

## **A short analysis of the Education Authority Guidance for Schools on Supporting Transgender Young People**

The Education Authority have produced 'Guidance for Schools, EOTAS Centres and Youth Service on Supporting Transgender Young People' (hereafter referred to as 'the Guidance'). The Guidance was released in October 2019 and is available at <https://www.eani.org.uk/school-management/policies-and-guidance/supporting-transgender-young-people>

Earlier this year the Evangelical Alliance released *Transformed*, a resource to help Christians understand transgender in our changing culture. It, and other resources are available at [www.eauk.org/trans](http://www.eauk.org/trans)

What follows, is our executive summary of the Guidance and a fuller analysis and commentary which we hope will be of assistance to school governors, principals, teachers, other staff, parents and indeed pupils. This should be read alongside our *Transformed* document.

Media coverage<sup>1</sup> reported that concerns were raised at the Education Authority board meeting that passed the Guidance. These included a claim that the Guidance was written in a "gender affirming perspective" and only reflected other views in a " cursory and minimalist way".

We understand that a wide range of groups were consulted, and the Evangelical Alliance met with a representative of the Education Authority on a number of occasions. We appreciate that this is a very difficult issue to create guidance around and valued the opportunity to meet with the Education Authority.

We highlighted our own resource 'Transformed' and a resource pack for schools produced by a group called Transgender Trend. Unfortunately, neither of these resources are mentioned in the Education Authority Guidance.

In places, the guidance is helpful and relatively balanced, acknowledging that schools have a wide degree of discretion to operate reasonably and proportionately within their ethos. However, it takes a largely unquestioning approach to gender identity and adopts ideologically contested language at a number of points. The Guidance will be contentious for people of different faiths and none and also within the LGB and Trans communities.

While it is only guidance and therefore not binding, many schools are likely to rely on the document in drafting their own policies. There are significant points of ambiguity, particularly around the free speech of teachers and other pupils.

While we appreciate the attempt by the Education Authority to offer guidance on a very sensitive and confusing issue, we remain concerned about the impact it will have on pupils, teachers and schools in Northern Ireland, now and in the future.

---

<sup>1</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-50202339>

## Executive Summary

In summary the Education Authority Northern Ireland Guidance:

- Is non-statutory and therefore not binding on schools. (1.1)
- Uses ideological language in key definitions - notably sex **assigned** at birth. The disputed nature of the term is noted in Annex A. (2.13)
- Notes that NI referrals to the gender identity service have remained fairly consistent (around 70 a year) since it opened in 2014. (2.12)
- Notes there is no legal protection from discrimination for transgender pupils in education. (4.2)
- Recognises the ethos of the school is important in developing a whole school approach. (6.3)
- Conflates sexual orientation and transgender at times. (6.3)
- Recognises that in the majority of cases involving pre-pubertal children, gender dysphoria will resolve, and they will identify with their birth sex. (7.1)
- Notes the high co-occurrence rates between autism spectrum disorders (ASD) and gender dysphoria. (8.5)
- Acknowledges that there is no formal evaluation or diagnosis that a young person needs to provide to have their gender identity recognised. This puts schools and staff in a difficult position. (9.5)
- Seems to set a relatively high bar for 'misgendering' requiring actions to be carried out in an attempt to bully or belittle. (10.2)
- Advises staff to respect a young person's non-binary gender identity and use pronouns such as "they" and "their" without giving sufficient explanation, justification or rationale. (10.26)
- Notes that staff should try and compromise with a person under 16 in terms of names and pronouns, even where the parents do not support the change (10.28)
- Acknowledges that Unique Pupil Numbers, Pupil Statements of Special Educational Needs and exam boards will use legal name and gender, but schools are advised that they can change their own databases and records. (10.30, 10.41, 10.67)
- Notes that school uniforms are not governed by legislation but fall to schools to determine (10.46).
- Notes that staff should have the opportunity to express views, but that they do not have an unlimited right to freedom of expression. (10.62-63)
- Notes that a pupil who has transitioned or wants to transition should be allowed to continue to attend a single sex school. However, no justification or reasoning is given for this assertion. (11.3)

## **Fuller Analysis and commentary**

Below is a fuller summary of the key sections, including some commentary. It works through the Guidance following the same headings and references.

