

POSITION STATEMENT ON SUPPORTING TRANS, GENDER QUESTIONING AND INTERSEX CHILDREN AND YOUNG PEOPLE

It is our experience that an increasing number of children are reporting to their schools and colleges that they have a gender identity that differs from that of their assigned birth sex, or who are questioning the validity of their assigned birth sex. In addition, schools and colleges work with intersex children who also may not identify with the sex that was assigned to them at birth.

Every child has a right to be educated in an environment that is safe, respectful and inclusive, that takes full account of their circumstances and needs, and that ensures that they are not subject to less favourable treatment on any grounds. These rights apply equally and fully to transgender, intersex and gender questioning children.

In supporting trans, gender questioning and intersex children, schools are entitled to clear guidance from government/administrations. NASUWT is clear that this guidance must meet three basic tests. It must:

- ensure that schools are able to meet all of their legal obligations under equalities, safeguarding and child protection legislation and guidance;
- reflect the reality of the needs and interests of trans, gender questioning and intersex children that schools are obliged to reflect; and
- support schools in fulfilling their overarching duty to act in the interests of each child, including trans, gender questioning and intersex children.

Schools and colleges need to act in the best interests of the child. This principle underpins some of the most important legal obligations placed on them, particularly those related to child protection and safeguarding. However, a best interests approach is also central to the guiding ethos of schools and colleges, underpinned by principles such as those set out in Article 3 of the United Nations Convention on the Rights of the Child (UNCRC).

This principle is also a core element of the United Nations Sustainable Development Goals which apply to the development of policy in the UK.

Such considerations are also incorporated into expectations of professional conduct through, for example, the provisions in statutory guidance on safeguarding, underpinned by the Teachers' Standards and the regulatory powers of the Teaching Regulation Agency (TRA) in England and Wales, the General Teaching Council for Scotland (GTCs), and the General Teaching Council for Northern Ireland (GTCNI).

Guidance, in England, Scotland and Wales, on supporting trans or gender questioning children should be focused on the implications of the Equality Act 2010, the Public Sector Equality Duty and those legal provisions that relate to safeguarding, child protection, data protection and prioritising the needs and interests of the individual child.

The Equality Act, which covers England, Scotland and Wales, states that a person, including a child, has the protected characteristic of gender reassignment if 'the person is proposing to undergo, is undergoing or has undergone a process of reassigning the person's sex by changing physiological or other attributes of sex'.

Protected characteristic status applies in circumstances where an individual has not been subject to any medical intervention nor has plans to access such interventions; they are regarded under the Act as having the protected characteristic of gender reassignment 'by changing... other attributes of sex'.

In Northern Ireland, legislation on gender reassignment only applies to an employment situation. However, the principles of Article 3 of the UNCRC, as laid out above, do apply.

Schools have been without guidance for far too long. The Department for Education (DfE) consulted on proposed guidance in 2024, but this was never published.

The Equality and Human Rights Commission (EHRC) withdrew its guidance for schools in 2021, and consulted with some groups on new guidance, but, again, this was never published.

FAQ from EHRC guidance 2014:

- Q: A previously female pupil has started to live as a boy and has adopted a male name. Does the school have to use this name and refer to the pupil as a boy?
- A: Not using the pupil's chosen name merely because the pupil has changed gender would be direct gender reassignment discrimination. Not referring to this pupil as a boy would also result in direct gender reassignment discrimination.

This FAQ was deleted from the draft EHRC guidance, NASUWT believes unnecessarily, when it was, and remains, a reasonable interpretation of the law. It is a prime example of the kind of guidance schools need, have a right to expect, and currently do not have.

The Education Authority in Northern Ireland has also withdrawn its guidance, first published in 2019, from its website.

In Scotland, non-statutory guidance was reviewed and amended following the Supreme Court ruling. NASUWT is clear that, following the publication of national Scottish Government guidance, there is no requirement for further school or council policies to be agreed or imposed, as to do so would risk exceeding or breaching the requirements of the national guidance.

NASUWT is clear that schools need effective guidance on how to support trans, gender questioning and intersex children and young people. We will continue to lobby and campaign for this.