



## Gender Identity in Schools

<b>ODBST Level 1 Statutory Policy:</b>	<b>ALL</b> Schools require this policy with <b>no changes</b> allowed to core text. No changes are necessary to personalise this with school name and branding, as this is a Trust level policy for use, without change, by all schools, <b>except</b> where a school contact is required as identified in the content of the policy. LGBs will <b>note</b> adoption in LGB meetings. Review will take place at Trust level, and schools will be notified of updates and review dates as necessary.
<b>Other related ODBST policies and procedures:</b>	Safeguarding and Child Protection Policy Admissions Policy SEN policy and Information report Behaviour Policy Exclusion Policy Anti-bullying Policy Whistleblowing Policy Disciplinary, Capability and Grievance Equality and Diversity Policy Privacy notices Looked After Children Lettings Staff Code of Conduct
<b>Committee responsible:</b>	School Effectiveness Committee
<b>Approved by:</b>	School Effectiveness Committee
<b>Date Approved:</b>	22 <sup>nd</sup> November 2023
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### ODBST Gender separation and gender identity in mixed schools:

#### 1. INTRODUCTION

- 1.1. This non-statutory guidance is provided to support our schools in identifying what is expected of them when it comes to separation, different treatment or provision by sex and ensuring that policies and actions do not constitute breaches of statute in cases of gender reassignment and self -dentification. This guidance has been prepared in the light of DfE guidance ‘[Gender separation in mixed schools: Non-statutory guidance](#)’ (June 2018) and other guidance.
- 1.2. Inclusivity is a key value in ODBST, and we strive to become a place where all are welcome, including those who are exploring their gender identity. We aim to ensure we have high

quality pastoral support in our schools to support this issue. It hardly needs to be said that many people still face significant levels of prejudice in our society. We are committed to being different: among us, people should find the respect due to every person created in the image of God (Gen 1.27) and the security of knowing they are loved as they are (Rom 5.8).

- 1.3. Trustees acknowledge and welcome the House of Bishops of the Church of England statement in 2017 which notes that it 'welcomes and encourages the unconditional affirmation of trans people, equally with all people, within the Church, the body of Christ, and rejoices in the diversity of that one body, into which all Christians have been baptized by one Spirit' (1 Cor 12.13).
- 1.4. They also recommend the Church of England Document Valuing All God's Children as a good resource. This also recommends other resources and sets out the Christian imperative for inclusion.
- 1.5. This document does not remove the need for schools to satisfy themselves in their individual circumstances that they are complying with the law and, consequently, they may wish to work with Trust officers to obtain our own legal advice.

## **2. OVERVIEW**

- 2.1. All our schools should provide an inclusive environment that allows every pupil to fulfil their potential, whatever their identity or background. Trustees expect our schools to know how best to support their pupils. The individual school's stance is a devolved responsibility to local governing bodies (LGB) but Trustees are keen to offer a range of supportive measures to help tackle discrimination. For example, ODBST invests in projects and training to help leaders, managers, staff and governors to tackle homophobic, biphobic and transphobic (HBT) bullying. They also provide support for curriculum and policy statements to ensure each school is compliant and offers a broad and balanced curriculum.
- 2.2. Trustees are clear that our schools should not generally separate pupils by reference to protected characteristics such as sex, race or faith while at school. Any separation by reference to a protected characteristic is likely to give rise to unlawful discrimination.
- 2.3. Trustees believe that every pupil in our schools is individually unique and each headteacher, governing body and community has an undertaking to help each pupil to fulfil their potential in all aspects of their life: physically, academically, socially, morally and spiritually. The Trust's aim and that of the schools that make up our family of schools is that all should flourish and have abundant life. Trustees expect our schools to respect a duty to try to remove any factor that might represent a hindrance to a child's fulfilment and for all pupils to willingly engage in learning in a safe and welcoming environment.
- 2.4. Homophobic, biphobic and transphobic bullying, alongside all forms of bullying, is a factor that can inhibit a pupil's ability to feel safe as well as their foundation for learning. ODBST schools must therefore implement measures to combat it.

### Equalities legislation

2.5. Government guidance is clear that schools must tackle discrimination of any sort and this also includes where it arises because of gender reassignment or sexual orientation.

2.5.1. **The Equality Act 2010** protects people from discrimination (both direct and indirect) and harassment in various fields on the ground of certain 'protected characteristics':

- age
- disability
- gender reassignment (gender identity)
- pregnancy and maternity
- race
- religion and belief
- sex
- sexual orientation

2.5.2. **The Education and Inspections Act 2006** contains a number of statutory obligations on schools with regard to behaviour that establish clear responsibilities for responding to bullying.