### **1. About this Guidance**

The Guidance is non-statutory – it does not constitute legal advice or impose any new legal obligations or requirements. (1.1)

The Guidance applies to pre-schools, primary schools, post-primary and special schools, as well as other educational settings under the control of the Education Authority. A different approach is recommended for younger (pre-pubescent) children compared to adolescents. (1.1, 1.2)

All EA staff have a duty to safeguard children and young people and promote their welfare. This means that they should consider, at all times, what is in the best interests of the child. (1.6)

There are many different views within and between people of different backgrounds on how to support a transgender young person. The Guidance acknowledges that it does not and cannot deal with all the issues that schools and other educational settings need to consider. In light of this, the Guidance does not recommend a ‘one size fits all’ approach but is designed to help staff in making justifiable decisions with regard to the support of transgender young people, including assessing any impact of those decisions on other pupils. (1.7)

The Guidance aims to support schools and other educational settings to develop and sustain effective pastoral care systems which can accommodate and develop the social, emotional, educational, physical and spiritual needs of all pupils within the school ethos. In supporting a transgender young person, what is reasonable and proportionate in each setting will depend on the circumstances of each case and the overall context, including the needs of the young person concerned, the ethos of the school (EOTAS or youth service setting) and its financial resources. (1.9)

It is proper and very helpful that the guidance is explicitly framed ‘within the school ethos’ and within what is ‘reasonable and proportionate.’

The Guidance is underpinned by three guiding principles:

1. **Best interests of the child** - taking into account the rights and duties of their parents, legal guardians, or other individuals legally responsible for them.
2. **Equality and Inclusion** - All decisions should be aimed at promoting an inclusive learning environment.
3. **Individualised support** - Support for the transgender young person should take account of their age, developmental stage and level of understanding. (1.10)

### **2. Definitions**

The guidance suggests that “Each of us is assigned a sex at birth (male or female), based on our physical characteristics.” (2.1) The notion that sex is assigned at birth is ideological language and it is unfortunate that it is included. Biological sex is based upon sex organs,

reproductive capacity and chromosomes. There is also some conflating of intersex and transgender young people. (2.2) The Guidance notes that we do not know exactly why people are transgender. It also notes the links with autism and significant difficulties at some point in their early lives (e.g. trauma). (2.6, 2.7)

The Guidance accepts there are no reliable statistics on transgender people in Northern Ireland but suggests that between 0.17% –1.3% of adolescents and young adults identify as transgender. (2.11) However, this is based on one US study. It notes that referrals in GB have increased but NI referrals have remained fairly consistent (around 70 a year) since the NI service opened in 2014. (2.12) There are approximately 15,000 gender identity patients in the UK – this equates to 0.02 per cent of the population.<sup>2</sup>

The Guidance notes that gender dysphoria is the discomfort or distress that is caused by a discrepancy between a “person’s gender identity and their sex assigned at birth.” (2.13) However, it is recognised by the NHS where, “a person experiences discomfort or distress because there’s a mismatch between their biological sex and gender identity.”<sup>3</sup> It would have been helpful if the guidance had used the medical terminology of biological sex rather than sex assigned at birth which is used by trans activists.

The Guidance notes that only *some* gender variant or transgender people experience gender dysphoria. (2.13) For the majority of gender variant children, gender dysphoria does not persist into adulthood and is strongly associated with a lesbian, gay, or bisexual outcomes. (2.14) It is helpful and important that the difference between gender dysphoria and gender variance is noted and included in the guidance. However, gender variance is not defined in Annex A.

Those under 18 who are experiencing distress in relation to their gender identity are usually first referred to the Child and Adolescent Mental Health Service (CAMHS). (2.20)

Under the age of 16, the only physical treatment that is recommended for children struggling with issues around gender identity is puberty blockers. (2.22)

The Guidance notes that social transition for younger children, remains controversial (largely due to the lack of empirical evidence around the long-term impact). (2.25)

According to the Gender Identity Development Service, gender development is complex and ‘some young people’s gender identity can be fluid over time even when they feel very sure that their identity or orientation is fixed’. (2.27)

### **3. Experiences of young transgender people at school**

The Guidance notes that gender variant young people face particular challenges at school, which can sometimes lead to depression, isolation and a desire to leave education as early as possible. (3.1)

### **4. What does the law say?**

The Guidance notes that there is no legal protection from discrimination for transgender pupils in education. (4.2) It notes that the Equality Commission for Northern Ireland has

---

<sup>2</sup> <https://www.theguardian.com/society/2016/jul/10/transgender-clinic-waiting-times-patient-numbers-soar-gender-identity-services> (Accessed 29/10/19)

<sup>3</sup> <https://www.nhs.uk/conditions/gender-dysphoria/> (Accessed 11/09/18)

recommended changes to equality law in Northern Ireland to strengthen protection for transgender children in schools. (4.4, 4.5) The guidance makes explicit reference to the potential for a judicial review of any decision by the school or Board of Governors in respect of a transgender pupil. (4.6) This could be by the transgender pupil or another pupil, and the Guidance itself could be subject to a judicial review.

