)	Yes
Should schools enforce pronouns and record children as the opposite sex?	No	No comment
What should schools do about uniform?	Offer flexible options for all	Offer flexible options for all
What should schools do about single-sex changing rooms, showers, toilets?	Have clear rules about single-sex spaces and consider offering a unisex option in addition	Have clear rules that can be justified
What should schools do about single-sex sports?	Have clear rules and ensure that gender-questioning children are not excluded or bullied from activities for their own sex	Have clear rules that can be justified
Should single-sex schools exclude children who	No – they have not changed sex	No

identify as the opposite gender?		
Can single-sex schools have clear entry criteria which exclude all children of the opposite sex?	Yes	Yes, if you have clear rules that can be justified

For a longer analysis of the legal opinion, see Sex Matters (2021). [Independent counsel agrees with us.](#)

Appendix C: Model policy for a school

[Download as a separate unbranded editable Word document.](#)

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, that 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/volunteer tell 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).

About Sex Matters and Transgender Trend

This guide has been developed by **Sex Matters**, an organisation that campaigns and advocates for clarity about sex in law, policy and language, with **Transgender Trend**, which promotes evidence and analysis in the way that institutions support children with gender distress.

Neither organisation has any religious or political affiliation. The production of this guide was self-funded through pro-bono expert contributions and individual donations.

Sex Matters

Sex Matters is a UK-based not-for-profit organisation. We have a singular mission: to re-establish that sex matters in rules, laws, policies, language and culture in order to protect everybody's human rights. We campaign, advocate and produce resources to promote clarity about sex in law, policy and institutions.

Our website is at sex-matters.org and you can contact us at info@sex-matters.org

Our priorities

- **Establish clarity about the law.** Sex is a protected characteristic, and the Equality Act 2010 protects single-sex services. Clear guidance for organisations is needed.
- **Support people to speak up.** It should not take courage to say that sex is real, binary, immutable and important – but right now it does.
- **Empower organisations.** We work to empower organisations to adopt sound, fair and transparent policies that reflect material reality and protect everybody's human rights.

Transgender Trend

Transgender Trend is the leading UK organisation calling for an evidence-based approach to the treatment of gender dysphoria in children and young people, and for factual teaching about sex and biology in schools. We are also concerned about legislation which places transgender rights above the right to safety for girls and young women in public toilets and changing rooms, along with fairness for girls in sport.

Our team includes teachers and safeguarding professionals, academics and parents. Founder and Director Stephanie Davies-Arai was shortlisted for the John Maddox Prize 2018 for the guide *Supporting gender diverse and trans-identified students in schools*. Stephanie's reputation and work in these fields was acknowledged when she was granted

permission to intervene in the ground-breaking judicial review *Bell v Tavistock* in October 2020.

Our website www.transgendertrend.com is consulted worldwide by governments, universities and other professional bodies. Our resources for schools are consistent with equality law and best practice for helping to support trans identified and gender non-conforming young people in schools.

Feedback

You can send comments to info@sex-matters.org or info@transgendertrend.com

This work is licensed under the Creative Commons Attribution 4.0 International License.

Sex Matters is a not-for-profit company registered by guarantee.

Company number: 12974690

Registered office: 63/66 Hatton Garden, Fifth Floor Suite 23, London, EC1N 8LE

Published 10th March 2023