

Diversity and Inclusion Policy

Last Review: 5/9/2024	Constructed / Reviewed by:
Next Review: 4/9/2025	Approval Required:
	Board Sign Off Date: 5/9/2024

1. Purpose

- 1.1 Eastern Independent Schools Melbourne Inc. (EISM) encourages an inclusive, welcoming and diverse culture through its practices, its interactions with each other, EISM Member Schools and the communities in which it operates.
- 1.2 Diversity and inclusion is an essential part of building and delivering EISM's objectives by fostering an environment where all staff and students can contribute to the achievement of EISM's vision, mission and values.

2. Scope

- 2.1 This policy applies to EISM and all EISM Member Schools.

3. Reference Points/Background Papers

- 3.1 *Equal Opportunity Act 2010* (Vic);
- 3.2 *Sex Discrimination Act 1984* (Cth);
- 3.3 *Disability Discrimination Act 1992* (Cth);
- 3.4 *Age Discrimination Act 2004* (Cth);
- 3.5 *Racial Discrimination Act 1975* (Cth);
- 3.6 *Australian Human Rights Commission: Guidelines for the inclusion of transgender and gender diverse people in sport* (June 2019)
https://humanrights.gov.au/sites/default/files/document/publication/ahrc_transgender_and_gender_diverse_guidelines_2019.pdf; and
- 3.7 Harassment, Discrimination and Grievance Policy and Procedure.

4. Accountability

- 4.1 EISM and all EISM Member Schools are responsible for ensuring that:
 - 4.1.1 all respective managers, leaders and supervisors foster an inclusive and welcoming culture where individual differences are understood, respected, valued and promoted;
 - 4.1.2 all respective employees:

- (a) are responsible for understanding, respecting, valuing and promoting individual differences; and
- (b) comply with this Policy.

4.2 EISM Member Schools will develop and implement their own policies to give effect to this Policy.

5. Employment

EISM is committed to mutual respect, teamwork and diversity in the workplace among people who are diverse in work background, experience, education, age, gender, race, national and social origin, physical abilities, religious belief, sexual orientation, gender identity and other real and perceived differences. EISM expects Member Schools to demonstrate this commitment in their own practices.

5.1 Recruitment and selection

Where reasonable, appropriate and lawful, EISM may take special measures in its recruitment and selection activities to enable it to promote equal opportunity in its workforce. These special measures may be in place for as long as required to achieve the objective of equal opportunity that specifically targets groups of people with particular attributes, including but not limited to race or gender.

5.2 Discrimination and harassment

5.2.1 EISM is committed to taking all reasonable steps to prevent unlawful discrimination and harassment. Any unlawful discrimination or harassment will not be tolerated and is inconsistent with EISM's values of diversity and inclusion.

5.2.2 Where any EISM or EISM Member School employee engages in such discrimination or harassment, it must be dealt with by the respective employer in accordance with the employer's relevant policies and procedures.

6. Access to sport

EISM supports the rights of all students to access the same opportunities to sport as their peers, and is committed to providing the same access, where appropriate, to school sport for all students regardless of gender, race, culture, religious belief, age or disability.

6.1 Students with disabilities

6.1.1 EISM will work with EISM Member Schools to provide students with disabilities opportunities to play sport in settings where they may compete with students with or without disability, as reasonable and appropriate in the particular circumstances. Where reasonably practicable, EISM Member Schools should make minor modifications to the rules at the first level of entry to better include all students. This is best done at a local level, and between schools, using a common sense approach to competition. EISM

Member Schools should also ensure there are disability parking spaces in front of their sporting venues.

- 6.1.2 EISM will work with its Member Schools to facilitate the existence of competition opportunities for students with a disability, and for pathways between school and community sport to be mirrored. Where the need arises, EISM and EISM Member Schools will decide what competition opportunities should be set up for students with a disability.