While the Guidance does not create legal obligations, it is considered ‘emerging good practice’ and so the clear recognition of different actions being taken to allow operation within a ‘school ethos’ is vital. Schools are encouraged to take care when employing blanket policies and consider whether an exception can be made to reduce any disadvantage that the transgender young person may face. (4.7)

## **5. Gender identity and the curriculum**

In line with CCEA guidance, the Guidance notes that schools can increase knowledge and understanding of transgender identity in an age-appropriate way that is in keeping with the school’s ethos and RSE policy. (5.5) CCEA has produced additional LGBTQ+ resources as part of its new RSE hub. (5.7)

## **6. Developing a whole school approach**

The Guidance suggests increasing the visibility of transgender young people by supporting pupils in setting up a Gender and Sexual Orientation Alliance or introducing transgender role models. (6.3) The conflation of sexual orientation and transgender is surprising. The fact that the Education Authority NI itself is a ‘Stonewall diversity champion’ is problematic. There is disagreement within the broader LGBTQ+ community about the ‘Stonewall Law’ focusing on gender identity rather than gender reassignment and how this might undermine feminist and lesbian perspectives. This has been highlighted recently in The Times and other papers covering the LGB Alliance group that disagrees with Stonewall’s approach.<sup>4</sup>

The resource suggests that “By tackling gender stereotypes, schools can create an environment where all young people are free to make the choices that are right for them.” The Guidance does not make clear what these stereotypes might be and how differences between the sexes might be recognised. (6.2)

The Guidance makes suggestions, but recognises that the ethos of the school is important. (6.3)

## **7. Supporting Younger Children**

The Guidance recognises that in most cases involving pre-pubertal children, gender dysphoria will resolve, and they will identify with their birth sex. In fact, it notes that most children who express themselves in ways that challenge stereotypes have a gender identity that is consistent with their birth sex. (7.1, 7.2)

However, it notes that all decisions should be made in the best interests of the child, taking account of any risks and the need to protect the child from the negative reaction of others. (7.5) The emphasis seems to be on the child struggling with their gender identity without recognizing the impact this could have on other Primary School children. The lack of definition around “negative reaction” is unhelpful. (7.5) The Guidance should be clearer that

---

<sup>4</sup> <https://www.thetimes.co.uk/article/lesbian-barrister-my-bosses-bowed-to-transgender-hate-mob-shm6x09v8>

decisions must be made in the best interests of each child and that a younger child will inevitably have questions about gender confusion and will also need support.

For more significant changes (e.g. changing a child's name or pronoun) The Guidance advises the school to contact the Operations and School Governance team. These changes at primary school level would be very significant and concerning and the Guidance isn't clear what circumstances would justify them. (7.5)

## **8. Young people with increased vulnerabilities**

This section discusses mental health issues, disability and in particular the overrepresentation of youth with co-occurring autism spectrum disorders (ASD) and gender dysphoria. (8.5, 8.6) It advises on the circumstances in which staff should consider making a mental health referral to the Child and Adolescent Mental Health Service (CAMHS). (8.2, 8.3)

## **9. Supporting adolescents with gender identity issues**

The Guidance draws on LGBT Youth Scotland for staff responding to a young person who is questioning their gender identity. (9.2) It notes that not all transgender young people will want to change how they express their gender identity. It also acknowledges that there is no formal evaluation or diagnosis that a young person needs to provide to have their gender identity recognised. (9.5) The lack of any formal process, puts staff in a very difficult position.

There is a difficult space to be navigated when a pupil 'comes out' to a teacher about their gender identity but does not want parents/carers involved. (9.3 & 9.6) This area could be subject to complaints or legal action where a school treats a young person as a different sex without informing parents, undermining their authority.

Schools are not required to take any decisions regarding the appropriateness of medical treatment for a transgender young person but should have regard to advice given by those medical professionals who are providing support and/or treatment for the young person. (9.6)

In making decisions in relation to the transition, staff are required to consider the potential negative impact of transition on the young person. (9.12) It is helpful that the Guidance recognises and recommends consideration of the potential negative effects of transition.

