

Procedure

Gender diverse and intersex children and young people support

Please note this procedure is mandatory and staff are required to adhere to the content.

Procedure overview

This procedure outlines the Department for Education's (the department) corporate, preschool, school and care setting processes for supporting gender diverse and intersex children and young people in accordance with the department's policy, *Supporting gender diverse, intersex and sexually diverse children and young people*.

This procedure aims to inform the application of the department's policy, [Supporting gender diverse, intersex and sexually diverse children and young people](#) by:

- outlining the requirements to ensure staff practices support gender diverse and intersex children and young people to receive a quality education in a safe and inclusive environment, free from discrimination, bullying and harassment;
- informing staff about practices that support compliance with the requirements of the [Equal Opportunity Act 1984 \(SA\)](#) and the [Sex Discrimination Act 1984 \(Cth\)](#) as amended by the [Sex Discrimination Amendment \(Sexual Orientation, Gender Identity And Intersex Status\) Act 2013 \(Cth\)](#) in relation to intersex and transgender children and young people in education and care settings.

Scope

This procedure applies to all staff working in department preschools, schools and care settings, and corporate offices.

It is important to read the definitions and abbreviations in section 3 before proceeding to 1.1.

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1. Procedure detail

The procedural considerations outlined below will help staff to provide appropriate support for children and young people who express their intention to affirm a gender identity in the education environment that is different from their assigned gender at birth. This process is often referred to as gender transition, gender affirmation or social transition. Gender transition or affirmation must be differentiated from processes involving medical intervention, which would involve a health professional working with the child or young person and their family outside of the education or care environment. Where a child or young person is socially transitioning in an education or care environment context a child or young person may use a different name that better aligns with their gender identity, wear a different uniform, use a different pronoun, and use alternate facilities as agreed.

For some children and young people, where medical intervention is occurring outside of the education or care environment, their needs may be supported through a health support plan.

NOTE:

This should not be considered as a comprehensive, all-encompassing procedure given the diverse factors that will relate to the individual, the preschool, school or care setting community, families, children and young people. It does not anticipate every situation that may occur and the needs of each child or young person must be assessed on an individual basis.

1.1 Preschool, school and care setting management

A whole-school approach is important in supporting gender diverse and intersex children and young people and in challenging transphobic and interphobic behaviour. Staff should develop and promote inclusive practices to ensure that children and young people who may experience marginalisation feel safe and supported. Bullying and harassment procedures must incorporate and address specific types of discrimination and bullying that may particularly affect children and young people who may be marginalised on the basis of, but not limited to: culture, race, ethnicity, disability, socioeconomic status, trauma and gender and sexual diversity.

Staff also need to be aware of their own behaviours and in particular how they plan for, communicate and support children and young people from diverse backgrounds. The Protective practices for staff in their interactions with children and young people guideline clearly outlines staff responsibilities, duty of care and describes examples of boundary violations including:

- inappropriate comments of a sexual nature (eg questioning the child/young person's sexuality)
- failing to intervene in sexual harassment of children/young people
- disrespectful or discriminatory treatment, or manner towards, a child/young person based on their perceived or actual sexual orientation.

1.2 Support for children and young people

1.2.1 Child and young person informed consent

A person is generally only considered to be of full legal capacity at law once they are of or over the age of 18.

In some cases a young person may be recognised as an independent student if common law considerations about the child or young person are taken into account, including their age (chronological, mental and emotional), maturity, and ability to understand the nature and consequence of their decisions. Consideration should also be given to whether the child or young person is subject to any

Court Orders and whether they have been declared independent for the purposes of receiving Centrelink support. Each child or young person's circumstances should be treated on a case-by-case basis and with regard to the particular circumstances of the young person concerned and the nature of the decision to be made.

An expert opinion regarding the child's functioning and development is usually required to make this assessment.

1.2.2 Parent involvement

The department encourages a family inclusive approach. Parental, carer and/or guardian involvement is important in supporting a young person expressing gender diversity. Where a child or young person is socially transitioning within the education or care environment, consultation with the child or young person and their parents, carers and/or guardians is required. This may also include others as appropriate.

