



## **The de Ferrers Trust**

### **Gender recognition and the rights of transgender Staff & Students**

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Approval needed by:	CEO
Consultation required	n/a
Adopted (date):	24 March 2021
Date of next review:	As and when required



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# **Gender recognition and the rights of transgender Staff & Students**

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## **1.Introduction**

The Equality Act 2010 places a set of statutory duties on us as an organisation, but our ambition stretches much further. The de Ferrers Trust shared vision is where everyone is included, able to make a contribution and achieve their potential. Our understanding of inclusion means we are committed to working in an anti-oppressive manner; recognising, welcoming and honouring diversity, working to ensure that all our staff, students, and volunteers feel included and enjoy the opportunity to experience wholeness and fullness of life.

At The de Ferrers Trust we recognise that gender identity, fluidity and transition are complex issues; linked closely with a sense of self identity, well-being, worth and value. Within our Academies we will support all staff and students who are exploring their gender identity, are transitioning or have transitioned. Our goal is not only to support them and their families, but wherever possible to adapt our provision, as well as to ensure that the issues of gender identity and sexuality are addressed within the curriculum.

At all levels of the organisation, within our Academies and Community Teams we aim to be inclusive of all. This means actively challenging negative or oppressive attitudes and behaviours, as well as ensuring marginalised groups are listened to, have representation, and are involved in decision making.

## **2.What is this guidance about?**

### **In brief**

As a Trust we recognise that the issues around transgender identities are complex; linked closely with a sense of self-identity, well-being, worth and value. At the de Ferrers Trust, and specifically within our Academies it is our aim to support our transgender staff and students, supporting them and their families, and adapting where possible and appropriate our provision. This guidance explains what the legal requirements are in relation to transgender pupils and how they will be implemented within the wider de Ferrers family.

Gender reassignment is defined in the Equality Act as applying to anyone:

- Who is undergoing or has undergone gender reassignment, And of particular relevance to schools:
- Is proposing to undergo a process (or part of a process) of reassigning their sex by changing physiological or other attributes.

This definition means that in order to be protected under the Act, a transgender pupil will not necessarily have to be undertaking any medical procedures, but will be considering or taking steps to live in the gender they feel they identify more closely with.

### **In more detail**

In 2014, the Equality and Human Rights Commission (EHRC) published guidance on the Equality Act 2010 and how it applies to schools in England.

Across the de Ferrers Trust our academies are subject to safeguarding duties to protect pupil wellbeing and so have referenced included anti-bullying practice within our Child Protection & Safeguarding Policy; specifically naming homophobia, bi-phobic and transphobic bullying. Decisions on uniform, provisions for shared sanitary and changing facilities and mixed sport

are primarily made by our academies themselves, within the respective framework provided by the Trust.

The charity Stonewall, working with Cambridge University, published their School report in 2017, which surveyed the experiences of transgender children in British schools. Included amongst its findings were:

- Nearly two thirds (64%) of surveyed pupils reported experiencing transphobic bullying;
- One in three pupils in transition (33%) were not able to be known by their preferred name at school;
- Around three in five (58%) were not allowed to use the toilets they felt comfortable in;

Transgender identity is not a sexual orientation. The terms 'sex' and 'gender' are often used interchangeably in colloquial discourse, though they have distinct meanings. For this guidance, sex refers to the classification assigned at birth, based largely on external reproductive characteristics. Gender however refers to the social construct of an individual's identity and self-representation. This is not to diminish the varied, self-determined expressions of the young person but solely to facilitate the application of this guidance.

The de Ferrers Trust fully recognises its responsibilities to safeguarding its students and recognise their choices around gender identity. In this guidance, a 'child' means all children and young people under 18 years of age.

As the de Ferrers Trust we recognise that the issues around gender identity are complex; linked closely with a sense of self identity, well-being, worth and value. Within our Academies we will support all staff and students who are exploring questions around a transgender identity or entering into gender transition, as well as those who have transitioned. For a smaller number of pupils the decision to transition may be to avoid other issues in their life; again the Trust will support them and their family, and will accommodate transition as appropriate. Our goal is not only to support our students and their families, but wherever possible and appropriate, to adapt our provision as well as to ensure that the issues of gender identity and sexuality are addressed within the curriculum.

