



# Transgender Policy and Procedure

<b>Formally adopted by the Trust</b>	
<b>Date:-</b>	<b>December 2019</b>
<b>Chair of Trustees:-</b>	<b>Mark Jeffries</b>
<b>Consulted with Trade Unions at county level</b>	<b>May 2019</b>

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## Roles and Accountabilities

Evolution Academy Trust is accountable for all policies across its Schools. All policies whether relating to an individual Schools or the whole Trust will be written and implemented in line with our ethos and values as articulated in our prospectus.

A Scheme of Delegation for the Academy Trust sets out the responsibilities of the Local Governing Body and Headteacher. The Headteacher of each school is responsible for the implementation of all policies of the Academy Trust.

All employees of the Academy Trust are subject to the Trust’s policies.

### 1. Introduction

- 1.1 The Trust is committed to treating all employees with equal dignity, fairness and respect, regardless of their gender identity, in all areas of employment.
- 1.2 This policy provides guidance on issues facing transgendered people undergoing transition and the supportive measures that can be taken to address these.
- 1.3 There are a small number of people in the United Kingdom whose gender identity does not match their appearance and/or anatomy. This is sometimes called gender dysphoria, or gender identity disorder. People with this medical condition who decide to adopt the opposite gender to the one assigned at birth are known as ‘transsexual people’. The process is known medically as ‘gender reassignment’. Transsexual also includes persons living in their new gender, but who have elected for personal reasons not to undergo surgical treatment. Transsexualism is not the same as, and should not be confused with, ‘cross dressing’, transvestism, or sexual orientation. Transsexualism is not a life style choice, nor a facet of sexual orientation, nor a disease.

### 2. Scope

- 2.1 This policy and procedure covers all employees, contractors, temporary workers and job applicants and applies to all stages of the employment relationship.
- 2.2 Failure to take account of this policy may result in disciplinary action being taken against an employee.

### 3. Policy principles

- 3.1 To welcome and support transgender employees.
- 3.2 To remove barriers to the recruitment, promotion and retention of transgender employees.
- 3.3 To provide a working environment that is free from discrimination, harassment or victimisation because of gender identity.

### 4. Relevant legislation

- **Equality Act 2010** – protects against direct and indirect discrimination, harassment and victimisation under nine protected characteristics, including gender reassignment. It is illegal to treat someone less favourably because they intend to transition, or they have transitioned in the past, and someone remains protected even if they do not proceed with their transition. The Act covers all types of employment, including contract workers and temporary workers.
- **The Gender Recognition Act 2004 (GRA)** – enables adults over the age of 18 to gain full legal recognition of their acquired gender. Under this act, the Gender Recognition Panel (GRP) was established to consider applications for a Gender Recognition Certificate (GRC). Once granted a GRC, the person is able to change their sex on their birth certificate and must be legally considered to be a member of that sex for all purposes. However, if someone does not apply for a GRC, it does not affect their rights in their school.
- **The Human Rights Act 1998 (article 9)** – this gives transgender people the same rights as everyone else to privacy and family life.
- **The Data Protection Act 2018/General Data Protection Regulations** – information regarding gender reassignment or an individual's gender history is deemed to be sensitive (special category data) and where the Trust processes the information it will ensure it has a legal basis for doing so as well as satisfying a specific condition under article 9 of the GDPR or it will ensure explicit consent is sought from the employee, prior to any processing.

### 5. Recruitment

- 5.1 Application process

Applicants do not have to disclose their transgender status during the application process but may need to disclose a previous identity where this is required to verify qualifications or request references where these may only be accessed in a previous name. Where an individual's documentation reveals their previous name and thereby their gender history, this information will be kept confidential and stored securely with the permission of the individual and in accordance with the requirements of data protection law.

### 5.2 References

All references must be requested in the name identified by the applicant and no information should be disclosed which could make a referee aware that the applicant has changed their identity. For information regarding reference provision please see section 8.2.

### 5.3 Qualifications and certification

Certification and/or qualifications in a name different to that of the employee will be accepted where evidence is provided to confirm their previous name e.g. deed poll certificate.

### 5.4 Disclosure and Barring Service (DBS)

The DBS has a separate application procedure for transgender applicants. The DBS confidential checking service will provide further information.

A conviction or other relevant information which has been recorded in a previous name will be revealed on the Disclosure certificate. The fact that this is recorded in a previous name is outside of the Trust's control.

### 5.5 Occupational Health

Documents held for medical purposes may include information that could lead to the identification of transgender status. Any relevant records will be dealt with as described below.