6.2 Trans and gender diverse participation

- 6.2.1 EISM must operate in compliance with the legal requirements of the *Sex Discrimination Act 1984 (Cth)* and the *Equal Opportunity Act 2010 (Vic)*.
- 6.2.2 Under the *Equal Opportunity Act 2010 (Vic)*, EISM has a positive duty, as far as practicable, to eliminate discrimination, sexual harassment and victimisation.
- 6.2.3 EISM will work with EISM Member Schools and other school sport structures to endeavour to provide opportunities for all students to play sport competitively regardless of their gender identity or sex.
- 6.2.4 EISM has an inclusive approach to all students playing sport competitively and encourages and supports participation of trans and gender diverse students in single sex competitions as appropriate to their identified gender. Communication on non-binary participation will be led by the individual player and their parents/guardians with a focus on which team they consider the most appropriate to join.
- 6.2.5 EISM recognises that terminology can have an impact on a student's identity, wellbeing and dignity. Using the right language respects individuality and recognises transgender and gender diverse people in our community.
- (a) **Gender Identity** – is defined in the *Sex Discrimination Act 1984 (Cth)* (the Act) as the gender related to the identity, appearance or mannerisms or other gender related characteristics of a person, with or without regard to the person's designated sex at birth. For example, a person's birth certificate may include a marker which indicates that the person's designated sex is female when that person identifies as a man (in other words, their gender identity is that of a man).
 - (b) **Gender diverse** – is an umbrella term that includes all the different ways gender can be experienced and perceived – it can include - trans/transgender, genderqueer, non-binary, gender non-conforming and many more.
 - (c) **Intersex status** – this means that a person has physical, hormonal or genetic features that are neither wholly female or wholly male; a combination of female or male or neither female or male.

- (d) **LGBTQIA+** – is an acronym for lesbian, gay, bisexual, transgender, queer/questioning, intersex, asexual and others.
- (e) **Non-binary** – is a term used to describe a person who does not identify exclusively as either a man or a woman.
- (f) **Pronouns** – these are the grammatical means of referring to a person. Trans and gender diverse people may prefer to use gender neutral pronouns such as they/them/their.
- (g) **Transgender** – is a general term used to describe a person whose gender identity is different from the sex they were assigned at birth. Being transgender is about how a person describes their own gender.
- (h) **Transition** – transition or affirmation refers to the social, medical or legal steps that a transgender person takes to affirm their identity.

6.3 Exemption to trans and gender diverse participation: Competitive sporting activity

6.3.1 It is important to note that it is against the law to discriminate against someone on the basis of their sex or gender identity in sport, unless an exception or exemption applies. Refusing or failing to select a student in a sporting team or excluding a student from participating in a sporting activity may constitute unlawful discrimination.

6.3.2 There may be circumstances where the exclusion of a student aged 12 years or over from a competitive sporting activity on the basis of sex or gender identity may not constitute unlawful discrimination. The law provides that in limited circumstances where the strength, stamina or physique of competitors is relevant in a single-sex competitive sporting activity, it may be lawful to exclude a student on the basis of their sex or gender identity.

6.4 Trans and gender diverse participation: Guidelines

6.4.1 EISM recognises that testosterone can increase a person’s strength, but sport is about more than just strength. Fitness, training, age and experience often play a bigger part in making someone a good player. Recent studies have shown no significant link between testosterone and performance for elite female athletes.

6.4.2 Students may be excluded from participation in competitive sporting activities on the basis of their sex or gender identity only in the circumstances contemplated by this policy (or as otherwise contemplated by legislation).

6.4.3 There are three exceptions in the *Equal Opportunity Act 2010* (Vic) which allow EISM to run single-sex competitions in particular circumstances:

- (a) Exclusion of people of one sex or with a gender identity from participating in a competitive sporting activity in which the strength, stamina or physique of players is relevant (s 72(1) *Equal Opportunity Act 2010* (Vic)).

- (i) Sporting clubs may run single-sex competitions where the strength, stamina or physique of the competitors is relevant to the outcome (for example, a male swimmer may have a competitive advantage competing in an exclusively female swimming race). This exception means that trans and gender diverse people may be excluded from single-sex competitions in some circumstances.
- (ii) However, the skill and competition level of the activities should be carefully considered when deciding whether it is appropriate to use this exception. The relevance of strength, stamina or physique will also depend on the sport.
- (b) Exclusion of people of one sex from participating in a competitive sporting activity if participation in the activity is necessary for progression to an elite level competition and the exclusion is necessary to enable participants to progress to national or international elite level competition (s 72(1A)(a) *Equal Opportunity Act 2010* (Vic)).
- (c) Exclusion or restriction of one sex from participating in a competitive sporting activity is intended to facilitate the participation of people of a particular sex, and this is a reasonable approach. (s 72(1B) *Equal Opportunity Act 2010* (Vic)).

These exceptions do not apply to sporting activities for children under the age of 12 years.