Topics involving gender identity can be complex and sensitive; Our academies will ensure that its policies and practices will not reinforce harmful stereotypes by assuming a student's gender based on their personality, interests or the clothes they wear. We also recognise that non-conformity to gender stereotypes should not be seen as synonymous with having a different gender identity or an implication that their body is 'wrong', nor should transgender children be expected to conform to gender stereotypes of their identified gender. We will ensure that all our staff and volunteers are educated when it comes to key issues, and we will seek to create a supportive environment for the individual needs of students and listen to them without judgement.

### **3. Who is this Guidance for?**

This guidance is for Academy leaders, and all Academy staff to follow when managing students who are transitioning. It will also inform our relationship with Local Authorities and parents.

### **4. Guidance Statement**

This guidance on gender recognition and the rights of pupils in transition is intended for use across the de Ferrers Trust Academies and is applicable to all Early Years, Primary, Secondary and 6th Form settings.

This guidance has been developed in line with the following key documents:

- The Equality Act 2010 and Schools, HM Government (2014)
- EHRC Technical Guidance for schools (2014)
- Working Together to Safeguard Children, July 2018, HM Government
- Gender recognition and the rights of transgender people - BRIEFING PAPER Number 08969, House of Commons 22 July 2020
- Keeping Children Safe in Education: Statutory Guidance for Schools and Colleges, updated September 2020, DfE

### **The requirements that apply to this guidance**

- The Equality Act 2010
- Data Protection Act 2018
- The Human Rights Act 1998
- The Gender Recognition Act 2004

## **5. Registration & Academy Records**

Under 13 years of age the registration of pupils who wish to identify as transgender will be under the instruction of the persons holding Parental Responsibility. If a parental request is made that the pupil be registered and known as their chosen, rather than birth name and gender then this request will be upheld.

Where conflict is determined between those who hold parental responsibility as to the 'correct' registration of their child, the permission of only 1 parent is required (if the parents are separated the view of the parent where the child is resident will be dominant) and the voice of the child will help determine the decision taken.

Where the child under 13 years requests a re-classification of gender identity, but the parents don't agree then the parent's instruction will be followed but support will be offered to the pupil. Where parental disagreement occurs, either between parents/carers or with the child's choice, support will be offered to the pupil and an assessment of any safeguarding needs will be made by the designated safeguarding lead.

Whilst for pupils 13 years -18 years old the rights of those holding parental responsibility supersede those of the child, the importance of supporting the teenager's right to self-expression needs to be considered. The Academy will work to offer support to both the pupil and parent/carer to attempt to achieve a compromise that meets both sets of needs acknowledging both legal rights, special educational need considerations, safeguarding implications and the impact on family dynamics.

A note should be made on previous records of the date the gender change was made. There is no requirement to retrospectively change student records. However any formal report written about the child should refer to their chosen name and gender identity but note previous designation where needed.

## **6. Names/Pronoun Change**

Gendered language can make some pupils feel excluded and reinforce stereotypes, thus if agreement is reached that a pupil's request to be known by their chosen gender identity then every attempt should be made to follow this request. The pupil should be referred to by their chosen pronoun and any communication with the parent/carer should be in this format. Care needs to be taken to avoid excluding those who do not see themselves in a binary definition

of male or female, and not to make assumptions about one's gender identity because of the way they appear.

From the date of change the pupil should be known by their chosen name. Mistakes may occur and an apology should be made if this happens. For those staff and pupils who struggle with the concept of a name change, they may find it helpful to think of the new name as a 'nickname', however, it is the legal right of the pupil and so compliance is expected even if the staff or pupil have moral, ethical or social objections. Changes should be made on sims from the agreed change date, with the birth name archived.

Where staff continually ignore the choices of the pupil and do not use their chosen name (so called 'dead naming') or pronoun ('misgendering'), then this should be discussed with the line manager which may include further diversity training being undertaken or other procedures being enacted under our various separate staffing procedures.

Refusing to use anyone's chosen name will be considered bullying. Any transphobic bullying should be dealt with immediately with appropriate sanctions applied to the bully, and support offered to the victim. Reporting of incident or bullying will be handled in the same way as any other incident, by the pupil to a trusted adult, and by staff via CPOMS.

A guide to language and definitions can be found on the Gender Identity Research & Education Society (GIREs) website:

<https://www.gires.org.uk/wp-content/uploads/2019/05/Terminology-May-2019.pdf>

## **7. Uniform**

The de Ferrers trust promotes a gender neutral uniform approach. Specific 'Boy's' or 'Girls' uniform should not exist – rather an academy uniform is promoted. This applies to the main academy uniform as well as any requirements around sports kits.

