



**Western Cape  
Government**

Education

Directorate: Policy Co-ordination

**WESTERN CAPE EDUCATION DEPARTMENT'S GENDER IDENTITY AND SEXUAL ORIENTATION  
POLICY**

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## 1. Definitions

In this policy, any word or expression to which a meaning has been assigned to and bears that meaning assigned to it and unless the context otherwise indicates, —

“**bisexual**” means a person who is sexually attracted to both men and women.

“**gender characteristics**” means the way in which a person expresses his or her social identity as a member of a particular sex by using style of dressing, the wearing of prostheses or other means.

“**gender expression**” means the way in which a person expresses his or her gender identity typically through their appearance, dress and behaviour.

“**gender identity**” means a person's perception and internal sense of their gender, which may or may not correspond to the sex they were assigned at birth.

“**gender reassignment**” or “**gender affirming actions**” means a process which is undertaken for the purpose of reassigning a person's sex by changing physiological or other sexual characteristics, and includes any part of such a process; or steps taken by a LGBTQI person to affirm their gender identity including social transition, gender affirming hormone treatment and gender affirming surgeries.

“**hermaphrodite**” or “**intersex**” means a person having both male and female sex organs.

“**homophobia**” means a fear or dislike of homosexual people.

“**homosexual**” means a lesbian or gay person who is sexually attracted to people of the same sex and not to people of the opposite sex.

“**lesbian**” means a woman who is sexually attracted to other women.

“**LGBTQI**” means lesbian, gay, bisexual, transgender, queer or questioning, and intersex.

“**parent**” means –

- (a) The biological or adoptive parent or legal guardian of a learner;
- (b) The person legally entitled to custody of a learner; or
- (c) The person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education at school.

“**queer**” is an umbrella term for lesbian, gay, bisexual, transgender and intersex persons.

**“sexual orientation”** means a person's sexual identity in relation to the gender to which they are attracted to; the fact of being heterosexual, homosexual, bisexual or any other sexual orientation.

**“transphobia”** means a fear or dislike of transgender people.

**“transgender”** means a person whose sense of personal identity and gender does not correspond with their birth sex.

## **2. Legislative Framework**

Alteration of Sex Description and Sex Status Act, 2003 (Act 49 of 2003)

Births and Deaths Registration Act, 1992 (Act 51 of 1992)

Child Care Act, 2005 (Act 38 of 2005)

Constitution of the Republic of South Africa, 1996

National Health Act, 2003 (Act 61 of 2003)

Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)

South African Schools Act, 1996 (Act 84 of 1996)

Western Cape Provincial School Education Act, 1997 (Act 12 of 1997)

## **3. Purpose**

The purpose of this policy is to –

- (a) create an educational environment that does not discriminate directly or indirectly against anyone on one or more grounds, including amongst others, gender, sex, sexual orientation, conscience, belief, culture and birth;
- (b) create an educational environment free from stigma and discrimination for all learners in all ordinary public schools; and
- (c) promote gender identity and gender expression.

## **4. Scope**

This policy is applicable to all ordinary public schools.

## **5. Gender Identity**

- 5.1 When a learner discloses his or her gender identity and/or sexual orientation to the principal, educator or a fellow learner, the matter must be treated with great sensitivity and confidentiality.
- 5.1.1 The learner should be referred to a social worker, psychologist or any other organisation which deals with matters of this nature in order to facilitate counselling and assistance.
- 5.1.2 The principal must manage and co-ordinate this process.
- 5.1.3 In order to maintain confidentiality, the principal must report to the school governing body that a learner is LGBTQI, without necessarily divulging the learner's name or gender identity.
- 5.1.4 With the consent of the learner, the principal must convene a meeting with the learner and his or her parent(s) to –
- (a) gain an understanding of the perceptions and expectations of the learner and his or her parent(s) in dealing with the matter.
  - (b) supply them with comprehensive information concerning all the appropriate guidance services available in the community and the services available at the school.
  - (c) clearly state that parents may request or can apply for an exception to the school's code of conduct where reasonable or practicable.
  - (d) take any further decisions, for example about--
    - whether the matter must be handled confidentially
    - self-expression and conduct on the part of the learner
    - allow for freedom of participation, where reasonable and practicable, in the school's extra-curricular activities and the use of other school facilities.