2.5.3. **The Children Act 1989** rules that a bullying incident should be addressed as a child protection concern when there is 'reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm.

2.6. Trustees have confirmed that ODBST believes that any separation of pupils of either sex that denies them the choice or chance to interact socially, or in an educational setting, with pupils of the other sex is likely to involve subjecting the pupils to a detriment because of their sex. This is likely to be viewed as direct discrimination and would be unlawful unless it falls within one of the statutory exceptions contained within the Equality Act. It is the Trust's opinion that this is the case even if done for religious or other bona fide reasons. This remains the case even if the quality of the education provided to boys and girls is the same. The only relevant exceptions are set out in [Annex A](#) of this document.

2.7. Where governors make the decision in an ODBST school that pupils are to be separated by sex (or by reference to any other protected characteristic) in specific lessons, assemblies and/or for any extra-curricular activities, school leaders and governors will be expected to justify this to Trustees and parents. Where a statutory exception is relied upon, Governors will be expected to demonstrate that they have considered and documented why the exception applies. They should be in a position to demonstrate that separation does not give rise to any detriment because its effect is negligible.

### 3. School policies

3.1. Trustees expect our schools to ensure that they have clear anti-bullying policies on preventing and tackling homophobic, biphobic and transphobic behaviour and language and that these policies are known and understood by all members of the school community. Trustees have issued guidance on the statutory policies on behaviour and bullying which covers these areas specifically and which sets out these expectations.

Trustees expect our school leaders to present clear messages that HBT bullying will not be tolerated and that there can be no justification for this negative behaviour based on the Christian or any other faith or social network.

- 3.2. Trustees would urge our schools to ensure that pupils understand how to report incidents and that if reported, they will be taken seriously. Every incident of HBT bullying should be taken seriously and Trustees expect all our schools to record, monitor and analyse incidents of bullying including homophobic, biphobic and transphobic bullying as separate categories. Such records should be reported regularly to LGBs.
  - 3.3. Officers of ODBST are happy to support governors in decisions about the physical possibilities for the provision of, for example unisex or gender-neutral toilets, changing facilities and other gender specific facilities. This could include support for, for example, swimming lessons etc.
  - 3.4. Trustees would expect uniform policies to be deliberately non-gender specific setting out a list of acceptable uniform without a gender-specific attribution. This removes any suggestion of bias or inequality and allows all pupils to select their dress from within acceptable boundaries, supporting the values and sense of belonging that a uniform brings but not undermining the statutory responsibility to provide equality in their policy frameworks. Trustees however would expect governors to work with staff, pupils and families to ensure they understand the actions of governors.
  - 3.5. Other gender specific practice for example gender lines, gender specific class organisation and /or specific entrances or exits should be phased out. Governors should consider carefully any continuing specific gender activity or rule and be clear that these are only used where the safeguarding or welfare of pupils are questioned (c.f. Annex A). The ease or smooth running of the school may not be a defensible position to take.
  - 3.6. The ODBST policy guidance on bullying makes clear that trustees expect any bullying, whether online or offline will not be tolerated. All our schools must have measures in place to prevent this. Trustees recognise that cyberbullying is a growing problem and ODBST E-Safety Policy Guidance and the Trust's Safeguarding Policy ensure that governors consider the safeguarding implications of bullying which isolates and endangers pupils.
4. Staff Training
- 4.1. All teaching and non-teaching school staff (including teaching assistants, school support workers and midday supervisors) should be informed of the issues of segregation by gender and the trust and governors' policies surrounding this. Trustees would expect each school to consider this guidance when planning timetables and reviewing their curriculum documentation so that no unintended discrimination arises in the grouping of pupils and their segregation in any academic, physical, spiritually, moral social or cultural activity undertaken under the control and direction of ODBST staff. This would include any unintended use of 'gender-specific' language or the use of gender stereotypes in allocating tasks or responsibilities.
  - 4.2. Trustees would expect all its staff to be trained to recognise and understand how to challenge all types of bullying including homophobic, biphobic and transphobic language and behaviour. Training to enable certain members of staff to offer appropriate pastoral

support should be in place. All staff should understand recommended paths of referral to more specialised support.

