

# Gender Separation Policy

## Berkhamsted Senior Schools & Sixth

Revision and Terminology: Please refer to the School's Policies Policy.

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## Introduction

### 1 Background

- 1.1 Berkhamsted Schools Group (which previously operated as Berkhamsted Collegiate School) maintained separate, single sex girls' and boys' schools with different DfE numbers until the merger of those schools in 1996.
- 1.2 Since 1996, the five schools of the Berkhamsted Schools Group based in Berkhamsted have been organised in a Diamond Model, with boys and girls taught co-educationally up to the end of Year 6 (Early Years Foundation Stage, Key Stage 1 and Key Stage 2), then in single-sex classes between Year 7-11 (Key Stages 3 and 4), with a co-educational Sixth Form (Key Stage 5). This followed a merger (in 1996) between girls' and boys' schools, based on separate sites, which thereafter operated under a single DfE number, 919/6005.
- 1.3 Between Year 7-11, boys and girls at Berkhamsted have lessons taught to them separately, on different sites, and on different timetables. However, although they are taught separately, boys and girls in the Senior Schools receive co-education in the broader sense, via trips, Drama, Music, Outdoor Education, CCF, and Clubs and Societies.
- 1.4 The School is aware of a number of other independent and non-religious schools which use a similar structure.
- 1.5 The reason for the 1996 merger was to reduce the segregation of the boys and girls in single sex schools whilst maintaining a school structure designed to maximise the academic achievement of boys and girls, the freedom of boys and girls to choose subjects in which they were interested and able (free from gender stereotypes), and to maximise the development of non-cognitive skills in boys and girls, in the context of the historic endowment of sites and buildings. The School recognises the importance of boys' and girls' ability to interact socially with both their own gender and the other gender and the current structure was created to maximise this and to reduce segregation.
- 1.6 The School considers that the aims of the 1996 merger have been achieved and continue to be achieved, and that to revert to separate single sex schools would be detrimental to the education, wellbeing and development of pupils of both sexes. The purpose of this policy is to explain and justify the School's arrangements in this regard.

### 2 Terminology: "sex" and "gender"

- 2.1 The terms "sex" and "gender" are closely connected and are often used interchangeably, both in this Policy and also in the Guidance taken into account in the formulation of this Policy. For example, although the protected characteristic in the Equality Act 2010 is "sex", the phrase "gender separation" is frequently used to describe a situation such as the diamond model arrangement at Berkhamsted whereby girls and boys are taught separately in Years 7 to 11.
- 2.2 In the context of admission to the Senior Schools, the starting point is a pupil's sex. However, a person's gender identity can correspond to or differ from the sex they were assigned at birth, and the School recognises that some members of the School community may be questioning their gender identity, or consider themselves to be

gender non-binary or agender.

### 3 Legal Context and Guidance

#### 3.1 Equality Act 2010

3.1.1 All schools, including independent schools, are required to meet the requirements of Part 6 of the Equality Act 2010 which states at section 85(2) that “the responsible body of ... a school must not discriminate against a pupil

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(a) in the way it provides education for the pupil;

(b) in the way it affords the pupil access to a benefit, facility or service;

....

(d) by not affording the pupil access to a benefit, facility or service;

...

(f) by subjecting the pupil to any other detriment.”

3.1.2 Two other provisions in the Equality Act 2010 are relevant:

3.1.2.1 Section 158 which is headed ‘positive action’ and, in summary, can justify any discrimination arising from gender separation.

3.1.2.2 Section 195 which makes a statutory exception in relation to single sex sports

#### 3.2 Education (Independent School Standards) Regulations 2014 (as amended)

3.2.1 As well as the School’s duties flowing directly from the Equality Act 2010, as an independent school it is also required to comply with paragraph 3(j) of the Schedule to the Education (Independent School Standards) Regulations 2014 (“the ISSRs”) which states that:

*“the standard in this paragraph is met if the proprietor ensures that the teaching at the school - ... (j) does not discriminate against pupils contrary to Part 6 of the Equality Act 2010.”*

#### 3.3 Case law

3.3.1 In the case of HM Chief Inspector of Education, Children's Services and Skills v the Interim Executive Board of Al-Hijrah School [2017] EWCA Civ 1426 the Court of Appeal found that the gender separation operated by the school in that case amounted to unlawful discrimination, not because of the mere fact of separation but because the impact that had on the quality of education in that case amounted to a detriment.

