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## Transgender and Gender Identity Policy

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**This policy should be interpreted in the context of other relevant College Policies and Procedures, particularly BCA Safeguarding Child Protection and Safeguarding Policy (December 2017), BCA Safeguarding Annual Audit (December 2017) and the Single Equality Scheme (October 2017).**

### **Purpose**

Providing high quality education that gives our students the knowledge, skills and experience to be successful in their chosen career.

### **BCA Equality and Diversity Ethos Statement**

This policy and procedure is subject to The Equality Act 2010. The College is fully committed to promoting, maintaining and supporting equality and diversity in all aspects of its work. The College aims to create an environment where all individuals have the opportunity to achieve their full potential, and gain a feeling of self-esteem and respect for and from all others. The College expresses its opposition to all forms of inequality and discrimination.

### Introduction

Terminology in the transgender field is varied and constantly shifting as our understanding and perceptions of gender-variant conditions changes. The concept of a 'normal' gender expression associated with a binary man/woman paradigm is, in itself, questionable. In addition, in writing such a glossary of terms there is a risk of merely creating further stereotypes. People have the right to self-identify, and many people, especially among the young, reject the whole idea of binary gender tick boxes, and use terms more wide ranging, open terms such as pan-gender, polygender, third gender, gender queer and so on.

### Gender identity

Gender identity describes the psychological identification of oneself, usually as a boy/man or as a girl/woman. There is a presumption that this sense of identity will evolve along binary lines and be consistent with the sex appearance. However, not everyone will wish to be constrained by that binary form of categorisation. Some people experience a gender identity that is completely inconsistent with their sex appearance, or may be neutral, or may embrace aspects of both man and woman.

### Sex

Sex refers to the male/female physical development – the phenotype. In an infant, the sex is judged entirely on the genital appearance at birth. Other phenotypic factors such as karyotype (chromosomal configuration) are seldom tested unless a genital anomaly is present. There is a presumption that an apparently male infant will identify as a boy, and vice versa.

### Gender role

The gender role is the social role – the interaction with others which gives expression to the inner gender identity and reinforces it. Despite the greater gender equality in modern Western culture, in terms of the subjects studied in school and at university, the choice of friends, work and domestic arrangements, dress and leisure pursuits, there is still a presumption of conformity with society's 'rules' about what is appropriate for a man or a woman, a boy or a girl, especially in terms of appearance. A significant departure from stereotypical gender expression often causes anxiety and discomfort in those who witness it.

### Gender variance/gender dysphoria/gender identity disorder

It is now understood that the innate gender identity, although powerfully influenced by the genitalia and the gender of rearing, is not determined by these factors. There is evidence that sex differentiation of the brain may be inconsistent with other sex characteristics, resulting in individuals dressing and/or behaving in a way which is perceived by others as being outside cultural gender norms; these unusual gender expressions may be described as gender variance. Where conforming with these norms causes a persistent personal discomfort, this may be described as gender dysphoria. In many, this includes some level of disgust with the phenotype, since this contradicts the inner sense of gender identity. Gender dysphoria is not a popular term with those experiencing the condition since it has become associated with the clinical diagnosis of gender identity disorder; both these descriptions imply a diagnosis of pathology and mental illness, whereas the more neutral

term, gender variance, denotes that these departures from stereotypical gender experience and expression are part of a natural, albeit unusual, human development.

## **Transsexualism**

Gender dysphoria may be experienced to a degree that medical intervention is sought; this may include hormone therapy and/or surgical procedures to change the appearance and improve personal comfort. Often these treatments are associated with a permanent transition to a gender role that accords with the gender identity, thus alleviating much or all of the discomfort. At this level of intensity, the condition is commonly known as transsexualism. A transsexual person, is someone who intends to undergo, is undergoing or has undergone gender reassignment.

The word transsexual should be used as an adjective, not a noun. It is, therefore, not appropriate to refer to an individual as a transsexual, or to transsexual people as transsexuals; the abbreviation tranny is also unacceptable.

## **Transition**

Transition is the term used to describe the permanent change of gender role in all spheres of life: in the family, at work, in leisure pursuits and in society generally. A few people make this change overnight, but many do so gradually over a period of time. The term affirmed gender, is now becoming more common in describing the gender role which accords with the innate gender identity.

## **Gender confirmation treatment**

Those transitioning permanently usually have gender confirmation treatment that includes hormone therapy and often surgery to bring the sex characteristics of the body more in line with the gender identity. Such surgery is sometimes referred to as gender (or sex) reassignment surgery. The term sex change is not considered appropriate or polite.