## **6. Gender Expression**

- 6.1 A LGBTQI learner has the right to choose the first name by which he or she wants to be known to educators, school staff and fellow learners, irrespective of his or her gender characteristics or assigned sex at birth.

- 6.2 The LGBTQI learner will maintain his or her sex description on the Central Management Information System (CEMIS) as it appears on his or her birth certificate or where he or she has altered his or her sex description on his or her birth register at the Department of Home Affairs.

## **7. Dress Code and Physical Appearance**

- 7.1 Schools are encouraged to accommodate the dress code preferences of LGBTQI learners in their respective codes of conduct and may introduce gender neutral uniforms. The same rules which are applicable to girls may apply to boys and vice versa, where reasonable and practicable.
- 7.2 Schools are also encouraged to allow for deviations from the school's uniform policy on cultural, medical and gender diversity grounds. A letter of application signed by the parents must be submitted to the principal.
- 7.3 Neatness and cleanliness must be the underlying principles of the school's dress code and the onus is on parents and learners to ensure that they remain presentable at all times.
- 7.4 The exception contemplated in paragraph 7.1 does not mean that "anything goes".

## **8. Participation in Sports**

- 8.1 Learners of all sexual orientations and gender identities should be encouraged to participate in school sports free from bullying, harassment and discrimination. However, LGBTQI learners can participate in any sports code of their choice provided that they are informed that when they progress to obtaining national or provincial colours, they will have to adhere to the rules and regulations applicable to the National and Provincial Sporting Federations.
- 8.2 Ensure that all learners have the opportunity to be physically active and able to express their sporting abilities and interests.
- 8.3 Schools should consider having sports that include all genders and allow traditional sports to be played in teams of both genders.

## **9. Use of Facilities**

### 9.1 Toilet and Changing Room Facilities

9.1.1 Having considered the safety measures and inherent risks, a school may allow a LGBTQI learner to use the toilets and changing room facilities which he or she feels most comfortable with, but the sensitivity of other learners must also be taken into account.

9.1.2 A school may also make provision for a unisex toilet, if reasonably practicable depending on their available financial resources and infrastructure.

## **10. School Excursions and Hostels**

10.1 Careful consideration and preparation is needed where a LGBTQI learner is a resident in a school hostel and when a LGBTQI learner goes on a school excursion, to ensure that a LGBTQI learner is not excluded in any way.

10.2 The sleeping arrangements will have to be thought about carefully before the excursion takes place and thorough risk assessments should be carried out prior to the excursion so that reasonable adjustments can be made to allow the LGBTQI learner to participate.

10.3 Similarly, the sleeping arrangements will have to be thought about carefully before placing a LGBTQI learner in a hostel, best suited for the LGBTQI learner, while considering the sensitivity of the other learners.

## **11. School Functions and the Matric Dance**

11.1 Learners should be allowed to have dress code preferences of their choice.

11.2 Ensure that all learners feel free to bring a partner of their choice to the matric dance regardless of sexual orientation and gender identity.

## **12. Single Gender Schools**

12.1 Single gender schools may admit LGBTQI learners and may make provision for their enrolment in its Admissions Policy.

- 12.2 The school should engage in consultation sessions with the parents and learners of the school community to ensure that the decision of the school to include the admission of LGBTQI learners reflects the wishes of the majority of the parents and learners.
- 12.3 Schools must be fair and objective in this instance and should not be swayed on the subjective wishes of a particular group.
- 12.4 Schools may engage in suitable education campaigns with the parents and learners of the school community to ensure that the decision of the school to include the admission of LGBTQI learners is understood by the parents and learners.
- 12.5 Reasons must be submitted to the parents and learners to substantiate the school's decision to admit LGBTQI learners to the school.