## 6. Support available

6.1 The Trust subscribes to the Norfolk Support Line (NSL) and so employees can contact NSL (0800 169 7676) for confidential and independent advice in legal, financial and employment matters, as well as counselling support.

6.2 Where employees are experiencing difficulties in the workplace they may contact their trade union representative for additional support.

## 7. Employment considerations

### 7.1 Disclosure

It is a personal choice if an employee wishes to disclose that their birth gender differs from the gender they currently identify with and present in, unless a Genuine Occupational Requirement applies. If they hold a GRC (see para 4), then there is no requirement to disclose this information.

### 7.2 Terms of address

Employees must always be addressed in the terms appropriate to the gender to which they identify and present themselves. All members of staff should refer to the transsexual person by their new name and use pronouns appropriate to their new gender role.

Any deliberate or constant failure to address the transgender employee in their new identity is transphobic abuse or harassment or bullying (e.g. name calling/derogatory jokes, unacceptable or unwanted behaviour, intrusive questions).

If a member of staff is in possession of a gender recognition certificate it is unlawful to disclose their transgendered status without their consent.

### 7.3 Employee records

Any documentation which may reveal the employee's transgender status will be stored separately, securely and confidentially following written notification of a change in social identity. Where documents have been copied at the point of starting employment (such as birth certificate, qualifications etc), these will be replaced with equivalent documents in the new name and gender, where provided by the employee.

It may be necessary to keep records relating to an employee's identity at birth, for example, pension or insurance purposes prior to obtaining gender recognition, however, once a person has obtained a GRC, these must be replaced with new updated records.

## 8. Employees files

The Headteacher will ensure that all other documentation and public references to the employee should reflect the affirmed gender of the employee to avoid a breach of confidentiality, irrespective of whether a GRC is held or not.

Any files that hold personal details should be changed by the time the individual presents at work with their new identity. Files will include all systems that may contain names, titles and other personal identifiers such as photographs on notice boards or websites. The Trust will work with the employee to ensure that nothing is omitted.

### 8.1 Pension considerations

Every effort will be made to replace any pension documentation with equivalent records in the affirmed identity irrespective of whether a GRC is held or not.

Transgender employees should note that pension benefits must be calculated based on the employee's original gender until a GRC has been obtained. In such circumstances, whilst personal benefits will remain unaffected, the dependents benefits of employees who were a member of the Local Government Pension Scheme prior to 1988 and have transitioned from a female to male gender identity may be affected. Employees should contact their Pension Scheme provider for advice.

### 8.2 Provisions of references

Any references requested at any time during or post-employment must be supplied in the identity provided on the reference request. No mention should be made of the change of gender identity or other information which may reveal their transgender status.

## 9. Gender reassignment of an existing employee

9.1 The Trust will be supportive of an employee who has made the decision to transition.

9.2 The Trust recognises that gender reassignment is a personal process (that is, moving away from a person's birth to their affirmed/'new' gender), rather than a medical process.

9.3 Gender reassignment covers a range of scenarios: -

- The reassignment of a person's sex may be proposed but never gone through.
- The person may be in the process of reassigning their sex; or the process may have happened previously.
- The employee may be undergoing medical gender reassignment treatments.
- The employee may present in a different gender identity, but not undergo medical treatment. This is known as a change of social identity.

9.4 An employee who makes the decision to change their gender is encouraged to speak to their Headteacher for advice and support. Once the Headteacher has been made aware by an employee that they will be starting, or have started, the process of transitioning, an appropriate point of contact will be agreed with the employee. That person will work with the employee to develop a confidential gender identity document of understanding to manage the individual's transition at work. It is vital that the employee is treated with sensitivity and confidentiality maintained. The discussions and decisions reached regarding their transition should be employee led and their wishes respected.

9.5 It may be appropriate to invite HR to a meeting to agree the process and measures needed to effectively support transition in the workplace. Any agreed actions should be documented in the Gender identity document of understanding (template document F332 available on HR InfoSpace).

