

Response to Department for Education
consultation:

**Further education residential accommodation:
national minimum standards**

April 2024

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Overview

Sex Matters has submitted a response to the Department for Education's consultation on the *Further Education Residential Accommodation Standards: national minimum standards* ("the Standards").¹

This consultation aims to align the standards with the position on residential accommodation being consulted upon in the draft *Gender Questioning Children: non-statutory guidance for schools and colleges in England*.

The standards apply to 16 to 19 academies, further education colleges and sixth-form colleges that have residential accommodation.² They set out the minimum standard both of accommodation that should be provided, and of safeguarding provision that should be put in place for students under the age of 18. Ofsted takes the standards into account in deciding whether or not the governing body or proprietor of a college has complied with its duty to safeguard and promote the welfare of children.

Colleges and their staff may use them in setting up provision and self-assessing their services, and for the induction and training of staff. They also provide a guide for parents, carers and students as to what they should expect from a college.

The standards provide (at paragraph 5.1) that suitable sleeping accommodation is provided for residential students.

- It is well organised and provides appropriate privacy for residential students.
- Where hazards are identified, due to the nature of the accommodation or the needs of the students, risk assessments are undertaken and findings acted upon to reduce risk for all residential students.
- **Sleeping accommodation for male students is separate from sleeping accommodation for female students.**
- All accommodation provides appropriate privacy for residential students including where students are required to share bedrooms.

It says that separate accommodation may consist of individual rooms within the same corridor or block, where other arrangements are impractical.

¹ Department for Education (2024). *Further Education Residential Accommodation: national minimum standards Government consultation: Launch date 09 February 2024*.

² Department for Education (2018). *Further education residential accommodation: national minimum standards*.

Current paragraph 5.2

Where a student in residential accommodation identifies as transgender or gender questioning, suitable sleeping accommodation and living arrangements are made, which provide appropriate privacy for all students.

Proposed paragraph 5.2

Where a gender questioning student in residential accommodation asks to use accommodation used by the opposite sex, suitable sleeping accommodation and living arrangements are made which take into account appropriate safeguarding, comfort, privacy requirements and the dignity of all students. A situation where a student shares communal sleeping accommodation with students of the opposite legal sex would not be appropriate and colleges should make a separate room available to the gender questioning student. Where no separate room is available other arrangements would be needed, as different legal sexes should not be sharing sleeping accommodation; nor should they be sharing bathroom facilities unless individual lockable toilets and showers within a communal bathroom are available.

Our response

The proposed paragraph is not clear. As paragraph 5.1 states “Sleeping accommodation for male students is separate from sleeping accommodation for female students”. A student who is gender questioning has not changed sex.

The guidance should not suggest that it would be appropriate for a gender-questioning boy to ask to sleep in the girls’ accommodation (or vice versa), any more than it would be appropriate for a child with any other protected characteristic to ask to share sleeping accommodation with the opposite sex.

Nor should the standard suggest that “other arrangements” are needed for a gender-questioning or trans-identifying child. They should not be bullied or harassed in using accommodation provided that is suitable for a child of their sex.

The issue here is not about a newly invented term “legal sex”: it concerns a child’s sex.

Similarly, there is no need to bring in the distinction of “communal sleeping accommodation”, which is not mentioned elsewhere in the standards. “Communal accommodation” in the Equality Act relates to “residential accommodation which includes shared sleeping accommodation which should only be used by members of one sex for privacy reasons” (note 998). Thus it includes all accommodation provided by a college under Section 5.1,

whether bedrooms are shared or not. It would not be appropriate to put a boy into girls' accommodation or vice versa, whether this is a shared bedroom, dormitory, corridor or block.

Suggested clearer wording

Where a student in residential accommodation identifies as transgender or gender-questioning, they should continue to sleep in accommodation (and use washing and other facilities) suitable for a student of their sex. Requests for additional privacy (such as a single room suitable for a student of that sex) may be considered.

