



# TRANS, GENDER VARIANT AND INTERSEX STUDENTS IN SCHOOLS

## POLICY

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MINISTRY FOR EDUCATION AND EMPLOYMENT



TRANS, GENDER VARIANT  
AND INTERSEX STUDENTS  
IN SCHOOLS



POLICY

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# TERMINOLOGY

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These definitions are provided not for the purpose of labelling students but to assist in understanding this policy and the legal obligations. Students may or may not use these terms to describe themselves.

## **Gender**

refers to people's internal perception and experience of maleness and femaleness, and the social construction that allocates certain behaviours into male and female roles which vary across history, societies, cultures and classes. Gender is hence strongly linked to society's expectations and is not exclusively a biological matter.

## **Gender Expression**

refers to people's manifestation of their gender identity, and the one that is perceived by others. Typically, people seek to make their gender expression or presentation match their gender identity, irrespective of the sex that they were assigned at birth.

## **Gender Identity**

refers to each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and/or functions by medical, surgical or other means) and other expressions of gender, including name, dress, speech and mannerisms.

## **Gender Variant**

refers to persons whose gender expression differs from stereotypical expectations and to varying degrees does not conform to gender-based norms and expectations of society.

## **Intersex**

refers to persons who cannot be classified as male or female with regard to their chromosomal, gonadal or anatomical sex. The latter becomes evident, for example, in secondary sex characteristics such as muscle mass, hair distribution and stature, or primary sex characteristics such as the inner and outer genitalia and/or the chromosomal and hormonal structure.

## **LGBTIQ**

refers to Lesbian, Gay, Bisexual, Trans, Intersex and Queer. Although all of the different sub-groups within "LGBTIQ" are often organised together, there are specific needs and concerns related to each community within the acronym.

**Parents**

refers to the biological or legal guardians of the student attending the school.

**School Support Management Plan**

refers to the plan by which the school will address the needs of the student when the student opens up to an adult.

**School Transition Management Plan**

refers to the plan by which the school will address the needs of the transitioning student.

**Sex**

refers to the biological term designating a certain combination of gonads, chromosomes, external organs, secondary sex characteristics and hormonal balances. Common terms are 'male', 'female' and 'intersex'.

**Sex Characteristics**

refer to the chromosomal, gonadal and anatomical features of a person, which include primary sex characteristics such as reproductive organs and genitalia and/or chromosomal structures and hormones and secondary sex characteristics such as muscle mass, hair distribution, breasts and stature.

**Trans**

refers to an inclusive umbrella term referring to those people whose gender identity and/or gender expression differs from the sex they were assigned at birth. Trans does not refer to a sexual orientation and trans people may have any sexual orientation.

**Transition**

refers to a complex, multi-step process that can take years in which a trans person aligns their anatomy and/or their gender expression with their gender identity. They go from living and identifying as one gender to living and identifying as another.

**Use Of Pronouns**

For a more inclusive policy, the use of 'they' shall be used for all genders even when referring to a single individual.

# 01

## PHILOSOPHY AND AIMS OF THE POLICY

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The Trans, Gender Variant and Intersex Students in Schools Policy is developed within the context of the Framework for the Education Strategy for Malta 2014-2024 (MEDE, 2014a) and the values promoted through the Respect for All Framework (MEDE, 2014b). Every student, in the present and in the future will be provided with the necessary knowledge, skills, competences and attributes for citizenship and employability within an inclusive, safe, secure and motivating school environment that inspires and facilitates learning.

It is envisaged that this policy will in due course form part of an umbrella policy about High Quality Education for All.

The policy adopts a whole school approach philosophy. This approach is defined as a unified collective and collaborative action by educators, administrators, parents and students that has been strategically constituted to improve student learning behaviour and well being and the conditions that support these.

### AIMS OF THE POLICY

This Policy aims to:

1. Foster a school environment that is inclusive, safe and free from harassment and discrimination for all members of the school community, students and adults, regardless of sex, sexual orientation, gender identity, gender expression and/or sex characteristics.