## 10. Document of understanding

- 10.1 This confidential document should be owned jointly by the individual and the Headteacher and will detail anyone who will have access to the document, where appropriate.
- 10.2 The process of changing gender may have significant consequences in the workplace. The document of understanding explores and documents the ways in which the employee will be supported during their transition and the appropriate actions to be implemented. Headteachers should be aware that each situation will be unique, however, it is recommended as a minimum that the following considerations are explored, where applicable: -
- The timing of any change in social or gender identity
  - Informing colleagues
  - Communicating with pupils, parents and governors
  - Consideration of whether an occupational requirement exists
  - Training/awareness raising for colleagues
  - Redeployment where there is a Genuine Occupational Requirement for the role, which means the employee must be a specific gender
  - Whether medical treatment is proposed, and if so, the time off required
  - Whether any other time off is appropriate to support a change in social identity
  - Dress code
  - Dealing with the media
  - Any interim arrangements required whilst the gender reassignment process is ongoing.
- 10.3 This is not intended to be an exhaustive list of all the considerations, as these will vary according to the individual preferences or there may be some role specific issues which are not identified below.
- 10.4 The document of understanding should be reviewed and updated at each significant stage of transition or at least every 3 months by the individual and the Headteacher (involving HR and Occupational Health Adviser as required) until the process is completed.

### 10.5 Medical treatment

Individuals will decide to go through transition in different ways and at different paces.

It is important to discuss:

- The expected timescales of medical/surgical procedures
- Time off for medical appointments related to the transition process.
- While absences associated with changing gender will not trigger procedures for dealing with persistent or high levels of absence they will be treated as sick leave where medical certification has been provided.

- If prolonged incapacity occurs beyond normal expectations from the process/procedure undergone, the normal long-term sickness management procedures will apply
- A risk assessment should be carried out (in relation to surgical recovery), where relevant to the role
- Where the employee reconsiders their decision to transition, agreeing with them appropriate support and interventions in light of that decision.

### 10.6 Informing colleagues/pupils/parents/Trustees

The Headteacher should explore with the employee their wishes in relation to informing colleagues, pupils, parents, Trustees etc. Consideration should also be given to the appropriate timescales for when this should happen and the amount of detail to be shared.

Pupils and parents should only be informed of a change in gender identity where the working relationship has already been established and is likely to continue after the gender change.

It is important to re-enforce the message that the employee must be treated in a sensitive and appropriate manner. Colleagues are also be reminded that breaches of confidentiality could lead to disciplinary proceedings, or a breach of the Data Protection Act 2018 or Equality Act 2010.

### 10.7 Training for Headteachers and colleagues

It is important to identify any potential training needs at the earliest opportunity. In some circumstances the employee may feel able to support their colleagues in raising their awareness. Alternatively, Headteachers may wish to explore using specialist outside trainers or facilitators where necessary.

### 10.8 Impact on current post

Discussions will explore any implications a change in gender will have on the employee's current role, in both the short and long term, requiring any temporary or permanent adjustments. This will include identifying if there are any Genuine Occupational Requirements associated with the current role and where there are, fully explore the feasibility of redeploying the individual on a temporary basis during the transition period including the qualifying period for gender recognition.

The discussion should also explore whether or not the employee wishes to continue to have face to face contact with the public, where relevant to their job during some parts of the gender reassignment process.

Depending on the issues identified it may be appropriate to explore whether redeployment on a temporary or permanent basis should be considered.

### 10.9 Facilities



An employee who is undergoing or has completed gender reassignment should have access to 'men-only' and 'women-only' areas, such as changing rooms and toilets, according to the gender in which they present.

In some situations, it may be helpful to explain the situation to work colleagues who use the facilities; however, this should only be done following full consultation with the employee and with their agreement. It is not acceptable to restrict the employee to using disabled toilets or other unisex facilities, however, they may wish to use a single-occupancy toilet, but they must not be pressurised to do so and this should not be seen as a long-term solution.

### 10.10 Dress code

Employees will have changing needs during the transition period in respect of Personal Protective Equipment and/or uniforms. Headteachers will need to identify any required change in provision and ensure it is supplied in a timely manner.

Headteachers are expected to apply any dress code in a flexible and non-discriminatory manner to accommodate the process of transition whilst ensuring the required standard of appearance is maintained.

### 10.11 The media

There may be occasions when rumours of a gender identity change could attract media attention. It is the Trust's policy to reaffirm the commitment to equality of opportunity and support for all staff. At no time will the member of staff be named, nor any details released, that could identify their role or work location without their consent. All media requests for information must be referred to the Headteacher.

## 11. Data protection

The Trust processes any personal data collected during the absence management procedure in accordance with its data protection policy. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the absence management procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the school's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the school's disciplinary procedure.

## 12. Associated documents

- Gender identity document of understanding F332
- Leave and time off policy

## Appendix 1 – Table of changes

Date of change	Paragraphs affected	Summary of update
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## Transgender policy and procedure

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19/11/2018	All	New document
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