#### 3.4 Guidance

3.4.1 The School has also taken into account the following guidance:

3.4.1.1 The Equality Act 2010 and Schools – DfE, 2014

3.4.1.2 Gender Separation in Mixed Schools – DfE, 2018

3.4.1.3 Independent School Standards Guidance – DfE, 2019

3.4.1.4 ISI Note on Gender separation in co-educational (mixed) schools – ISI, March 2022

3.4.1.5 Inspecting paragraph 3(j) of the Independent School Standards in mixed schools that separate pupils by gender – ISI, May 2022

3.4.1.6 Equality and Human Rights Commission Technical Guidance for Schools – EHRC, 2014

3.4.2 None of this asserts that any gender separation is unlawful or requires any gender separation to cease. It provides guidance about relevant factors and the approach to be taken by ISI inspectors in this regard which includes requiring the School to explain clearly its policy on gender separation and its reasoning in support, which this document does. It takes account of all of the above guidance and law, including the following from the May 2022 ISI document in the above list:

*“12. For the purposes of inspection, “teaching” may be construed widely as anything planned or provided by the school which may enhance the knowledge and skills of pupils. Therefore, the opportunity for female and male pupils to mingle socially or take part in co-curricular activities planned by the school and included as part of their school life, and by which they may learn about wider engagement and socialisation, will be scrutinised as part of the holistic evaluation of teaching under paragraph 3(j).”*

3.5 Having considered all of the above law and guidance, and having taken appropriate legal advice, the School considers this Gender Separation Policy to be lawful, that it qualifies for the exemptions under Section 158 of the Equality Act 2010, and that it does not result in detriment to, or discrimination against, pupils of either sex. The Governors and Senior Leaders find that the structure of the School results in a better education for pupils of all sexes/genders, and indeed that it would be detrimental if it were to return to a structure of separate single sex schools for pupils in Years 7 to 11.

## Policy Statement

### 4 General Policy Statement

4.1 The School’s Diamond Model whereby pupils in Years 7 – 11 are taught academic lessons separately provides measurable benefits through positive action to advance equality, in particular in relation to these three areas:

4.1.1 Maximising academic outcomes for boys and girls at the end of Year 11 (“positive action”)

4.1.2 Widening academic choices for both girls and boys in terms of subjects pursued at A-Level, ensuring representation is less biased by gender stereotypes than would otherwise be the case

4.1.3 Promoting equality of opportunity for boys and girls, in part by ensuring different needs of boys and girls may be met more appropriately

4.2 Although academic lessons are delivered separately for Years 7 - 11, the School does not fulfil the criteria of “strict segregation”, as there are many and varied opportunities for, and contexts within which, boys and girls in the Senior Schools mix regularly such as:

- 4.2.1 Activities to generate academic curiosity, for example Academic Enrichment Societies, Academic Competitions and Academic Gala Evening; Critical Thinking seminars; Careers events and opportunities
- 4.2.2 Sport where this is appropriate and permitted by the relevant sport's governing body such as Eton Fives and cricket. Even where girls and boys are required to compete separately, they train together where timetable and travel allows, for example in Athletics. Mixed gender opportunities are offered in activities such as dance, yoga, Pilates, and recreational netball and football.
- 4.2.3 Extra-curricular music and drama (with the exception of choirs making provision for only girls' or boys' voices)
- 4.2.4 Extra-curricular clubs and societies (although some may be single sex by virtue of up-take)
- 4.2.5 CCF, Duke of Edinburgh and Outdoor Education (where the policy is that all expedition groups are mixed)
- 4.2.6 Transport, Trips and Visits (with the exception of house trips)
- 4.3 In the Sixth Form, all lessons, houses, and extra-curricular activities, with the exception of those competitive sports in which it would be inappropriate or prohibited by the sport's governing body, are undertaken with girls and boys together. The exception in Sixth Form is those PSHE/RSE sessions in which a particular subject area merits separation, for example in male or female genital health education, in which it might reasonably be anticipated that co-education could prevent or inhibit the asking of important questions by pupils, and questions which may reasonably be expected to differ between girls and boys.