There are other gender-related surgeries that may also be undertaken for reasons of appearance or function. Equality law makes special provisions for people who need to take time off for treatments associated with gender reassignment.

## **Transgender**

Transgenderism has had different meanings over time and in different societies. Currently, it is used as an inclusive term describing all those whose gender expression falls outside the typical gender norms; for example, those who cross-dress intermittently for a variety of reasons including erotic factors (also referred to as transvestism), as well as those who live continuously outside gender norms, sometimes with, and sometimes without, medical intervention. There is a growing acknowledgement that although there is a great deal of difference between say, a drag artist and a transsexual person, there are nonetheless areas in the transgender field where the distinctions are more blurred; for example, someone who cross-dresses intermittently for some years, may later transition fully to the opposite role and could, then, be described as a transsexual person.

## **Trans men and trans women**

The word trans is often used synonymously with transgender in its broadest sense. However, sometimes its use is specific, for instance, those born with female appearance but identifying as men may be referred to as trans men and those born with male appearance but identifying as women may be referred to as trans women; these individuals could also be referred to as transsexual men and women. Many trans people, having transitioned permanently, prefer to be regarded as ordinary men and women. In these cases, where it becomes essential to refer to their pre-transition status, the phrase woman (or man) of transsexual history may be used.

## **Intersex conditions**

There are a number of intersex conditions (recently renamed Disorders of Sex Development) that may lead the individuals born with them to experience some inconsistency between their gender identity, and the gender role assigned at birth. Inconsistencies in development may be associated with atypical sex chromosomes such as Klinefelter syndrome (XXY), Jacob's syndrome (XYY) or other genetic anomalies, such as Androgen Insensitivity Syndrome or Congenital Adrenal Hyperplasia in which unusual hormone levels are present. These may lead to atypical genital appearance at birth.

## **Sexual orientation**

Sexual orientation is a separate issue from gender identity. Sexual orientation is associated with the sexual attraction between one person and another. This is quite different from the internal knowledge of one's own identity. Trans people may be gay, straight, bisexual or, occasionally, asexual. Their sexual relationships may remain the same through the transition process, or they may change.

So a person who is living as a man, and is in a heterosexual relationship with a woman may, having transitioned to live as a woman, continue to be attracted to women and seek a lesbian relationship, or may be attracted to men, and therefore seek a heterosexual relationship with a man. Sometimes trans people make lasting relationships with other trans people, so the possibilities are many and varied, and do not necessarily fit comfortably into typical categorisations of sexual behaviours.

## **Gender Recognition Certificate**

In 2004 the Gender Recognition Act was passed, and it became effective in 2005. Those trans people who have undergone a permanent change of gender status may endorse their new gender status by obtaining legal recognition in the form of a Gender Recognition Certificate; this converts to a new birth certificate. Those in existing marriages or civil partnerships are obliged to annul them. Annulment may be achieved by obtaining an interim GRC (IGRC) which lasts for six months only, during which time the application to annul must be made.

### **1. Legislation on Gender Reassignment and Gender Identity**

The Equality Act 2010 became law on 1st October 2010. The Act streamlines earlier equality legislation into one Act and introduces common definitions of discrimination.

The nine 'protected characteristics' under the Act are:

- Age
- Disability
- Gender reassignment (people undergoing gender reassignment or who are trans-gender)
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Gender
- Sexual orientation (gay, lesbian, bisexual and heterosexual orientation)

The Act changed the law in several ways in relation to Gender Reassignment:

- The definition of gender reassignment makes it clear that a person does not have to be under medical supervision to be protected from discrimination
- It provides protection against direct discrimination that arises because the victim is wrongly perceived to be undergoing or have undergone gender reassignment. This may cover others within the wider transgender community
- The new public sector Equality Duty, which is extended to cover gender reassignment in full, is no longer restricted to eliminating discrimination but will require public authorities to advance equality of opportunity for transsexual people
- It provides protection for people who experience discrimination because of their association with transsexual people, for example, as their partner
- While only transsexual people are explicitly protected under the Act if, however, a person who cross-dresses, for instance, is discriminated against because they are wrongly thought to be transsexual, they will be protected under the Act.