The Guidance notes that where a parent/carer does not recognise a young person's gender identity or does not support their transition, staff working in schools and other educational settings, are generally advised to preserve the parent's right to make decisions about their child. (9.18)

The Guidance includes a number of examples on developing a support plan, respecting confidentiality, parental consent or queries and safeguarding.

## **10. Practical Considerations**

### ***Bullying***

The Guidance rightly identifies bullying as an issue. (10.1) We oppose the bullying of anyone, including on the grounds of their perceived gender identity. There is concern

however, about the concept of 'misgendering' and that people could be forced to use language they are uncomfortable with. The Guidance talks about asking "unwanted intrusive questions about a young person's gender identity or deliberately using the incorrect pronoun, first name or gender identifier in an attempt to bully or belittle a pupil". (10.2) Unwanted questions could be seen as subjective. However, it is linked with an attempt to bully or belittle which requires intent. The inclusion of intent is important and rightly sets a relatively high bar for 'misgendering'.

The Guidance refers to Addressing Bullying in Schools (NI) Act 2016 which defines bullying as repeated actions with the intention of causing physical or emotional harm. (10.4) The Act refers to gender reassignment in terms of motivation but does not refer to transgender bullying. This section of the Guidance should be clearer given the statutory framework.

### ***Toilets and Changing***

In relation to toilets and changing facilities the Guidance notes that there are strongly held views and that staff should be "sensitive to the needs of transgender pupils, as well as the needs of other pupils." (10.8)

The Guidance notes that where requested, staff should give a transgender pupil access to toilets which matches their gender identity, unless there is a good reason not to do so. (10.11)

There is no explanation, justification or rationale given for this being the default position. It does note that if another pupil feels uncomfortable sharing changing facilities with a transgender young person, it may be appropriate to restrict access to the facility where the pupil's objections (or, likely objections) are *reasonable*. The Guidance does note that proper consideration of the views of other young people is important. (10.15)

The Guidance does not specifically address how a school might deal with a young person who identifies as non-binary, gender fluid or pan-gender when it comes to these practicalities.

The Guidance notes comments from the Equality Commission which are unhelpful. The Commission notes where separate cubicles are available, "one might doubt whether any purported objections are reasonable." (10.16) However, there have been significant public debates about women's toilets in exactly these situations. The Commission also notes objections which should not be accepted at face value. (10.18) It seems ironic that the Commission, and this Guidance, is asking that a person who perceives their gender identity different to their biological sex is to be taken at face value, but a person with an objection is not.

The Guidance does note that alternatives to sharing are available including access to a private part of a public area or providing a privacy curtain, closed changing area or a schedule so that the pupil can change before or after other pupils. (10.19)

### ***Names and Pronouns***

The section on names and pronouns causes great concern. While the Guidance notes that there is nothing to prevent a school or other educational setting from using a pupil's preferred name in day to day interactions, it fails to note the corollary that there is also no requirement to use it. Again, there is no explanation, justification or rationale given for this section. It does recognise that with younger children, medical advice may be sought. (10.23)

Section 10.24 states “Where a decision has been made to allow a young person to use a preferred name this should be communicated . . .” The Guidance makes no mention of how such a decision should be made, or circumstances in which it might not be agreed. The Guidance goes on to advise staff to respect a young person’s non-binary gender identity and use pronouns such as “they” and “their”. (10.26) No medical evidence is cited in support of non-binary identification and it is a significantly more contested notion. Again, no explanation, justification or rationale is given in this section.

The Guidance even notes that staff should try and compromise with a person under 16 in terms of names and pronouns, even where the parents do not support the change (10.28). This could leave teachers in the unenviable position of undermining parental authority.

The section on school management is confusing and arguably contradictory. Schools are advised that they can change their own databases and records but that the pupil’s Unique Pupil Number and the Pupil Statements of Special Educational Needs will continue to be issued in a young person’s legal name and gender. (10.30) The Guidance notes that transgender pupils, who transition after having completed school, may ask for their school records to be amended to reflect their new legal name and gender (10.41). This means a pupil who attended school as a male could transition to a female after leaving school and go back years later and have the school change their records to their legal name and gender. Anyone reviewing the records would understand that a female had attended the school despite the fact the person presented as a male at the time. This rewriting of history is deeply problematic and very concerning.