## 5 Rationale for separation of pupils by gender in Years 7 - 11

- 5.1 The School's Diamond model of separate academic teaching within the curriculum, and on different sites for pupils in Years 7-11, is to enable boys and girls to **overcome any disadvantage in cognitive development accruing from being educated together**. The disadvantage overcome in this instance is less favourable exam results of pupils taught in co-ed schools. Our pupils perform exceptionally well at GCSE following the curriculum being taught separately for Years 7-11.
- 5.2 At the same time, the Leadership notes a difference between the value-added scores of boys and girls. The School therefore monitors carefully differences in performance between the genders at GCSE and, where data suggests any positive action may remediate an identified disadvantage, applies gender-specific solutions to underperformance to achieve this. This has allowed specific and different interventions to be targeted at boys' and girls' groups to enhance their prospects at GCSE. These interventions have been measurably successful. Our positive action allows us to undertake different action plans for boys' and girls' exam preparation and teaching, and this is in place. Such differentiated strategy is, we believe, responsible for the overall picture.
- 5.3 The School's model enables us to **provide differently for different needs**, for

example in terms of addressing the differences in MidYis averages scores observed for most year groups on entry, particularly in “skills”. Our approach is also to encourage teaching staff to take different approaches in their KS3 and KS4 classes with girls and boys. The granularity, and repeated, nature of this difference in emphasis in academic lessons forms part of our strategy to maximise academic value added, minimise psychological ill health and improve representation.

- 5.4 Furthermore, we note different rates of incidence of mental health conditions, and polar biases in AS Tracking data. This indicates that, on average, boys’ and girls’ populations demonstrate different probabilities of falling victim to psychological dysfunctions, or erroneous and mildly harmful ways of thinking. The AS tracking data appears to show that fewer pupils exhibit polar biases in Y7-11 than national norms for similar schools<sup>1</sup>. This affirms that the structure of the School affords pupils better opportunities for pastoral care. Whilst simplifying, it is not an oversimplification to say that this evidence justifies the separation on the basis of positive action. The care of pupils is advantaged by the segregation of boys and girls during the academic time of each day. This data corroborates staff, pupil and parent feedback.
- 5.5 Our model plays a role in **widening representation** – ensuring that subject choices at A Level are not gender stereotyped – therefore **increasing opportunity to both boys and girls** beyond these stereotypes.
- 5.6 While academic teaching is delivered separately on different sites, the School ensures that girls and boys interact in all extra-curricular pursuits (as above), including DofE, CCF, school trips (both residential and day), all school transport, festivals and celebrations. This is effective in promoting healthy social interaction.
- 5.7 The School’s Gender Separation Audit document sets out in detail the research and evidence underpinning the School’s Gender Separation Policy.

## 6 Proportionality of the gender separation

- 6.1 In accordance with the ISI May 2022 Guidance, the School has considered whether the means by which the positive action is undertaken are proportionate, and whether the achievement of these ends may be achieved by other means which do not require the same level of segregation.
- 6.2 Prior to the 1996 merger the Senior schools operated as two completely separate schools. The current arrangements significantly reduce segregation when compared with the situation prior to the merger.
- 6.3 The School’s Leadership and Governors have considered whether and how the School could provide an education which is even less segregated. However, the School occupies two sites approximately 12 minutes’ walk apart, and our risk assessment indicates that it is neither practical nor reasonable for pupils in Year 7 -11 to need to cross from one campus to another during the school day without being supervised or escorted, such that pupils are not permitted to do this during the school day.
- 6.4 One co-educational alternative considered would require Years 7-8 (girls and boys) to occupy one site and Years 9-11 (girls and boys) to occupy another (but retaining single

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<sup>1</sup> Source: Steer – based on AS tracking results 2021-22 and Steer benchmark data.

sex teaching in lessons). This might be possible in respect of the number of classrooms and other facilities. However, the need to provide resources which are appropriate to different schemes of work in respect of (for example) competitive sport would render the physical education scheme of work inoperable. There is also a mismatch in the numbers of pupils involved and the capacities of the respective sites. This model would also necessitate a significant proportion of pupils needing to walk between sites for sport, and other activities, which would not be safe unless directly supervised. Furthermore, under this model the interaction of boys and girls would be principally during unstructured and often not-directly-supervised break times. The School's assessment is that our ability to separate boys and girls during such unstructured time has been beneficial to their social development<sup>2</sup>; instead pupils interact with each other in the enterprises detailed in this Policy where they are in the presence of a responsible adult at all times.