Current footnote 11

As far as possible, transgender or gender-questioning students should be able to sleep in accommodation appropriate to their gender identity. The Equality Act 2010 does permit certain exceptions from the prohibition on discrimination against trans people in relation to communal accommodation. The exception allows communal accommodation to be restricted to one sex only for privacy reasons, as long as the accommodation is managed as fairly as possible for both males and females.

For further guidance see:

<https://www.legislation.gov.uk/ukpga/2010/15/schedule/23/crossheading/communal-accommodation>

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315587/Equality_ActAdvice_Final.pdf [Link broken: similar to <https://www.gov.uk/guidance/equality-act-2010-guidance?>] or

<https://www.intercomtrust.org.uk/item/55-schools-transgender-guidance-july-2015> [Link broken: see <https://sex-matters.org/wp-content/uploads/2023/02/transgender-policy-effective-from-01-jan-2023.pdf>]

Proposed footnote 11 for paragraph 5.2

When considering accommodation requirements for gender questioning students, colleges must take all the relevant protected characteristics into account when making their decision. There may be an instance where colleges will need to find a balance between the rights of gender questioning students

and those of others with a different protected characteristic if there are limited individual rooms available. Colleges will need to consider the impact of their policy or decision on all those affected and ensuring that, in each case, any particular disadvantage suffered by those sharing a protected characteristic can be objectively justified and is proportionate. For further guidance see:

<https://www.legislation.gov.uk/ukpga/2010/15/schedule/23/crossheading/communal-accommodation>

https://consult.education.gov.uk/equalities-political-impartiality-anti-bullyingteam/gender-questioning-children-proposedguidance/supporting_documents/Gender%20Questioning%20Children%20%20nonstatutory%20guidance.pdf

[Link broken: see <https://sex-matters.org/wp-content/uploads/2024/04/Gender-Questioning-Children-non-statutory-guidance.pdf>]

Our response

It is important to remind colleges that when considering accommodation requirements for gender-questioning students, they must not forget that these students have not changed sex.

The Equality Act 2010 does not permit discrimination on the basis of “gender reassignment”, therefore a student who may have this protected characteristic should in general be accommodated in the same way as another student of the same sex.

Schedule 23 Paragraph 3 provides that a person does not contravene this Act, so far as relating to sex discrimination or gender reassignment discrimination, only because of anything done in relation to the admission of persons to communal accommodation if this is a proportionate means of achieving a legitimate aim.

A college should be careful to recognise that they should not place a student in accommodation that is different from the general accommodation provided as suitable for members of the same sex unless there they have identified a legitimate aim. They should always make sure any alternative accommodation is suitable.

In an FE college there may occasionally be students that have changed the sex recorded on their birth certificate by means of a gender recognition certificate. Their actual sex has not changed.

As Section 5.1 states “ Where hazards are identified, due to the nature of the accommodation or the needs of the students, risk assessments are undertaken and findings acted upon to reduce risk for all residential students. “ Any such risk assessment should consider the actual sex of all students.

Proposed wording

When considering accommodation requirements for gender-questioning students, colleges must not forget that those students have not changed sex and should not in general be excluded from accommodation provided for students of their sex. They should certainly not be placed in accommodation provided for members of the opposite sex.

A gender-questioning student might request a single room suitable for a student of their sex. If these are limited, the college will need to allocate rooms considering the impact of their policy or decision on all those affected and taking into account disadvantages related to any relevant protected characteristic, so that the decision can be objectively justified and is proportionate.

In rare situations a student may have changed the sex recorded on their birth certificate by means of a gender recognition certificate. Their actual sex has not changed for the purpose of considering hazards and risks, and the rights of other students.

Further changes suggested for clarity

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“In carrying out the inspection, part of the role of the inspectorate is to determine the extent to which the policies and procedures of the college promote and safeguard the welfare of all residential students. Inspectors will make judgements based on the adequacy or suitability for the specific needs of the residential students, having regard to their numbers, **gender** and any special requirements they may have.”

This should say “sex”.

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The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender), sexual orientation.

Delete (gender).