1.2.3 Support process

If a child or young person requests to transition or affirm gender identity within an education environment, the preschool, school or care setting leader and/or delegate should initiate a meeting with the child or young person and their parents, carers and/or guardians to identify their wellbeing needs, concerns and education and care setting support processes. In instances where one or both parents, carers and/or guardians do not support or oppose the child or young person's decision to transition or affirm their identity, staff must assess what is in the best interests of the child or young person to ensure their physical and psychological safety and wellbeing. This can only be properly considered on a case by case basis. In such circumstances staff should contact the department's Engagement and Wellbeing Directorate.

The child or young person may choose to involve other key education or care support persons in a meeting. Often this support is best provided by a Student Wellbeing Leader and/or year level coordinator with consideration given to other professionals that may be consulted. This could include health professionals and support agencies as appropriate to each child's or young person's individual needs.

It is important that the child's or young person's preferences inform who, when and how the communication will occur and the language that will be used.

The decisions and actions made at any meetings must be recorded and adhered to with a plan of action put in place. It can be helpful to consider setting a specific date for any changes regarding a new name, pronoun, use of toilet facilities and/or change of uniform to occur together.

Items 1.5 – 1.9 outline these considerations.

1.3 Enrolment and other records

Currently, for children and young people under the age of 18 a request to change their enrolment name and gender identifier requires:

- the signed consent of a parent or guardian or a court order unless the child or young person has been declared an 'independent student' by Centrelink or
- documentation that the change of name has been registered with Births Deaths and Marriages or
- a passport has been issued with the changed name is provided (deed polls are no longer used for changing names in Australia).

If none of the above exist, and the parent/guardian does not support changing the enrolment record then the preschool, school or care setting leader and/or delegate will need to work with the child and young person and the parent/guardian and come to a mutually respectful decision about what is in the best interests of the welfare of the child or young person with regards to how they are referred to at the education or care setting.

Consideration of advice from a treating health professional regarding the child or young person's capability and maturity may also enable an informed decision to be made. Failure to support a request to refer to a child or young person in a manner that aligns with their gender identity or intersex status may breach the *Sex Discrimination Act* and *Equal Opportunity Act*. Further legal or other advice may be sought from the department's Engagement and Wellbeing Directorate and Legal Services.

For schools, any changes on the EDSAS system must be informed by the EDSAS Fact Sheet, *Maintaining EDSAS Records to Support Transgender Students*. The ED ID is the unique student identifier and should always remain the same. Although changes on EDSAS will change official records, care should be taken to ensure that other records not automatically generated through EDSAS are also kept up to date. This includes for example, re-issuing the student ID card and email with the student's preferred name. Any other files held outside of EDSAS, either electronically or in hard-copy, will need to be closed so a new file can be independently created that records the new name and gender of the child or young person. Original hardcopy files should be sealed and locked away as confidential by the preschool, school or care setting leader.

1.4 Confidentiality and privacy

Intersex and gender diverse children and young people are entitled to the same confidentiality and privacy as any other child or young person. A child or young person's intersex status or gender identity should not be disclosed to a third party without consent in accordance with privacy obligations. Disclosure to other students, staff, families or other third parties without informed consent may breach privacy principles under Information Privacy Principles (IPPS) Instruction.

The department's ISG procedure sets out a framework for disclosure of information that applies to all departmental staff. Disclosure of a child or young person's confidential information may be required without consent where it is authorised by law or it is unreasonable or impracticable to seek consent or consent has been refused, and the disclosure is reasonably necessary to prevent or lessen a serious threat to the life, health, or safety the child or young person. The decision to disclose a child or young person's confidential information must be informed by duty of care obligations and be approved by an appropriate officer within the department or education or care setting. Advice should be sought from the department's Legal Services Directorate when considering whether to disclose personal information about a child or young person to a third party.

Disclosure of a child or young person's personal information may be required under the mandatory reporting requirements in section 31 of the *Children and Young Persons (Safety) Act 2017 (SA)* or other legislation or policy. Staff must adhere to their mandatory reporting obligations if they suspect on reasonable grounds that a child or young person is, or may be, at risk, as defined by section 18 of that Act.