This not only supports those pupils who identify within a transgender identity, but those students who from a social or faith perspective wish to cover legs/arms etc.

## **8. Toilets**

Where possible gender-neutral toilets should be available. Any new build or refurbishment will include this requirement in their initial design.

The pupil should use the toilet facilities in line with their affirmed gender identity and wishes, with the expectation that the toilet stalls have floor to ceiling doors and working locks. As with all pupils and staff, the right to privacy and dignity is an overall expectation. The academy may wish to provide some unisex facilities, not necessarily for the child in transition, but for others who don't want to share with their peers.

There should be no requirement for those pupils who are in transition to only use the disabled toilet facilities; this gives the message that transgender is a disability. However, relabelling these toilets as 'toilet facilities with easier access' may increase the available pool of facilities that pupils can use. Pupils in transition will be able to use these facilities which have been labelled sensitively and appropriately if they feel more comfortable doing so.

## **9. Changing Facilities**

Changing facilities for sports lessons/events may cause anxiety for pupils in transition, and in some occasions for the other pupils in the class. As with toilet facilities, choice of changing room should be in line with their affirmed gender identity and wishes. The provision of changing cubicles with floor to ceiling doors may mitigate any concerns.

The option to change just before or after the main group could be offered to the pupil in transition, but this should be done with tact as it may draw further attention to the pupil's transition status.

Making the pupil change in the toilets is not appropriate.

When competing at another school or outside venue, Academy staff must ensure there is appropriate sensitive changing provision available.

## **10. Teams & Groups**

Where at all possible the idea of 'Boys vs Girls' competitions and unisex teams should not be used.

Sports and Physical Education is a key aspect of the national curriculum and the physical and mental well-being of young people. Physical Education develops pupil's competence and confidence to take part in a range of physical activities that become a central part of their lives, both in and out of school.

A pupil in transition has the same right to physical education as other young people, there should be reasonably few, if any, issues regarding participation within the sports usually associate with their identified gender choice.

Recognition should be given to the possibility of hormone-blockers, whether prescribed under the relevant court order or under parental consent, leading to lack of energy. This should be considered during PE lessons and reflected in any academic progress report.

Under section 195 of the Equalities Act; sports, games or other activity of a competitive nature in circumstances where the physical strength, stamina or physique of the average girl (or boy) would put her (or him) at a disadvantage in competition with the average boy (or girl) are exempt from Equality Act consideration. Therefore, it is possible to have unisex sports within the academy but consideration on a 1:1 basis should be given as to whether a transgender student could participate. E.g. a person born as a girl, but now identifies as a boy, with a passion and skill at football could play in a boys' team despite the exemption rule.

If a pupil is binding their chest, they should be monitored carefully during particularly physical activities and in hot weather. There is a chance that the binding could cause discomfort or even impair breathing. Short breaks from activity could be offered discretely.

## **11. Trips, Visits & Work Experience Placements**

For trips and visits that do not include an overnight stay the issues of transition should have little impact.

If the visit is for swimming or work experience, then the Academy does not need to notify the facility that the party includes a transgender pupil, and should not identify that pupil. The pupil should be given the choice as to whether they wish to take part in swimming lessons or not. If the trans-pupil wishes to take part in swimming lessons, a risk assessment of the changing

facilities or work experience placement should be completed. A copy of this guidance should be shared with the Facility if they do not hold their own gender recognition policy.

As in section 5.5 the choice of swimming changing room should be in line with their affirmed gender identity and wishes.

For overnight trips consideration should be given to residential sleeping arrangements and toilet/shower/changing facilities for students and staff who are either exploring their gender identity or are transgender.

Schedule 23 para 3 of the Equality Act 2010 allows the exclusion of members of a certain sex or those undergoing gender reassignment from communal accommodation, defined as: residential accommodation which includes dormitories or other shared sleeping accommodation which for reasons of privacy should be used only by persons of the same sex, though where related to gender reassignment this should be done only if it is a 'proportionate means of achieving a legitimate aim'.

Where co-sharing accommodation on a trip is the only option the Education Visit Coordinator must seek permission from the pupil and their parents to discuss sleeping arrangements in a confidential manner with the other pupils and their parents. If consent is refused, then access to single rooms or 1 person tents must be made available at no additional cost.