2. Promote the learning of human diversity that is inclusive of trans, gender variant and intersex students, thus promoting social awareness, acceptance and respect.
3. Ensure a school climate that is physically, emotionally and intellectually safe for all students to further their successful learning development and well-being, including that of trans, gender variant and intersex persons.

## VALUE-BASED POLICY

This policy is based on the following values:

- Inclusivity refers to the understanding of and responding to the different potentials and needs of every individual person.
- Diversity refers to the dimension used to differentiate groups and people from one another. It means respect for and appreciation of differences in ethnicity, sex, gender, age, national origin, disability, sexual orientation, gender identity, gender expression, sex characteristics, education, and religion. It brings with it diverse perspectives, work experiences, lifestyles and cultures.
- Equity is the quality that allows for all students to be provided with opportunities to be successful, that identifies and removes institutional barriers to such success and that provides all learners with supports and rewards to develop their abilities and achieve their aspirations.
- Social Justice implies fairness and mutual obligation in society: that we are individually and collectively responsible for one another, and that we should ensure that all have equal opportunities to succeed in life.

## SCOPE

This policy covers behaviour that takes place in the school, on school property, at school-sponsored functions and activities. It also applies to usage of electronic technology and electronic communication that occurs in the school, on school property, at school sponsored functions and activities, on school computers, networks, fora and mailing lists.



# 02

## BACKGROUND

Knowledge about the incidence of trans, gender variant or intersex children and young people is scarce both at an international as well as at the national levels. The incidence of trans, gender variant and intersex children and young people in Malta is therefore, difficult to determine. Nonetheless, while numbers of a particular group should not have a bearing on their access to human rights, it can be noted that the prevalence of intersex people may not be as rare as is sometimes thought. It is estimated that 1.7% of born babies are intersex (Fausto-Sterling, 1993). Similarly, it is estimated that there could be as many as 1.5 million trans people in the European Union alone (Amnesty International, 2014).

Irrespective of the incidence, every student deserves to be treated with respect and to be protected from violations of their human rights, including their right to be free from discrimination, harassment and violence (Council of Europe, Office of the Commissioner for Human Rights, 2009). Every student has a right to be encouraged to learn and to grow intellectually and emotionally without being asked to deny an essential component of their identity (Bochenek and Widney Brown, 2001). It is unacceptable that sex and gender minority students face the same social and developmental challenges as their peers but often should have to do so with the added burden of extreme social isolation, self-doubt, and fear (Weiler, E.M. 2003).

While schools should be a safe, learning environment for all (Weiler, E.M. 2003), studies unfortunately show that trans, gender variant and intersex persons encounter difficulties ranging from negative reactions to bullying in school across the European Union (European Union Agency for Fundamental Rights, 2014). Local studies show that the situation is no different in Malta (Baldacchino and Grech, 2008: 8). Being able to be one's self at school is an essential factor in every student's success and well-being. Schools are therefore obliged to ensure safe and inclusive environments for all students.

# 03

## RELEVANT LEGISLATION AND OTHER RELATED INSTRUMENTS

### 3.1

International Covenant on Economic, Social and Cultural Rights, Article 13.

As a state party, Malta should ensure that all have access to education without any distinction. Education shall aim at fully developing the human personality, sense of dignity as well as strengthen the respect for human rights and fundamental freedoms. Furthermore Malta should promote understanding and tolerance for different sectors of society.

### 3.2

European Convention on Human Rights' First Protocol. Article 2 states that Education is a right available to all, which the State has to guarantee.

### 3.3

Recommendation CM/Rec(2010)5 adopted by the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity, called on member states to address equality in education by taking into due account the overriding interests of the child. Member states should take appropriate legislative and other measures, addressed to educational staff and students, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity. This includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

### 3.4

Parliamentary Assembly of the Council of Europe. (2013). Resolution 1952 (2013) Children's right to physical integrity. This Resolution makes reference to Article 3 of the United Nations Convention on the Rights of the Child (UNCRC), which envisages that the best interest of the child should always prevail, and tackles non-medically justified violations of children's physical integrity which may have a long-lasting impact on their lives.