1.5 Names and pronouns

An intersex or gender diverse child or young person should be asked their preferred first name and pronoun. Pronouns may include, but are not limited to, she/her, he/him, they/their. The preferred name should be recorded as part of the preschool, school or care setting management procedure and be used by staff, children and young people regardless of enrolment information. The department's Sexual harassment policy and the education or care setting's Anti-Bullying and harassment policy should be utilised where staff, children and young people deliberately or repeatedly use names or pronouns other than the one identified by the child or young person concerned.

If the parent or guardian does not support using the child or young person's preferred name the preschool, school or care setting leader and/or delegate must endeavour to talk to the parent or guardian and come to a mutually respectful decision about what is in the best interests of the welfare of the child or young person as outlined in 1.2.3.

When contacting the parent or guardian of a gender diverse child or young person, however, staff should use the child or young person's name and the pronoun corresponding to the child or young person's gender and name on the enrolment record unless either they or their parent, carer, or guardian has specified otherwise. Item 1.3 provides guidance on parental consent to change the enrolment record.

1.6 Toilet and change room facilities

Gender diverse and intersex children and young people should have the choice of accessing toilet and/or change room facilities that match their gender identity. It is important to discuss with the child or young person the options available in an open way that does not put pressure on their decisions. The child or young person's safety and wellbeing is the primary consideration in determining appropriate use of toilet and change room facilities. Such facility arrangements are to be made and managed by the preschool, school or care setting leader and/or delegate in consultation with the child or young person and family and other identified support persons the child or young person may choose. Alternative options (such as use of disability or staff facilities) must be considered short-term solutions only unless the child or young person themselves indicates otherwise, with the ultimate aim being to minimise any risk to their safety and wellbeing.

Preschools, schools and care settings may also have unisex/gender neutral facilities, which should be accessible to any child or young person who wishes to use them. While this is a helpful strategy for creating an inclusive preschool, school or care setting environment for intersex and gender diverse students broadly, it is not appropriate to insist that any child or young person, including an intersex or gender diverse student, use this toilet if they are not comfortable doing so.

The agreed decisions about the use of facilities must be documented, followed and reviewed at least annually and at major transition points. The considerations will be specific to the needs of each child or young person and the individual circumstances of each preschool, school or care setting.

Failure to provide intersex and gender diverse children and young people with access to appropriate toilet and change facilities may breach anti-discrimination legislation. What is required will depend on the circumstances of the case and the effect of the various options on all concerned. Importantly, the safety and wellbeing of all children and young people is the primary consideration when making these decisions.

1.7 Uniform/dress code

Guidelines for school uniforms and dress codes vary from school to school. Governing councils determine the uniform policy in consultation with their school community. Many schools already have gender neutral uniforms/dress codes.

The department's [School dress code procedure](#) alerts schools to the relevant Acts of Parliament when deciding a school uniform. An inflexible dress code policy that requires a person to wear a uniform (or assume characteristics) of the sex that they do not identify with may be in breach of anti-discrimination legislation including under the *Equal Opportunity Act 1984*. Children or young people who identify as intersex or gender diverse should be allowed to choose from the uniform options available at the school. Gender diverse children or young people may be considered to be treated less favourably than other children and young people if they are not permitted to dress in accordance with their identified gender where others are able to do so.

The above considerations apply to all uniforms including any sports uniforms and if applicable any dress requirements at a preschool or care setting.

1.8 Excursions, camps including overnight

A risk assessment for the safety and wellbeing of all children and young people is a requirement of all excursions and camps (further detail is provided in the department's [Camps and excursions guidelines for schools and preschools](#)). Item 1.6 above provides guidance on the use of toilet and change room facilities in preschools, schools and care settings and these same considerations apply to the access of facilities by intersex and gender diverse students whilst on excursion or camp.

There will also need to be consideration of sleeping arrangements should the excursion or camp include an overnight stay. It is important to discuss with the child or young person and their parents, carers and/or guardians the options available. As with access to toilet and change room facilities, the ideal situation will be for a child or young person to access sleeping quarters that correspond to their gender identity if they choose. If this is not possible or appropriate then private or separate sleeping quarters can be considered. In order to not isolate the child or young person consideration of sharing sleeping quarters with other students such as friends of the intersex or gender diverse child or young person should be considered.

