

KCSIE guidance consultation OII Europe questionnaire response

Prepared by OII Europe in April 2026

Please find below our full response to Questions 33, 34 and 35, which did not fit in the online questionnaire response due to character limitations.

Question 33: Does the updated section of the guidance on children who are questioning their gender provide clarity about the considerations schools and colleges will need to take into account?

→ **Our Selection: 'No'**

No. While some positive elements are included in the section, the following inconsistencies risk resulting in harmful practices in implementation. In the current wording of the guidance, children who will be grouped as 'gender questioning' might include trans, non-binary or those intersex children who do not comply with expectations connected to the sex that has been assigned to them at birth, or any child whose gender expression is seen as non-normative. It is concerning that this section overall frames these children as one homogenous group of children who are 'gender questioning', reinforcing the normative notion that children cannot know themselves, thereby removing agency, reinforcing harmful beliefs and severely undermining the right of the student to access education in a respectful and inclusive school environment.

It is deeply concerning that the guidance approaches the wellbeing of these children predominantly from a safeguarding perspective, neglecting to place sufficient weight on equality and non-discrimination obligations, and focusing rather on demonizing and further stigmatising so-called 'gender questioning' students as 'risks', rather than as rights-holders who are entitled to protection from discrimination in the same way as their cisgender and/or endosex (non-intersex) peers.

It can be questioned whether the guidance adequately reflects schools' legal obligations under the Equality Act 2010 as well as under the Public Sector Equality Duty (PSED). Looking at the Equality Act obligations, requiring additional scrutiny or barriers for so-called 'gender questioning' students seeking to change their name, pronouns, or presentation, when cisgender and/or endosex students are not subject to the same scrutiny or equivalent processes, may amount to unlawful discrimination. Differential treatment for similar requests constitutes discrimination and may therefore be unlawful, for example, an intersex child, who

may become aware of their intersex variation only during puberty as a result of natural changes in their body, may wish to change their name, compared to a non-intersex child who wishes to change their name, (whether that be related to their gender identity or not) both of which OII Europe considers rightful as acts of self-determination for a mature child.

It is especially concerning that para. 116 which introduces the section, as well as the consultation questionnaire, claims that child protection and the best interests of the child can be at the forefront of policy developments, when only some children (cisgender, endosex children) would ultimately benefit from protection, whilst co-called 'gender questioning' children are further exposed to discrimination and situations potentially endangering their emotional and physical wellbeing.

We are concerned that the guidance incorrectly frames being co-called 'gender questioning' (trans, non-binary, intersex or gender non-conforming) as a potential safeguarding concern, both in relation to the child themselves and to their peers. There is no evidence that being trans, non-binary or intersex constitutes a safeguarding risk. On the contrary, statistics show that this group of students experience alarmingly high levels of bullying in schools. According to a 2025 study by UK charity, Theirworld, nearly half of UK LGBTIQ+ youth say they have faced hostility in educational settings, with more than one in four saying they did not or do not feel safe at school. This kind of bullying, which constitutes discrimination under the Equality Act, can take many forms: using homophobic, transphobic or intersexphobic language, deadnaming or purposely using the wrong pronouns, outing someone against their wishes, ignoring or isolating an LGBTIQ+ pupil, and verbal, physical or sexual abuse (Bachmann & Gooch, [2017](#)).

Evidence from OII Europe's membership and lived experience show that supportive and inclusive environments enable so-called 'gender questioning' children to thrive socially and educationally, we believe this should instead be the focus on the guidance. Additionally, longitudinal research from The Trevor Project (Project SPARK) shows that supportive, affirming environments—particularly those involving family and peer support—are linked to markedly lower rates of anxiety, depression, and suicide risk among transgender and non-binary youth. Treating identity itself as a safeguarding issue can contribute to stigma and runs counter to guidance from the World Health Organization, which identifies stigma and exclusion as major drivers of harm in school environments (WHO, *Global Standards for Health Promoting Schools*).

The current framing of the guidance implies that the duty of schools to combat discrimination applies mainly to "significant decisions" which is not legally accurate. In reality, schools and colleges are required to have due regard under the PSED to the need to eliminate discrimination, advance equality of opportunity, and foster good relations in the exercise of all their functions and in every decision they make. This includes individual decisions affecting all pupils, such as those relating to names, pronouns, uniform, or participation in activities. Misstating the duties and obligations in this way creates a risk that schools may act unlawfully. In practice, most children seeking social transition will fall within the protected characteristic of gender reassignment and are entitled to protection from discrimination.