## 5. Curriculum

- 5.1. Trustees would expect each revision of a school's curriculum policy statement to consider the guidance in this document with regard to the provision of gender neutral learning opportunities and to refer to governors and trustees any provision under the 'positive action' aspects of the Equality Act and any provision for activities defined as 'gender-affected' under the terms of the same act.
- 5.2. Other curriculum and learning policy statements (including SEN, Disadvantaged pupils, charging and remission and visits policies) where protected characteristics may be referred to however obliquely, as a reason for a difference in provision or intended outcomes should be reviewed and the guidance provided by Trustees acted on promptly.
- 5.3. Opportunities to discuss issues to do with self-esteem, gender identity, and anti-bullying including HBT bullying should be included in physical, social, health and economic education or citizenship programmes. ODBST has secured membership of the PSHE Association and has provided policy guidance on Relationships Education which will be a statutory part of the Key Stage 2 curriculum from September 2019. The curriculum should offer opportunities for pupils to learn to value themselves and their bodies. The Trust's Relationship and Sex Education Policy takes LGBT people into account.
- 5.4. Opportunities should also be offered for pupils to explore why some people seek to bully and how bullying can take the form of HBT bullying. Strategies about how to protect yourself and others from bullying should be taught, including online safety and cyberbullying awareness.

## 6. Governors

- 6.1. ODBST Trustees expect governors to take responsibility for monitoring and responding to this guidance and ensuring that policies and the practice of teaching and non-teaching staff do not give rise to any consideration of discrimination under the Equality Act.
- 6.2. Governors are also expected to monitor the effectiveness of anti-bullying strategies (including curriculum, policies and school vision and ethos) and ensure that regular reports about bullying and wellbeing are part of the cycle of governors' meetings. LGBs could consider the 'best-practice' action in the nomination of a 'lead governor' on safeguarding and behaviour which will include homophobic, biphobic and transphobic bullying.

## ANNEX A

### **Positive action and single-sex activities**

There may be instances where separating by sex is appropriate and lawful and a school may be able to provide activities or lessons which are confined to one sex, or in which boys and girls are separated, by reference to justifications based on positive action.

Positive action, is a general exception to discrimination under the Equality Act. Under This separation of pupils by sex may be justified if the school reasonably thinks that:

- girls or boys suffer a disadvantage connected to their sex;
- girls or boys have needs that are different from the needs of the other sex; or
- participation in an activity by girls or boys is disproportionately low.

In these circumstances, schools may take action designed to achieve the aim of enabling or encouraging girl or boy pupils to overcome or minimise the disadvantage, to meet the sex-specific needs or to enable or encourage participation in the activity (as relevant), but only if the action taken is a proportionate means of achieving the aim.

For example,

- it would be lawful to teach sex education and elements of Personal, Social, Health and Economic (PSHE) education to single-sex classes because boys and girls may have different needs in this context. But it would be necessary to ensure that appropriate classes were provided to both boys and girls.
- a positive action in the curriculum designed to help one sex would not necessarily be unlawful (for example, if boys were doing disproportionately badly in maths) but the school would need to be able to show that this was a proportionate way of dealing the issue connected to their gender. (It would not be proportionate to refuse help to girls with similar difficulties in order to help boys catch up with the higher attainment of girls).
- Schools might want to do more to encourage the participation of girls in STEM subjects but any measures taken would have to be a proportionate way of dealing with the participation issue.

### Single-sex sport

A “gender-affected activity” is a sport, game or other activity of a competitive nature in circumstances where, taking into account the age and stage of development of children who are likely to be competitors, 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).

This is more unlikely to justify separation in relation to sports for younger children. It is appropriate for schools to consider whether an activity is gender-affected.

For example,

- this exception might permit a mixed school to have a boys-only football team, or a girls-only hockey team. However, the school would still have to allow girls, or boys as the case may be, equal opportunities to participate in comparable sporting activities
- however, it would be unlawful discrimination for a school to treat one group less favourably – for example by providing the boys’ hockey or cricket team with better resources than the girls’ team.

### Negligible and exceptional separation

There may be occasions where a mixed school can lawfully separate boys and girls if the separation can be considered negligible in its effect on the ability of pupils of both sexes to mix, socialise or learn from and with each other. Trustees would expect the LGB of any ODBST school to take guidance through the Trustees legal representation, having evaluated whether the separation could be said to give rise to any detriment to any pupil of either sex.

For example:

- it is permissible for toilet and boarding accommodation facilities to be separate as they are captured under existing statutory exceptions, providing the same standard of accommodation is provided for both boys and girls.