6.4.4 Where EISM seeks to specifically exclude a student from a sporting activity based on sex or gender, it must consider:

- (a) whether there is any evidence which supports the relevance of strength, stamina and physique to the relevant sport;
- (b) how a trans or gender diverse student's participation might lead to unfair disadvantage;
- (c) whether a student's individual circumstances give them a competitive advantage;
- (d) what impact exclusion would have on both the student and the school, as well as the competition (particularly whether participation will result in a risk to the student or others in the competition);
- (e) consulting with the relevant national or state sporting organisation; and
- (f) ensuring that any assessment is undertaken in a timely manner so that the student is not unnecessarily disadvantaged.

6.5 Trans and gender diverse participation: Procedures

- 6.5.1 Primary decision-making authority in relation to the inclusion or exclusion of a student in accordance with this policy rests with the school.
- 6.5.2 EISM expects that the Head of Sport has met with the student and their parents/guardians to discuss their sporting expectations and preferences for participation in EISM competitions. At this stage issues relating to safety and risk for the student will be considered and all parties will agree on the best sporting options for the student.
- 6.5.3 If a student is seeking to compete in a Category 2 or 3 Sport, Principals will need to submit in writing to the EISM Executive Officer their school's support of a transitioning student's participation in the sporting activity.

Categories for a boy transitioning to a girl

- (a) 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.

- (b) 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 as a courtesy.

- (c) 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.

- (d) **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 the student's participation. If approved, Heads of Sports and coaches will communicate with each other where appropriate and where safety is concerned.

Categories for a girl transitioning to a boy

- (e) 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.

- (f) 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. Heads of Sports and coaches will communicate with each other where appropriate and where safety is concerned.

In each of the EISM seasons, the transgender student must have 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.

- 6.5.4 At all times, the privacy of the student must be respected and only relevant information will be shared. The student and their parents/guardians must approve all communications.
- 6.5.5 Before making a decision to exclude a student on the basis of their gender identity from participating in a competitive school sporting activity, or modifying participation in such an activity, the home school will consult:
- (a) the student and their parents/guardians and provide them with the opportunity to have input into any decision to exclude the student from a competitive sporting activity;
 - (b) on how best to respect the dignity of the student; and
 - (c) the student to ensure that their privacy is protected.
- 6.5.6 Information about a student's gender identity is personal information of a sensitive nature and should not be disclosed to the wider school community without the consent of the student and their parents/guardians.
- 6.5.7 Consideration of applying exceptional circumstances will be done on a case-by-case basis by the Principals of Member Schools involved, and with information and recommendations from the Heads of Sport.
- 6.5.8 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.

6.6 Access to facilities

EISM recognises that students participating in sport need access to appropriate changing and bathroom facilities, and have the right to use these facilities without stress.

6.7 Uniforms

6.7.1 EISM recognises that all students should be able to play sport in a uniform in which they feel comfortable.

6.7.2 EISM Member Schools should encourage their students to wear the uniform of their choosing as it aligns with their gender identity, so long as it complies with the wider sporting code attire rules. EISM Member Schools' uniform requirement rules should cater to all types of bodies, and where possible, various uniform options and sizes should be offered to students so they can participate in a uniform they feel comfortable in.

6.8 Collection of personal information

All personal information that is collected from students regarding gender will be collected and retained in accordance with the EISM Privacy Policy.

6.9 Pride and Diversity Coordinator

6.9.1 EISM has appointed the EISM Executive Officer to be the Pride and Diversity Coordinator, as a first point of contact to provide advice and support to students, parents and staff regarding the safety and wellbeing of LGBTQIA+ students.

6.9.2 Reports of discrimination or bullying of such students can be made directly to the Pride and Diversity Coordinator, who will act in accordance with the EISM Policies and Procedures. Confidentiality will be maintained throughout the grievance procedure to protect the privacy of individuals involved.

7. Implications for practice

7.1 At EISM level

To properly implement this Policy, EISM must ensure;

- that this Policy is reviewed and endorsed on an annual basis;
- that copies of this Policy are made available to employees on the EISM website and within members schools;
- that this Policy is incorporated into EISM's record of current policies;
- that this policy is incorporated into EISM's induction program, to ensure that all employees are aware of the Policy, have read and understood the Policy, and acknowledge their commitment to comply with the Policy; and

- that periodic training and refresher sessions are administered to all employees of EISM in relation this Policy.

7.2 **At Other Levels**

To properly implement this Policy, EISM staff and member schools must abide by this Policy and assist in the implementation of this Policy.

7.3 **At EISM Member School Level**

7.3.1 To properly implement this Policy, EISM Member Schools must ensure that they implement a policy and procedures to give effect to this Policy that this Policy is endorsed on an annual basis.

7.3.2 EISM will require Member Schools to sign an annual attestation of compliance with this policy.