### **Gender Recognition Act**

The Gender Recognition Act came into force in April 2005 and allows transsexual people to seek full legal recognition of their gender identity. It allows transsexual people to apply, through the Gender Recognition Panel, for a gender recognition certificate (GRC). This means that they:

- for all legal purposes have the same rights and responsibilities associated with their gender identity
- can marry a person of the opposite gender/entitled to a civil partnership

- are eligible for the state retirement pension (and other benefits) at the age appropriate to the new gender
- can apply for a new birth certificate which does not disclose the fact that their gender has changed and in effect will be just as if it has always been that way
- If an employer dismisses an individual because of impending gender confirmation treatment, the employer would be breaking their duties under the Equality Act, just as it is illegal to dismiss a pregnant woman. There are no specific allowances within the regulations in terms of time off for transgender reassignment surgery. Transsexual people should be treated the same as anyone else living with a life-altering condition
- The Act also safeguards privacy by banning authorities disclosing information about their gender reassignment

The Ministry of Justice holds responsibility for the Gender Recognition Act. Additional information can be found on the Gender Recognition Panel website on how to gain a Gender Recognition Certificate

<http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/genderrecognition-panel/>.

## 2. Intent

The College undertakes the following:

- Students will not be denied access to courses, progression to other courses, or fair and equal treatment while on courses because of their gender identity. The curriculum will be checked to ensure that it does not rely on or reinforce stereotypical assumptions about trans people, and that it does not contain transphobic material.
- The College will respect the confidentiality of all trans staff and students and will not reveal information without the prior agreement of the individual.
- Staff will not be excluded from employment or promotion because of their gender identity.
  - Transphobic abuse, harassment or bullying (name-calling/derogatory jokes, unacceptable or unwanted behaviour, intrusive questions) is a serious disciplinary offence and will be dealt with under the College's Disciplinary Policy
- The College will provide a supportive environment for staff and students who wish their trans status to be known. However, it is the right of the individual to choose whether they wish to be open about their gender identity. To 'out' someone, whether staff or student, without their permission is a form of harassment and, possibly, a criminal offence.
- The College will include gender identity issues in equality training.
  - The College welcomes, and will provide, appropriate facilities for trans student and staff groups.
- Staff and students undergoing medical and surgical procedures related to gender reassignment will receive positive support from their managers/tutors to meet their particular needs during this period.
- The College recognises that trans staff and students come from diverse backgrounds, and will strive to ensure they do not face discrimination on the grounds of their gender identity or in relation to other aspects of their identity, for example, their race, age, religion, disability or sexual orientation. In addition, assumptions will not be made about the sex of partners of trans staff or students.

### 3. Implementation

Managing the transitioning process for students or staff:

- A person identifies that their physical gender is not their actual or preferred gender ○ The person informs the College that they want to 'transition' to their preferred gender and commence a real-life experience
  - If the person is a member of staff they can raise this with their manager or HR Advisor.

If the person is a student, the Student Welfare Manager meets with the individual to support and records confidential information, which may include:

- Timing of transition: change of gender presentation, name and pronouns. No supporting documentation is necessary for social name change
- Changing of documentation and previous records. N.B. this is often supported by official documentation of change of name and title by way of a Statutory Declaration or Deed Poll. It does not require a Gender Recognition Certificate
- Ensuring absolute security of documentation that reveals previous identity
  - Deciding when, how and who should inform colleagues or students. Some people prefer to inform people themselves, with appropriate back up. Others wish it to be undertaken by someone of their choosing
  - Ensuring additional help to catch up if term time is lost. Treatments that prevent attendance may be scheduled for vacation time. However, specific dates on NHS cannot always be guaranteed.

Finalising the transition process:

- At the person's request, the College updates its records to reflect any name change and their new gender
- A new file is created and any documents revealing their former name and gender that must be kept (for example pension records) are marked 'confidential'.
  
- After at least 12 months of real life experience the person may undergo genital surgery.
- After two years of living in their chosen gender, whether or not they have undergone surgery, the person applies for a gender recognition certificate
- A gender recognition certificate is awarded and the person is issued with a new birth certificate. The person is now legally recognised in their chosen gender – all documents and references not already changed must now be changed. N.B Gender Recognition Certificates are not normally issued until someone is 18, but following transition names and documentation will be changed
- If the person is a staff member who is a member of the institution's pension scheme, they must send their new birth certificate to the appropriate person to ensure their gender is changed on pension records

**Further information and guidance can be found from the following sources:**

LSIS Guide: Promoting transgender equality in further education Dec 2010