These decisions should be incorporated and documented as part of the risk assessment and consultation with the child or young person and parents, carers and/or guardians prior to the excursion or camp.

1.9 Physical education and sport

Gender diverse and intersex children and young people can participate in Physical Education classes as per the Australian Curriculum as their identified gender. This is also the case concerning sports, and applies for any sport before a child or young person turns 12, including non-competitive or mixed gender sports and events and those sports where strength, stamina or physique do not give a child or young person a competitive advantage. Should participation in sports competitions be at an elite competitive level then an intersex or gender diverse child or young person aged 12 and over may be excluded. However, full participation in sport should be the ultimate goal where possible. If in doubt, contact the department's Engagement and Wellbeing directorate and Legal Services, before preventing any student from competing in the sport as their identified gender.

The same considerations apply for use of toilet, shower or change room facilities for sporting purposes (or sleeping quarters on a sport related excursion or camp) and sports uniforms as set out in items 1.6 to 1.8 above.

1.10 Professional development and support staff

Staff professional development should be considered to ensure that the greatest level of understanding and support is provided to a child or young person to affirm or transition gender within the education and/or care environment.

Staff can contact the department's Engagement and Wellbeing Directorate directly to receive prompt assistance, discuss their particular needs and be provided with the appropriate support. This may include policy advice, specialist consultancy, staff training and links to other services.

1.11 Documentation and review

The decisions and actions made at any meetings must be recorded and adhered to with a plan of action put in place. This plan must include review points to ensure that the child or young person feels safe and supported and that any concerns are addressed appropriately and in a timely manner. This process may include a health support plan.

2. Roles and responsibilities

Role	Authority/responsibility for
Chief Executive	This procedure is issued under the authority of the Chief Executive who is ultimately responsible for ensuring compliance by department schools, preschools and care settings and staff with this procedure.
Executive Directors and Directors	<p>Executive Directors and Directors are responsible for ensuring that department policies and processes support gender diversity, intersex and sexual diversity, and will oversee the development of state-wide initiatives to support this cohort as per the delegations.</p> <p>Corporate leaders will maintain oversight of the procedure and policy's relevance, its alignment with legislation, state government commitments and national standards and will amend the procedure and/or policy as appropriate.</p>
Education Directors	<p>Education Directors will ensure that:</p> <ul style="list-style-type: none"> • all Principals and Preschool Directors are familiar with this procedure and the <i>Supporting gender diverse, intersex and sexually diverse children and young people</i> policy • preschools, schools and care settings are safe and inclusive environments for all children and young people including gender diverse, intersex and sexually diverse children and young people • preschools, schools and care settings have practices and procedures in place to address and respond to homophobia, interphobia, transphobia and biphobia in addition to supporting gender diverse, intersex and sexually diverse children and young people. <p>The Education Director will support staff to implement the procedure and will respond to concerns raised by the education and/or care community and department employees in relation to the procedure.</p> <p>Education Directors will support preschools, schools and care settings to address gaps in compliance and advise corporate leaders as required.</p>
Preschool, school and care setting Leaders	<p>Preschool, school and care setting leaders are responsible for ensuring:</p> <ul style="list-style-type: none"> • all staff are familiar with this procedure and that preschools, schools and care settings are safe and inclusive environments for gender diverse, intersex and sexually diverse children and young people (as per Protective practices guidelines; Child protection policy) • all volunteers and service providers (if and as contracted) act in accordance with the obligations outlined in this procedure • compliance with the <i>ISG</i> procedure • gender diverse and intersex children and young people are provided appropriate support (as per Gender diverse and intersex child and young people support procedure) • the school's anti-bullying policy addresses all types of

bullying, to ensure that high risk cohorts who may experience marginalisation feel safe and supported, and to ensure the wellbeing and safety of all children and young people

- teaching and learning is inclusive and relevant to the lived experiences of all children and young people
- staff are appropriately trained to support and respond to the needs of gender diverse, intersex and sexually diverse children and young people
- incidents of homophobic, transphobic and biphobic bullying, harassment and discrimination are recorded appropriately.