### ***Uniforms, PE and Sports***

The wearing of a school uniform in Northern Ireland is not governed by legislation but falls to schools to determine (10.46).

The Guidance notes that transgender pupils should only be treated differently in respect of their participation in P.E. and sports if it is necessary to do so to ensure fair competition or the safety of competitors (10.52). It notes that there may be sports where, depending on their age or developmental stage, a male to female transgender young person may have a competitive advantage over other girls. There is no guidance about how to deal with the issue, for example in a sports match between two schools with different policies on this issue and how a pupil may raise concerns about their own safety or competitive advantage.

### ***Overnight and residential trips***

The Guidance notes that there may be occasions where a school or other educational setting identifies a need to exclude a transgender young person from sharing single sex communal accommodation which aligns with their gender identity or birth sex, but there must be a good reason for doing so and the reason must be justified and proportionate. It notes that the health and safety of the transgender young person would be a justifiable reason but does not address the obvious corollary. (10.58)

The Guidance notes that it may be appropriate to inform other young people or their parents of the sleeping and changing arrangements, with the consent of the transgender young person. It unhelpfully seems to presume objections will be based on prejudice or transphobia and makes no mention of legitimate objections. (10.59)

### ***Supporting staff and responding to concerns***

While the Guidance notes that staff should have the opportunity to express views, it also notes that they do not have an unlimited right to freedom of expression. (10.62-63)



The issue of deliberately 'misgendering' is addressed in (10.64). The difficulty is in defining 'misgendering'. As noted above, the bar is relatively high, but in this section, it seems teachers will have less of a defence if they struggle to use a person's preferred pronouns or name. The scenario includes this quote, "while St Clements is still an all-girls school . . . if the term 'girls' excludes some young people, teachers will need to think about whether that language is appropriate". (10.65) So the school remains an all-girls school, but a teacher is told to make sure he uses gender neutral terms, apologise if he makes a mistake and ensure the pupil "understands and really believes that it is a genuine mistake."

In a further scenario, in which a teacher won't use a new name because it is not the pupil's "real name" the Guidance avoids directing how the teacher should act, though the implication is clear. However, the ethos of the school will be critical. (10.66)

### ***Exam Entries and Certificate Changes***

When it comes to exams, names should be capable of being verified against suitable identification, such as a birth certificate, passport or driver's licence. (10.67) This leads to considerable inconsistency with exam boards only recognising legal names and genders but schools being expected to act differently. Again, pupils who subsequently transition after having completed school may ask their previous schools to amend school records. This ultimately leads to a certificate in one name, even though the exam was sat under a different name.

## **11 Admission to single sex schools**

The Guidance notes that a pupil who has transitioned or wants to transition should be allowed to continue to attend a single sex school. Again, no justification or reasoning is given. It notes that there is nothing in current equality law that will prevent a school from accepting a transgender pupil into a single sex school and suggests that a policy that only admits pupils in accordance with their sex as recorded at birth may be potentially challengeable. (11.3) This section is particularly concerning and it looks to signal a significant threat to the continued existence of single sex schools. The advice from Transgender Trend is directly contradictory and we made the Education Authority aware of this resource. It is notable that this section has no footnotes or legal opinion referenced.

## **Annex A - Terminology**

Only here does the Guidance acknowledge the disputed nature of gender assigned at birth. It suggests that some people tend to avoid the term "biological" when referring to sex, as they feel that it privileges biology over their lived and felt identity. This is an extraordinary admission in a school guidance document. It also defines sex as something assigned at birth.

## **Conclusions**

The guidance is helpful and balanced in places, acknowledging that schools have a wide degree of discretion to operate within their ethos. However, it takes a largely affirmative and unquestioning approach to gender identity and adopts ideological language at a number of points. This guidance will be contentious for people of all faiths and none and also within the LGB and Trans communities.

A member of the Education Authority board has raised concerns that the Guidelines were written in a "gender affirming perspective" and only reflected other views in a " cursory and minimalist way". He commented, "We are all aware that there are divergent views on the nature of transgenderism and concerns have been articulated by radical feminists, social conservatives and many academics as well as many who come from a faith-based perspective."

While it is only guidance and therefore not binding, many schools are likely to rely on the document in drafting their own policies. There are significant points of ambiguity, particularly around the free speech of teachers and other pupils.

In light of the above, we appreciate the attempt by the Education Authority to offer guidance on a very sensitive and confusing issue. However, we remain concerned about the impact it will have on pupils, teachers and schools in Northern Ireland.