## **12. Disclosures**

The right to privacy for the pupil in transition must be upheld by the Academy at all times. This includes the right to keep private one's trans-status or gender non-conforming presentation at school. It will be almost impossible for the academy to control gossip between pupils, but it should be actively discouraged. Any replies to queries from other parents should advise about pupil's right to confidentiality under UK GDPR and Equality Act legal rights.

Disclosure of transition to whom, by whom, how and when, will be carefully and sensitively managed by the Senior Leadership. This will include communication to class teacher, pastoral staff and support staff.

Disclosure to parents of children in class and children in peer group may be considered but only with the permission of the pupil involved and their family respecting confidentiality and privacy. Wider disclosure to the year group or whole school, should not be necessary unless at the request of the student and family. A new pupil to the Academy who has already transitioned need not disclose.

Where objections are raised by a third party on moral, ethical, social or religious grounds to a pupil in transition being in the academy, the Public Sector Equality Duty (Equality Act 2010) applies. The Academy must eliminate discrimination; provide equality of opportunity, and foster good relations between minority groups and others and so would not allow discrimination on grounds of ethnicity, faith, class, disability and equality will not do so on the grounds of gender identity. Religion or social beliefs may not be used to discriminate against lesbian, gay, bisexual or gender variant/trans/non-binary people.

## **13. Press Enquiries**

Press enquiries about transgender provision within a single academy will be declined so that any additional attention will not be drawn to the individual pupils.

Freedom of information enquiries about and transgender provision would be reviewed on a case-by-case basis. If the enquiry relates to an individual then a UK GDPR exemption would apply. If the enquiry related to transgender issues generally and didn't identify individuals a decision to respond would be taken on its merits.

#### **14. Appointments, Absence & Support**

Pupils in transition who are undergoing related health care may need to miss school to attend additional medical appointments. As with other absence recording, proof of an appointment can be requested by the academy (but not including clinical details) and should be recorded with sims as an authorised absence. Confidentiality must be maintained at all times when complying with absence recording procedures but will not reference transgender health care specifically.

A significant number of young people transitioning face emotional and mental health issues. Pastoral support should be arranged within the academy as appropriate including the allocation of a member of the safeguarding team as a 'single point of contact' to support the pupil with any academy-based issues or concerns. Where requested, the Academy will help the family identify appropriate emotional & mental health support and time will be given to attend any counselling or external support group appointments.

#### **15. Memorandum of Understanding**

To provide a reference point for any discussion and agreement between the Academy, Parents/Carers and the Pupils, it is strongly recommended that a memorandum of understanding is drawn up between all so a clear record is kept. A copy will be given to the child and family and a copy retained in the CPOMS record. See Appendix A

## Appendix A – Memorandum of Understanding

**We have agreed that:**

### Academy Records

From *(insert date) (insert old name)* will be known within the Academy as *(insert new name)* and that this new name and gender identity will be recorded on the Academy system and any classroom list.

To this end:

- All staff will use the new name;
- Any letters or notes sent home will use the name of choice;
- Any record of gender from the above date will refer to the chosen gender identity.

### Support in the Academy

The Academy will try to make the transition period as easy as possible, but understand that this is a difficult period in your life.

To this end:

- *(insert name)* will be available from the Academy staff as a Pastoral link for you;
- The Academy will take seriously any bullying - simply it will not be tolerated;
- You will wear the academy uniform that best suits your chosen identity;
- You will participate in PE activities appropriate for your chosen gender identity;
- Time will be given for any health appointments relating to your transition.

### Academy Facilities

In accordance with the law you are able to use the toilet and changing facilities that you feel most comfortable with.

Changing Rooms & Toilet Facilities (delete as appropriate):

- Toilets in our Academy are gender neutral so you will use the nearest to your classroom
- Whilst we address the long term provision of gender neutral toilets in our Academy you have decided to use *(insert location)*
- The changing facilities in our Academy have cubicles for you to use and you have decided to use the *(insert choice: boys/girls)* changing room
- Whilst we address the long term provision of our changing facilities you have chosen to use *(insert choice: boys/girls/unisex facilities with access)*.

But, please remember you can change your mind at any point – but do discuss this with your **Link Mentor**.

### School Visits & Residential Trips

Every effort will be made to ensure that there is appropriate provision for you. For residential trips this will be a single room. If this is not possible the Academy will meet with you and your family to agree a way forward.

**Agreed:**

Name:..... Name:.....  
Principal Parent/Carer Pupil

Date:..... Date:..... Date:.....

...