In addition, leaders of education and care settings with a secondary enrolment are responsible for ensuring:

- that secondary schools have a written policy against sexual harassment by children and young people that incorporates procedures for resolving complaints
- that the education and/or care setting community is made aware that it is unlawful under section 87(3)(3) of the *South Australian Equal Opportunity Act 1984 (SA)* for a child or young person 16 years and over to sexually harass another child or young person or staff member.

Leaders will provide ongoing monitoring of their preschool's, school's or care setting's compliance with this procedure and the department's policy, *Supporting Gender Diverse, Intersex and Sexually Diverse Children and Young People*.

Staff

All staff are responsible for:

- complying with this procedure and modelling appropriate and professional conduct at all times
- responding to and challenging all forms of homophobic, interphobic, transphobic and biphobic language and behaviour
- ensuring positive representation of gender diversity, intersex and sexual diversity across all areas of the curriculum
- promoting the use of inclusive and non-gendered language within the education or care setting.

Student Support Services

Student Support Services are responsible for supporting staff to implement this procedure. This includes assisting with the referral of children, young people and families to appropriate support services where possible and as required.

3. Definitions

Language in the gender diverse, intersex and sexually diverse community is constantly changing. The use of inclusive and acceptable terminology empowers individuals and enables visibility of important issues.

All terms mean something unique and specific to the person using them. There are also a large number of culturally distinct terms that are used and should be respected for example, in some Aboriginal¹ communities the terms Sistergirls and Brotherboys are used. Generally speaking, it is useful to ask which terms a child or young person may prefer and respect their choices.

Term	Meaning
Bisexual	A person who is emotionally and romantically attracted to people of more than one gender. This is not necessarily in the same way or at the same time.
Discrimination	Discrimination as defined in the <i>Equal Opportunity Act 1984 (SA)</i> and the <i>Sex Discrimination Act 1984 (Cth)</i> as amended by the <i>Sex Discrimination Amendment (Sexual Orientation, Gender Identity And Intersex Status) Act 2013 (Cth)</i> .
Gender	Generally understood as a social and cultural construction. A person's gender identity or gender expression is not always exclusively male or female and may or may not correspond to their sex.
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, gender queer or gender questioning. It refers to people whose gender expression or identity differs from the gender identity associated with the sex assigned them at birth or society's expectations. The person may identify as neither male nor female, or as both.
Gender Dysphoria	A term used to refer to distress or discomfort that may occur when a person's biological sex and gender identity do not align.
Gender expression	A person's gender expression is the outward signs they present to the world around them. This could include their choice of name and preferred pronoun (which may include using no pronoun), their style of dress and appearance and/or their mannerisms.
Gender identity	Refers to a person's strongly held internal sense of self, of being masculine or feminine, or both or neither. Gender identity does not necessarily relate to the sex a person is assigned at birth.
Independent child or young person	A person is generally only considered to be of full legal capacity at law once they are of or over the age of 18. In some cases a young person may be recognised as an independent student if common law considerations about the child or young person are taken into account, including their age (chronological, mental and emotional), maturity, and ability to understand the nature and consequence of their decisions. Consideration should also be given to whether the child or young person is subject to any Court Orders and whether they have been