- 6.5 The School notes a further possibility, of co-education both on sites and in lessons. However this would mean that the positive action benefits in respect of reducing academic disadvantage, meeting different needs and widening academic choice would be lost, as well as the increase in risk to physical and social health set out above.
- 6.6 Therefore the School's conclusion is that the practicable alternatives are:
- 6.6.1 Re-registration of Berkhamsted Senior & Sixth as two separate schools – in which there would be two options:
    - 6.6.1.1 the Boys School to have a co-educational Sixth Form, to which the girls have right of access – however under this model girls would suffer detriment, by virtue of having to enter space designated as 'boys', which we prefer to avoid (and which the new Sixth Form Centre currently under construction will ameliorate further).
    - 6.6.1.2 A segregated Sixth Form – but this model contains the same disadvantage as outlined above, in respect of the total segregation of separate single sex schools, and in respect of the restricted academic choices which would be a consequence of fewer pupils in each subject.
  - 6.6.2 Continuing with the Diamond model currently employed, noting the reduced segregation this implies, and the greater opportunities to prepare all pupils effectively for life in contemporary British Society, than would exist in two single sex schools.
- 6.7 As stated above, the School judges that its current structure results in a better education for pupils of both sexes, and that to revert to separate single sex schools would be detrimental to the education, wellbeing and development of pupils of both sexes.

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<sup>2</sup> Cf: [Review of sexual abuse in schools and colleges - GOV.UK \(www.gov.uk\)](http://www.gov.uk): "Given that children and young people talked in particular about sexual harassment happening in unsupervised spaces, such as in corridors between lessons, school leaders should identify where there might be 'hot-spots' of poor behaviour and act accordingly."



## 7 Steps taken to ensure equality of provision

- 7.1 The School recognises that utilising Section 158 of the Equality Act 2010 to improve equality by taking positive action does not allow inequality of provision. Schools are required to ensure that provision is equal in quality and nature such that the remediation of disadvantage does not result in inequality of provision. The School acknowledges this risk, and actively takes steps to assess and monitor to ensure that equality of provision is maintained – some examples are:
- 7.2 Leadership and Management  
 All arrangements for lesson observations, appraisal, department budgeting and resourcing are equal in SMT meetings, where the Heads of Boys and Girls Schools are responsible for identifying and ‘calling out’ any bias or inequality in provision (each member of the SMT has a protected characteristic for which they are responsible)  
 Management and Leadership scrutinise girls’ and boy’ results, reports and assessments and provide Learning Consultations (parents’ evenings) in identical fashion  
 Academic Deputy Heads have offices on both sites to make them equally accessible to pupils and staff in both sections of the School  
 Regular discussion of the School’s provision for separate genders by the Executive Committee and by Governors  
 Gender integration is modelled at Leadership and Management level
- 7.3 Curriculum  
 There is an identical curriculum for girls and boys (with the exception of competitive sports, where there is a specific exception in section 195 of the Equality Act 2010)  
 All academic options are available to both girls and boys, and the Curriculum Policy includes a clear procedure for the contingency in which an academic option became available at only at the boys’ or girls’ school as a result of the number of pupils opting for it  
 One set of Heads of Department across both sites  
 Academic competitions simultaneously open to both boys and girls
- 7.4 Teaching and teaching resources  
 Equal allocation of teachers, and quality of teaching and feedback  
 All teachers have the same training, professional development, Professional Development Review (PDR), induction  
 Each department works across the 11-18 age range  
 Staff are not deployed as teachers of boys or teachers of girls – in 2021/22 91% of teachers teach both boys and girls  
 The Library has common reading schemes for boys and girls in Years 7-9
- 7.5 Physical accommodation  
 In 2008, the School’s evaluation of the Kings site (occupied primarily by the girls) and Castle site (occupied by boys and the base for the Sixth) resulted in a major capital development at the Kings site. This resulted in the quality of building provision on the Kings site overtaking the Castle site. The next (current) major project is therefore at the Castle site, in the form of a large new building for Sixth formers. This, in turn, will allow the refurbishment of accommodation currently occupied by the Sixth form for boys’ school use.  
 The School has recently undertaken a masterplan which sets out the facilities

development over the next 35 years. This has paid close attention the level and quality of facilities of boys and girls and will seek to move from a provision of equal quality to a provision of more similar environments on each site