### **13. Safe Space**

- 13.1 Schools must strive to create an environment where LGBTQI learners get affirmation that whatever their sexual orientation and gender identity is, that it is respected, valued and deemed part of the normal spectrum of sexual orientations and gender identities.
- 13.2 Schools must be vigilant against learners who pretend to be LGBTQI with the intention to deceive that he or she is LGBTQI in order to abuse concessions and exceptions granted to such learners.
- 13.3 We recommend that schools support and acknowledge the establishment of Diversity Social Associations where the celebration of diversity is embraced.

### **14. Curriculum Inclusiveness**

- 14.1 The school environment, curriculum and assemblies can all be used to explore issues of sex, gender, gender identity, homophobia and transphobia and should be a topic explored in a subject such as Life Orientation.
- 14.2 Gender inclusion should be integrated into the curriculum, by —
- (a) Using lesson plans that help learners see, appreciate and understand one another as individuals.

- (b) Using lesson plans that help learners identify gender stereotyping and limits such as examining popular culture, advertising, picture books or toys for children.
  - (c) Discussing and practicing ways learners can stop gender stereotyping and disparagement in school.
  - (d) Teaching ways for learners to be an ally and to stand up for one another.
  - (e) Integrating gender topics into the curriculum through story problems, writing prompts, readings, art assignments or music.
- 14.3 The importance of providing learners with the knowledge, skills, attitudes and values around sexual orientation and gender diversity, to have a clear understanding that sexual orientation and gender diversity are two completely different things. The accompanying social responsibilities in especially the learning area such as Life Orientation, cannot be over-emphasised. Emphasising the importance of good moral values should be the backbone of sexual education.

## **15. Western Cape Education Department's Training of Schools to Raise Awareness**

- 15.1 The Western Cape Education Department will provide training to education districts, principals, governing bodies, educators and learners to create awareness around gender diversity as a key focus area to promote positive attitudes to gender diversity by including LGBTQI learners without discriminating against them.
- 15.2 There shall be ongoing professional development to build the skills of staff members to prevent, identify and respond to bullying, harassment and discrimination.
- 15.3 Schools can also enable parents and guardians to play an active role in the sexual education of their children by presenting parent involvement and educational support programmes.
- 15.4 It is important that the school leadership, i.e. the principal, school management teams and the representative council of learners, makes an effort to educate the school community about sexual orientation and gender identity rights.

## **16. Review**

This policy must be reviewed when the need arises or in the case of changed circumstances such as pronouncements by legislation and/or regulations and budgetary constraints.

### **Note: Seshego Equality Court Judgment - Mphela and Others v Manamela and Others (2016), Case No. 1/2016**

In a landmark judgment handed down in March 2017 in the Equality Court for the District of Seshego in Limpopo Province, the South African Human Rights Commission instituted proceedings on behalf of a transgender secondary school learner, Nare Phillemon Mphela. The case arose from allegations of humiliation and harassment based on the gender identity of the learner that created a hostile and intimidating environment at school. The learner testified that he identified himself to be a girl and dressed accordingly and used the girls' toilet facilities. He did not complete matric and he further testified that he felt that the school system failed him in acknowledging his personal situation and providing a safe and comfortable environment. The court held that the principal of the school and the Limpopo Provincial Department of Education was and still is tasked to create a safe, protective, stress free environment for learners. They are tasked to look after the well-being of the learners and they failed.

The Western Cape Education Department has developed this policy to sensitise all public schools and school communities to assist in creating an educational environment that does not discriminate directly or indirectly against anyone on one or more grounds, including amongst others, gender, sex, sexual orientation, conscience, belief, culture and birth.

I.....(name of Minister) Provincial Minister for  
.....(name of Department)  
hereby approve the Western Cape Education Department's Gender Identity and  
Sexual Orientation Policy.  
.....(Signed Name)  
..... (Date)

DRAFT