

## **EISM GENDER IDENTIFICATION & PARTICIPATION POLICY**

As an inclusive Association EISM supports and encourages the participation of all students in our sporting programs and events.

Sport is an important part of life for many people and has significant social and health wellbeing benefits. One of the key principles of EISM is to provide opportunities for students to participate in sport who would otherwise not play at all. EISM will work with schools and other school sport stakeholders to ensure that opportunities are provided for all students to play sport competitively and with dignity. In partnership with schools, EISM will support all concerned to build the confidence and capacity to support participation for all students regardless of race, gender, culture or disability in sport.

As per the School Sport Victoria Inclusion Policy (February 2018); School Sport Victoria (SSV) supports the right of ALL students to access the same opportunities to school sport as their peers. All schools and school sporting structures have a legal and a moral obligation to provide the same access, where appropriate, to school sport for all students regardless of gender identity, sex, disability, race or culture. All students benefit socially, emotionally and physically by participating in sport and evidence shows that improvements in academic results occur when students actively participate in sport. Participation in school sport can be an introduction to ongoing participation in sport outside of, and after, a student leaves school. This can have lifelong positive mental and physical health outcomes

### **Transgender and Gender Diverse Students**

Definitions: (from the Safe Schools Resource “All of Us”)

*Transgender:* An umbrella term used to describe people whose gender identity is different from the sex assigned to them at birth. An example is a child who is assigned a male sex at birth but actually feels more comfortable living as a girl and identifies as female.

*Gender Diverse:* A broad term that can refer to all forms of gender identity and gender expression and includes people who may identify as for example trans, transgender, genderqueer, or gender questioning. It refers to people whose gender expression or identity differs from the gender identity associated with the sex assigned then at birth or society’s expectations. The person may identify as neither male nor female, or as both.

### **Participation**

Students who identify as transgender or gender diverse are encouraged to participate in the sport of their choice. Students aged 12 years or older will be permitted to compete in EISM competitions as the gender to which they identify in line with the Category Guidelines listed in this Policy that takes into consideration the safety of all participants.

For Category 2 & 3 Sports, Principals will need to submit in writing to the EISM Executive Officer their School’s support of a transitioning student’s participation in EISM sport programs. In the event of acceptance, Directors/Heads of Sport will work together in conjunction with sport Coaches to support and encourage their participation and build the student’s confidence.

EISM has an inclusive approach to transgender and gender diverse students playing sport competitively and schools should encourage participation in sport by transgender students.

EISM are committed to ensuring that all facilities and venues utilised by the Association will cater for the needs of all students participating. Changeroom and Toilet facilities will be monitored and managed at each venue and adaptations or modifications made to suit all participants as required.

### **Communication**

Communication between schools is important, however all concerned must be mindful of privacy and confidentiality. The process for communication is:

- 1.** Head/Director of Sport to communicate with School Principal the context and request of a transitioning student to participate in and Category 2 or 3 EISM sport
- 2.** School Principal to communicate (in writing) with the EISM Executive Officer requesting the inclusion of the transitioning student in their School's nominated sport team
- 3.** EISM Executive Officer to communicate (in writing) with the opposition School Principals from the nominated sport competition as a courtesy for Category 2 sports and for Principal approval for category 3 sports
- 4.** If approved, Head/Director of Sports will communicate with each other where appropriate and where safety is concerned
- 5.** Heads/Directors of Sport to communicate with coaches where appropriate

Any commentary relating to the gender identity or sexuality of a student or staff member is inappropriate and should be addressed immediately.

The Equal Opportunity Act 2010 prohibits discrimination on the basis of a person's gender identity. Refusing or failing to select a student in a sporting team, or excluding a student from participating in a sporting activity. On the basis of that student's gender identity or status may constitute unlawful discrimination.

### **Exceptional circumstances**

Exceptional circumstances will only be considered after all other options have been exhausted and safety concerns remain.

There are exceptional circumstances in which exclusion of a student aged 12 years or over from a competitive sporting activity on the basis of their gender identity may not constitute unlawful discrimination. The law provides that in limited circumstances in single-sex competitions where strength, stamina or physique of players is relevant in a competitive sporting activity, it may be lawful to exclude a student on the basis of their gender identity. These protections and the exceptions are aimed at ensuring fairness by protecting players from discrimination while also ensuring individuals do not have an unfair competitive advantage.

In deciding whether to apply this exception to discrimination, consideration should be given to:

- Whether the student would have an unfair physical advantage over other students

- In sporting competitions involving player-to-player contact, where the disparity in strength or physique of a student of transgender status differs so significantly that it may give rise to concerns for the safety of the student or other students

Even if the exception applies, it remains lawful to decide to allow a transgender student to participate (subject to complying with applicable obligations in relation to ensuring the safety of students).