¹ Reference to Aboriginal" is inclusive of Torres Strait Islander people

	<p>declared independent for the purposes of receiving Centrelink support. Each child or young person's circumstances should be treated on a case-by-case basis and with regard to the particular circumstances of the young person concerned and the nature of the decision to be made.</p> <p>An expert opinion regarding the child's functioning and development is usually required to make this assessment.</p>
Informed consent	Permission an individual gives to information sharing, either implied or explicit, after they have demonstrated that they understand the purpose of the request and the likely outcomes of consenting.
Intersex	<p>An umbrella term for people born with sex characteristics that do not fit medical norms for female or male bodies.</p> <p>Intersex variations are natural manifestations of human bodily diversity and include a wide range of hormonal, genetic and gonadal differences that may be diagnosed prenatally, at birth, at puberty, when trying to conceive, or through random discovery.</p> <p>Being intersex is not about gender identity and most intersex people identify as women or men. Some intersex people do not identify as the sex assigned to them at birth, and therefore may go through a process of affirming their true gender identity in a way that is similar to a transgender person.</p>
LGBTIQ+	An acronym that is used to describe lesbian, gay, bisexual, transgender, intersex and questioning/queer (plus other) people collectively.
~phobia (as in, transphobia, interphobia, homophobia and biphobia)	<p>The fear, intolerance, and/or discrimination of people who identify as:</p> <ul style="list-style-type: none"> • Intersex (interphobia) • Same-sex attracted (homophobia) • Transgender, gender diverse or gender nonconforming (transphobia) • Bisexual (biphobia). <p>These attitudes can be linked with hostility, verbal and physical abuse, prejudice or discrimination.</p>
Preschool, school or care setting leader	The individual who has responsibility for the welfare of children and young people attending that preschool, school or care setting; for example, the principal, director, manager or family day care educator supported by their coordinator. Or the person to whom the education or care setting leader has delegated relevant authorities.
Same-sex attracted	People who experience feelings of sexual and emotional attraction to others of the same sex. This term includes people who may identify as lesbian, gay, bisexual or something else, or who are questioning their sexuality.
Sexual diversity	A diverse range of sexualities, identities, and romantic or sexual attractions. This term includes those who may identify as same-sex attracted, lesbian, gay and bisexual.
Sexual orientation	Refers to a person's emotional and/or sexual attraction to another person, which can include the following identities: heterosexual, gay, lesbian, bisexual or something else.
Sistergirls and Brotherboys	Terms used by some Aboriginal and Torres Strait Islander communities to describe a person assigned male or female at birth

	and identifying or living partly or fully as another gender. Use and spelling of the terms may vary across different groups and communities, and other cultures will use different terms to describe gender diversity.
Social transitioning	Refers to a number of changes that can be made in a transgender person's social life and situation, including: <ul style="list-style-type: none"> • Use of a different name and pronouns • physical appearance (eg hair, clothing) • Use of amenities in keeping with their gender It does not refer to medical intervention.
Staff	Refers to employees, professional service providers (if and as contracted), and volunteers.

These definitions have been sourced from:

- [Australian Human Rights Commission](#)
- [Victorian Department of Education & Training](#)

SUPPORTING INFORMATION

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Related legislation

[Children and Young Peoples \(Safety\) Act 2017 \(SA\)](#)
[Children and Young People \(Safety\) Regulations 2017 \(SA\)](#)
[Education and Early Childhood Services \(Registration and Standards\) Act 2011](#)
[Education and Early Childhood Services \(Registration and Standards\) Regulations 2011](#)
[Equal Opportunity Act 1984 \(SA\)](#) as amended by the [Statutes Amendment \(Gender Identity and Equity\) Act 2016 \(SA\)](#)
[Sex Discrimination Act 1984 \(Cth\)](#) as amended by the [Sex Discrimination Amendment \(Sexual Orientation, Gender Identity And Intersex Status\) Act 2013 \(Cth\)](#)
[Births Deaths and Marriages Registration Act 1996 \(SA\)](#)

Related policy documents

[Access to legal services across departmental procedure](#)
[Camps and excursions guidelines for schools and preschools](#)
[Child protection in schools, early childhood education and care policy](#)
[Duty of care policy](#)
[Health Support Planning](#)
[Information Sharing Guidelines for Promoting Safety Wellbeing \(ISG\) procedure](#)
[Information Sharing Guidelines for promoting safety and wellbeing \(ISG\), Ombudsman SA.](#)
[Keeping Safe: Child Protection Curriculum](#)
[Maintaining EDSAS records to support transgender students](#)
[Protective Practices for Staff in their Interactions with Children and Young People](#)
[Responding to Abuse & Neglect – Education & Care training \(RAN-EC\)](#)
[SA Information Privacy Principles \(IPPS\) Instruction \(Cabinet Administrative Instruction PC012\)](#)
[School dress code procedure](#)
[School enrolment policy](#)
[Sexual harassment policy](#)
[Supporting gender diverse, intersex and sexually diverse children and young people policy](#)

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United Nations Convention on the Rights of the Child

Victorian Equal Opportunity and Human Rights Commission 2015, [Guideline: Trans and gender diverse inclusion in sport – complying with the Equal Opportunity Act 2010](#)

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REVISION RECORD

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v1.0	Senior Executive Group	27/10/2016	27/10/2017	First publication
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