In sport, while different curricula are followed for competitive sport, investment in facilities is carefully monitored so that access, opportunity and development is even handed

The only other (than sport) area of different provision is in boys' and girls' House Rooms, where provision is different where the demands of the pupils are different – i.e., in response to pupil voice. In boys' house rooms for example this may imply more provision of table football tables, and in girls' house rooms by the provision of more seating space. Work on this is ongoing but **if** the School determines that boys and girls should have house rooms of a substantially different nature (in addition to the divergence noted above for pupil voice reasons) this will take the form of positive action – i.e., providing different environments so that neither gender may be disadvantaged by poor behaviour where this is conditioned by their environment.

#### 7.6 Management of pupils' access to shared areas and facilities

The main Sports Centre is on the Girls' Campus but is used by Boys.

Likewise, Girls use facilities at the Boys' School such as the gym and Fives courts.

The School has an architectural masterplan in place which sets out the School's plans for the next 35 years – it pays close attention to the level and quality of facilities of boys and girls and will seek to move from a provision of equal *quality* to a provision of more similar *environments* on each site

#### 7.7 Seeking and listening to pupil voice and timeliness of response to identified needs

Senior School Council meets half termly as a co-ed group chaired by the Deputy Heads of Boys and Girls School

Leadership Team meets with Y11 prefects in the Boys and Girls Schools each week

#### 7.8 Culture and Ethos

same high educational expectations for boys and girls

active tracking and monitoring of equal access

research, staff CPD and Middle Leader working parties looking into gender equality and a variety of approaches

### 8 **Other contributory factors**

8.1 In addition to paragraph 3(j) of the ISSRs, the School takes steps in relation to other standards which are relevant to the context of evaluating provision in mixed schools which separate pupils by gender:

8.1.1 Through its Careers programme, the School provides accurate, up-to-date careers guidance for all pupils in Year 7 – 11, presented in an impartial manner enabling pupils to make informed choices about a broad range of career options and helping to encourage them to fulfil their potential (paragraph 2(e) of the ISSRs)

8.1.2 Through the School's broad-based curriculum in general terms, and specifically through the PSHE and RSE (Personal Development) programme, as well as through various extra-curricular activities, the School prepares all pupils for

the opportunities, responsibilities and experiences of life in British society (paragraph 2(i) of the ISSRs) and actively promotes principles that encourage respect for other people, paying particular regard to the protected characteristics in the Equality Act 2010 (Paragraph 5(b)(vi) of the ISSRs).

## **9 Transgender issues**

- 9.1 In consultation with the School and their parents, a transgender pupil may transfer from Girls' School to Boys' School or vice versa, without having formally to leave and re-enter a separate school (as defined by the DfE number). The School will take a pupil-centred approach and work to enable the pupil to transfer schools at the moment that is in pupil's best interests; the pupil's needs and desires will be taken into account. The pupil will be able to move to identical schemes of work and programmes of study, from a boys' class to a girls' class, or vice versa, with no interruption in learning. The structure of the School ensures the Admissions Policy does not apply, and therefore that a year group will not be declared 'full', which could otherwise inhibit such a pupil move.

## **10 Risk assessment and monitoring**

- 10.1 The School safeguards and promotes the welfare of all pupils through its assessment and management of risks, including risks arising from the Diamond structure and the implementation of the policy of gender separation for academic lessons for pupils in Years 7 – 11. The risk assessment is an addendum to the Gender Separation Audit. This includes risks of unintended consequences arising from the gender separation, and details of action taken to mitigate potential negative impacts such as the effect on pupils' chances to develop into socially confident individuals with their peers of the opposite gender.
- 10.2 Pupil Voice is of key importance and pupils' opinions on the implementation and impact of the Gender Separation Policy are actively and regularly sought and considered by the Leadership Team.

## **11 Governance and Leadership Team oversight**

- 11.1 The School's structure and the impact of the Gender Separation Policy are regularly discussed by the School's Executive Committee and Senior Management Team, and by Governors.
- 11.2 Where necessary, appropriate action is taken promptly to ensure equality of experience.
- 11.3 This Gender Separation Policy is reviewed annually by the School's Executive Committee and by the Governing Body.