The guidance also fails to address obligations under the Data Protection Act 2018 and UK GDPR. Information about a child's gender identity (among other characteristics) is likely to

qualify as special category data, which is subject to stricter requirements for lawful processing and disclosure. However, the guidance does not refer to the baseline expectation of confidentiality or to key principles such as lawfulness, fairness, transparency, and data minimisation. Nor does it call for case-by-case decision-making prior to disclosure. Decisions to share sensitive personal data must be grounded in necessity, proportionality, and the child's best interests, taking into account factors such as age, maturity and competence (including Gillick competence), the child's wishes, and any risk of harm. In particular, the guidance does not make clear that schools should assess, in each instance:

- whether there is a valid lawful basis for disclosure, particularly where the child has not consented,
- the scope of the information to be shared and whether it is strictly necessary, and
- whether disclosure is proportionate and justified, including in light of safeguarding considerations.

Finally, and especially in light of the above, we are deeply concerned that the guidance risks undermining trust between students and staff. If children and young people cannot safely disclose aspects of their identity or bodily reality (as is the case with intersex children), or fear that doing so will lead to unnecessary escalation, differential treatment, or disclosure without consent, they may be less likely to seek support from trusted adults. It also fails to consider that for some so-called 'gender questioning' children, their home environments may not always be a safe place for them, and perhaps some might seek to confide information about their identity or bodily reality to a trusted teacher. The guidance's approach to parental involvement in such cases raises serious safeguarding concerns, data protection issues, as well as human rights concerns. Disclosing information to parents without careful assessment may expose some to harm, including rejection or abuse. This approach is highly problematic and is contrary to core safeguarding objectives. Overall, the section lacks clarity, is difficult to interpret in practice, and risks leading to inconsistent, harmful, and potentially unlawful outcomes.

Question 34: Do paragraphs 104-115 provide clarity for schools and colleges about their legal obligations relating to toilets, changing rooms, and boarding and residential accommodation?

→ **Our Selection: 'No'**

Toilets

No. The section fails to provide sufficient clarity and therefore risks leading schools and colleges to adopt practices that are harmful to students and that create legal uncertainty. There is no mention of the need to ensure privacy, and safety, for so-called 'gender questioning' students, showing again a clear bias towards the 'safeguarding' of only a percentage of the student population and not the whole. It is unclear as to why these students are undeserving of the necessary safety afforded to their cisgender, endosex peers, especially as data cited above clearly shows that this group is particularly vulnerable to bullying and violence.

Blanket restrictions on access to facilities aligned with a student's lived gender, combined with inconsistent provision of alternatives (which for most schools and colleges is the current reality), may give rise to risks under the Equality Act 2010, including discrimination. The

guidance does not clearly explain how schools can meet their legal obligations in a way that is both compliant and respectful of students' rights whilst at the same time proposing measures which violate those rights.

That the guidance also underestimates or fails to consider the practical constraints, is deeply worrying, as it shows no real commitment or belief in the importance of ensuring the safety and accessibility of toilets for so-called 'gender questioning' students. For most schools and colleges, the current reality is that many lack the infrastructure to provide appropriate alternative facilities that ensure safety, privacy, comfort, and dignity. Students may be directed to use accessible or staff toilets, which can be stigmatising and impractical. In practice, this is likely to result in students being singled out or 'outed' to their peers, increasing the risk of stigma, bullying and violence, and mental health harms.

In addition, forced disclosure of a young person's trans or intersex status is directly linked to higher risks of bullying, stigma, exclusion and poorer mental health outcomes, whereas supportive and welcoming environments protect students, as evidenced by evidence from school climate research consistently shows that forced disclosure of a young person's trans or intersex status is associated with increased risk of stigma, bullying, and mental health harms, while supportive environments are protective (Kosciw et al., GLSEN National School Climate Survey; Russell & Fish, 2016, Journal of Youth and Adolescence).

Policies that visibly differentiate students damage trust and reduce the likelihood that students will seek support. In addition, where students feel unsafe or uncomfortable accessing toilets, they may avoid using them altogether, with negative consequences for physical health and wellbeing, including urinary tract infections and dehydration risks (ACLU & National Women's Law Center reports on school restroom access; UNICEF guidance on safe, inclusive school environments).

Where the guidance merely "recommends" instead of mandating accessible toilets for so-called 'gender questioning' students, whilst being fully aware that most schools lack appropriate facilities in the current moment, it effectively allows for 'non-uptake' of its own guidance. This guidance is also contrary to evidence from school design and inclusion research, which shows that safety and privacy can in fact be improved through inclusive infrastructure (such as single-user, gender-neutral toilets integrated across school buildings, or floor-to-ceiling partitions), rather than opting for the segregation of specific groups of students. These approaches benefit all students without singling out 'gender questioning' students (please see: Wilcox, JoAnn Hindmarsh, and Kurt Haapala. 2016. How to Design School Restrooms for Increased Comfort, Safety and Gender-Inclusivity.).

Changing rooms and showers

No. The section fails to provide sufficient clarity and therefore risks leading schools and colleges to adopt practices that are harmful to students and that create legal uncertainty. There is no mention of the need to ensure privacy, and safety, for so-called 'gender questioning' students, showing again a clear bias towards the 'safeguarding' of only a percentage of the student population and not the whole. It is unclear as to why these students are undeserving of the necessary safety afforded to their cisgender, endosex peers,

especially as data cited above clearly shows that this group is particularly vulnerable to bullying and violence.