In view of the above Member States are encouraged to undertake further research to increase knowledge about the specific situation of intersex people, ensure that no-one is subjected to unnecessary medical or surgical treatment that is cosmetic rather than vital for health during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to persons concerned, and provide families with intersex children with adequate counselling and support.

### 3.5

EU Charter of Fundamental Rights, Article 14. Taking into account the non-discrimination principle enshrined in Article 21 of the Charter, the enjoyment of the right to education must be accessible to all on an equal basis. Referring to homophobic and transphobic bullying in schools, the European Parliament called on the European Commission to promote equality and non-discrimination on the grounds of sexual orientation and gender identity throughout the EU's youth and education programmes (European Parliament Resolution, 4th February 2014).

### 3.6

Constitution of Malta, Article 32, as amended in 2014 contains anti-discrimination provisions on the grounds of sex, sexual orientation and gender identity amongst others.

### 3.7

The Education Act (1988), Chapter 327 of the Laws of Malta, binds the Directorate of Educational Services with the duty to provide quality education for all and to promote the physical and mental health of students. The Directorate is also responsible to ensure the provision of services to deal effectively with issues of bullying and to provide a safe and secure environment for students, teachers and any person who is in the school.

### 3.8

Criminal Code of Malta, Article 82A, provides protection against sexual orientation and gender identity hate crime and hate speech, while the Gender Identity, Gender Expression and Sex Characteristics Act (GIGESC Act) included the grounds of gender expression and sex characteristics within its scope (Chapter 540 of the Laws of Malta, Article 14).

### 3.9

The Equality for Men and Women Act, Chapter 456 of the Laws of Malta, provides protection against discrimination on the grounds of sex, sexual orientation, gender identity, gender expression and sex characteristics.

### 3.10

The Gender Identity, Gender Expression and Sex Characteristics Act (2015) provides for the recognition and registration of the gender of a person and regulates the effects of such a change, as well as the recognition and protection of the sex characteristics of a person.

# 04

## MAKING SCHOOLS INCLUSIVE FOR TRANS, GENDER VARIANT AND INTERSEX STUDENTS

Trans, gender variant and intersex students face a range of issues and psychological demands and needs (Table 1) that warrant being addressed (Istar Lev, 2009; Kosciw & Diaz, 2008; Richards, 2015; Luengsurawat, 2009; OHRC 2014).

### ISSUES

faced by Trans, Gender Variant and Intersex Students

- Sex and gender stereotypes
- Culture and cultural expectations
- Lack of well-being due to discrimination, bullying and other unfair treatment
- Exclusion from sports and other gendered activities
- Unease with gendered uniforms, toilets and other gendered spaces
- Decreased attention during school time and failure to learn due to lack of safety in school and lack of support services
- Minority stress and social isolation
- Absenteeism due to lack of safety in schools

### NEEDS

faced by Trans, Gender Variant and Intersex Students

- Privacy and confidentiality
- Persons to advocate for their wellbeing and rights: parents, teachers, psychologist, social worker, counsellor etc
- Adequate facilities
- Inclusive policies and regulations
- Support from school and wider community
- Possibility of amendments of gendered characteristics in documentation of child's file
- Counselling when identity affirmation is proving difficult
- Access to information

In order for the issues of trans, gender variant and intersex students to be addressed effectively, responsibility for creating a safe school is to be shared by all stakeholders involved, including all teaching and administrative school staff (college principals, school management teams, educators, etc) and support services. Addressing gender identity, gender expression and sex characteristics issues in schools is a continuous endeavour that involves a proactive approach to new forms of inclusivity. This process includes not only understanding and supporting the student, but also identifying areas of change and adjusting accordingly.

## TRANSITION

There are a growing number of students who are choosing to transition (or affirm their gender) while in school. This may mean that they will be adopting clothing, hairstyles and mannerisms that match their identity. Some may even be undergoing hormone therapies or puberty blockers. This is one of the advantages of a co-ed school which makes it possible for students to undergo transition in the same school.

The transition process may take several years and requires support at every stage. The family, friends and schoolmates also go through the transitioning process as they learn to relate to the individual in their affirmed gender.

Teachers, school counsellors and school administrators need to provide information, resources, be supportive, help other students understand and build inclusive environments.