Before making a decision to exclude a student on the basis of their gender identity or intersex status from participating in a competitive school sporting activity, or modifying participation in such an activity, the relevant school should:

- 1.** consult with the student and their parents / carers and provide them with the opportunity to have input into any decision to exclude the student from a competitive sporting activity;
- 2.** consider how best to respect the dignity of the student;
- 3.** consider and act compatibly with the human rights of the student, including their right to enjoy their human rights without discrimination; and
- 4.** consider the student's privacy and the impact that any decision may have on such privacy. Information about a student's gender identity or intersex status is personal information of a sensitive nature and should not be disclosed to the wider school community without the consent of the student.

Consideration of applying exceptional circumstances will be done on a case by case basis by the EISM Principals with information and recommendations from the Directors/Heads of Sport.

The school's reasoning and decision-making process would also need to be documented in case the decision to exclude (or include) a transgender or gender diverse student were challenged.

Importantly, where an exception does arise, there is no obligation to exclude. That is, while lawfully a school may exclude the student, they also can lawfully include the student, provided it is safe to do so. It is always preferable to include students and encourage their participation.

Information in the above policy has been sourced from the Victorian Equal Opportunity & Human Rights Commission's Guideline: Transgender people and sport - Complying with the Equal Opportunity Act 2010 and School Sport Victoria's Inclusion Policy and the School Sport Victoria Inclusion Policy.

### **Transgender Guidelines for students in EISM sport**

The following notes are a guide for Principals when a student notifies them that they identify as being a trans gender or gender diverse. All care is taken to cater for the wellness and sensitivities of all EISM sport participants.

Victorian Legislation stipulates that students identifying as a particular gender can play sport against other students of that gender.

Victorian Legislation stipulates that the EISM **can** discriminate if stamina, strength and physique are an issue.

The EISM has no concern with a transgender student potentially gaining an advantage due to having extra stamina. There are potential safety issues where strength and physique are involved. The EISM encourages all students to participate in some form of sporting activity. If it is deemed that a transitioning student could provide an unsafe environment for opponents, there are other sporting activities that could be pursued that do not pose issues for opponents. The EISM is comprised of 14 sports that fall into 3 categories:

#### **Categories for a boy transitioning to a girl**

Category 1:     *Badminton, Table Tennis, Bowls*

These are mixed gender sport seasons with both boys and girls playing in the same team.

**ACTION:** The Principal would not involve the EISM if a student wished to participate in this sport.

Category 2:     *Tennis, Softball, Volleyball, Indoor Cricket, Ultimate Frisbee*

A student with significant strength/physique advantages would unlikely compromise the safety of opponents. A safe environment for all participants could be assumed.

**ACTION:** The Principal to inform the EISM office that a student from their school is involved in one of these sports. Opposition Schools to be notified.

Category 3:     *Basketball, Netball, Football, Hockey, Soccer, Touch Rugby*

These sports have the potential to have strength/physique as a consideration for student safety as there are times when there are collisions during the contest.

**ACTION:** If a student wishes to play in any of these sports, communication with the EISM office by the Principal needs to be made. Opposition Schools need to agree to student's participation.

### **Categories for a girl transitioning to a boy**

Category 1: *Badminton, Table Tennis, Bowls*

These are mixed gender sport seasons with both boys and girls playing in the same team.

**ACTION:** The Principal would not involve the EISM if a student wished to participate in this sport.

Category 2: *All other sports are considered as category 2.*

The Principal to decide on safety issues if the student can play sport with other boys in the school team. If the decision is to allow them to play in boys' sport, that is done so with consideration to the transitioning person's safety and wellbeing.

**ACTION:** The Principal to contact the EISM office and inform them that a student from their school is playing a sport that falls in line with their new gender designation

In each of the EISM seasons, the transgender student has the choice of at least one sport from Category 1 or 2 where strength and physique are not considered to put other students in an unsafe environment.

EISM rules would need to be followed in that once a student selects a sport for a season, they need to stay with that team for the duration of the season.

In every communication with the EISM office, the name and details of the transitioning student are to remain confidential to the school.

### **Mixed Sport Options**

EISM continues to explore Mixed gender sport options, with Badminton and Netball 2 sports that have been offered as a mixed gender option in weekly sport competitions previously.

Based on team participation numbers entered, additional mixed sport options such as Tennis, Volleyball, Table Tennis, Ultimate Frisbee and Touch Rugby will be considered annually.