Requiring 'gender questioning' students to use separate facilities is likely to single them out and 'out' them to peers, increasing the risk of bullying, exclusion, social isolation, stigma, and shame. Such approaches may undermine safe school environments rather than support them. In addition, forced disclosure of a young person's trans or intersex status is directly linked to higher risks of bullying, stigma, exclusion and poorer mental health outcomes, whereas supportive and welcoming environments protect students, as evidenced by Evidence from school climate research consistently shows that forced disclosure of a young person's trans or intersex status is associated with increased risk of stigma, bullying, and mental health harms, while supportive environments are protective (Kosciw et al., GLSEN National School Climate Survey; Russell & Fish, 2016, *Journal of Youth and Adolescence*).

Again, we fear the guidance does not adequately consider practical realities. Many schools lack the space or resources to provide appropriate alternatives, meaning students may be required to change in isolation or at different times, which can be stigmatising, may 'out' them and can be disruptive to their participation in school life. There are also implications for equal participation in school sports and PE, which all children, regardless of how they identify, have the right to participate in. Restricting access to facilities that are safe and appropriate for so-called 'gender questioning' students curbs their full participation, limiting access to the physical, social, and educational benefits of sport.

Boarding and residential accommodation

No. The section does not provide sufficient clarity and risks leading to inconsistent and harmful practices. Blanket restrictions on access to safe accommodation aligned with a student's lived gender, combined with inconsistent provision of alternatives (which for most schools and colleges is the current reality), may give rise to risks under the Equality Act 2010, including discrimination and harassment. The guidance does not clearly explain how schools can meet their legal obligations in a way that is both compliant and respectful of students' rights, especially their right to privacy.

In practice, mandating alternative accommodation arrangements can single so-called 'gender questioning' students out, effectively 'outing' them to peers and heightening their exposure to bullying, stigma or social exclusion, particularly in sensitive residential settings, and may result in negative mental health outcomes. The guidance also does not adequately reflect practical constraints in boarding settings, where flexible or private accommodation options may be limited. There are significant safeguarding implications. Approaches that single out students may undermine trust and reduce the likelihood that concerns are reported.

Such measures are contrary to the broader goals of safeguarding and inclusion. The World Health Organization notes that stigma and exclusion within institutional environments are significant drivers of poor mental health and wellbeing among young people, whereas inclusive and supportive settings serve as protective factors (WHO, *Global Standards for Health Promoting Schools*). Restrictive approaches to accommodation may effectively severely limit so-called 'gender questioning' students' participation in boarding and

residential opportunities, which directly impacts their eventual access to education, and may encourage dropping-out of school.

Sports (paragraph 94-97)

Question 35: Do paragraphs 94-97 provide clarity for schools and colleges about the circumstances in which the school is justified in having a policy of single-sex sports?

→ **Our Selection: 'No'**

No. The section does not provide sufficient clarity and risks encouraging restrictive and exclusionary practices. The guidance creates legal uncertainty. Blanket exclusion of so-called 'gender questioning' students from participation aligned with their lived gender, without consideration of proportionality or less restrictive alternatives, may expose schools to risks under the Equality Act 2010. The guidance asserts that when sports are separated for safety reasons, this must be determined strictly by sex assigned at birth, with no exceptions. Claims that so-called 'gender questioning' students pose risks to safety or fairness in school sports are not supported by evidence and can perpetuate harmful stereotypes (Jones et al., 2017).

This position lacks the necessary flexibility, and fails to account for the many ways school sports can be organised to ensure both safety, inclusion and thereby the wellbeing of all students. Inclusive physical education practices - such as flexible grouping, non-contact activities, and differentiated participation - can enhance both safety and engagement for all students. UNESCO emphasizes that quality physical education should ensure inclusion and equal participation regardless of gender or other characteristics. Similarly, the WHO stresses the importance of inclusive and adaptable physical activity in schools, noting that exclusion and stigma, rather than inclusion, present the greatest risks to young people's health and wellbeing - this should be the focus of safeguarding policies in the area of sport.

Participation in sport plays a vital role in physical health, mental wellbeing, and social development. So-called 'gender questioning' students may already encounter significant barriers to taking part in sports, such as fear of bullying and harassment. Policies that exclude them are likely to further limit participation and deepen existing inequalities. Additionally, restrictive measures as proposed by the guidance in its current form, may increase the risk of students being involuntarily 'outed' to their peers, leaving them vulnerable to stigma and harassment.

The guidance is also inconsistent with its broader aim of promoting flexibility and avoiding rigid gender stereotyping across school policies. Overall, the section lacks clarity, is overly prescriptive, and risks leading to exclusionary and even discriminatory and harmful practices.

For more information, please contact:

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