## INTERSEX

Intersex is a form of bodily diversity, rather than a sexual orientation or gender identity. Intersex people typically discover their intersex variation when told by their parents or doctor. This is a different experience to the LGB (lesbian, gay, bisexual) concept of 'coming out' to family and friends. Most intersex people identify as either a woman or man, while some may identify as neither exclusively a woman nor exclusively a man. This means that gender identity and gender expression issues that students face in schools still apply to intersex students. However advocacy and support for intersex students may take a different form from other work on issues related to sexual orientation, gender identity and gender expression since:

Intersex students may or may not:

- identify as male or female; identify as both, all, between, or neither gender/s.
- connect with the LGBTIQ community
- be post-diagnosis or have experienced medical intervention.
- be self-accepting.

## HEALTH ISSUES FACED BY INTERSEX PEOPLE

Intersex bodies are most often healthy. While some health problems are associated with some forms of intersex, being intersex is not a health problem in and of itself. Intersex is not a medical condition.

Research has shown that many intersex people suffer from the physical and mental effects of infant and childhood surgeries, other ‘normalising’ treatments, medical photography, lack of counselling for themselves, their parents and family, and a lack of transparency from doctors and other healthcare providers. By means of the GIGESC Act (Cap. 540 of the Laws of Malta) unless there are exceptional circumstances, such adverse treatment is prohibited until the person to be treated can provide informed consent.

## DISCLOSURE

It is not an intersex student’s duty to discuss intersex at any time, nor should they be expected to discuss their experience.

Intersex-specific Needs

1. In addition to the above, intersex students need:
  - a. clear messages that a service welcomes intersex people, and awareness of sex characteristics related to bodily variations, not gender identity or sexual orientation;
  - b. to know that confidentiality will be respected;
  - c. services that understand intersex health and well-being concerns.

## INCLUSIVE LANGUAGE AND INTERSEX

Terms to avoid include pathologising language such as ‘disorders of sex development’. The word ‘hermaphrodite’ is also regarded as stigmatising by several intersex people. It is preferable to use the word ‘intersex’, or refer to sex traits, variations or characteristics. Most intersex people are not trans or gender variant either. Making assumptions that intersex people have, want to, or need to, transition should be avoided. Referring to intersex people using language that describes trans people, such as transgender, or ‘gender diversity’ should be avoided altogether. Questioning whether or not a person identifies with LGBT is unacceptable. ‘All’ or ‘different’ genders should be considered without, assuming that intersex people automatically have a non-binary gender identity or that having a non-binary gender identity means someone is intersex. Assumptions that people with a specific intersex variation identify with a specific gender should be avoided, as should assumptions that surface characteristics define an intersex student’s gender.

## SCHOOL-COMMUNITY PARTNERSHIPS

Effective school-community partnerships enable representation and active participation by diverse groups and ensure the inclusion of the perspectives, experiences, and needs of trans, gender variant and intersex students. Such partnerships should enhance the educational opportunities of all students. Schools should seek to increase cooperation and collaboration among home, school, inclusive and specialised services, LGBTIQ community organisations and the community-at-large.

In so doing, schools should at the outset, ensure that students, parents, and staff have access to supportive services and resources whenever these are requested.



# 05

## RELATED DOCUMENTS

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Other related documents to this policy include:

- Framework for the Education Strategy for Malta 2014-2024 (MEDE, 2014a).
- Respect for All Policy Framework (MEDE, 2014b).
- Addressing Bullying Behaviour in Schools Policy (MEDE, 2014c).
- Education for All. European Agency for Special Needs and Inclusive Education (Denmark 2014) on behalf of the Ministry for Education and Employment, Malta (MEDE 2014).
- Managing Behaviour in School (MEDE, 2015).

# 06



## OWNERS

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### OWNERS

Director General - Directorate for Educational Services

Director General - Directorate for Quality and Standards in Education

# 07



## REVIEW DATE

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This document will be reviewed during August 2016.  
You are encouraged to submit your feedback by the 30th April 2016 via  
email on [r4af.mede@gov.mt](mailto:r4af.mede@gov.mt)

# 08

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