



LEGAL RIGHTS *at school*

FOR YOUNG PEOPLE OF MINORITY SEXUALITIES AND GENDERS

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Young people of sexual and gender minorities often experience discrimination at school, which can take many different forms. This resource aims to give you an overview of *your legal rights at school*, covering both issues that might affect an individual, and a queer straight alliance/rainbow diversity group.

When advocating for your legal rights, it is important not to enter any situation that may make you feel unsafe. We advise seeking support from your peers, a supportive staff member, parent/guardian or whānau when standing up for your rights at school.

InsideOUT is here to support you too:
hello@insideout.org.nz

Acknowledgments:

Artwork by Jaye Barclay
<http://sonoko-arts.tumblr.com/>

Design by Chloe Stokes
<https://www.behance.net/felisdesign>

Writing and Editing by InsideOUT and Community Law Wellington & Hutt Valley

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Bullying & Harassment

What kinds of remedies do victims of bullying have available to them?

(Health and Safety at Work Act 2015, National Administrative Guidelines)
All School Boards must provide a safe physical and emotional environment for students. Schools should have a complaints policy which lets you know how complaints can be made and how they can be investigated. If there is no complaints policy, you could talk to your teacher, a Guidance Counsellor or an adult that you trust. They could then talk to the Principal who can assess how best to discipline the bully (you could also potentially approach the principal yourself if you feel comfortable doing so). The bully may get a detention or equivalent punishment or, if the bullying is more severe, be suspended.

All students have a right to education and when deciding how to discipline a bully the school must balance the bully's right to education against your right to be safe at school. It will need to be a case by case decision.

The school may use restorative practices to deal with bullying but this will depend on the individual case and whether this is something that the victim of the bullying agrees to.

When making a complaint to your school about bullying, it is important to have this in writing, so the school can follow appropriate discipline procedures. This also holds them accountable if the complaint gets ignored and legal action ends up being taken.

Does bullying have to occur on school grounds for the school to take action, or can it also include out-of-school interactions between students, including online?

Bullying often takes place outside of school grounds and hours and outside of the direct view of teachers and parents. Bullying can also occur online – which could be anything from an offensive email or a mean post about you on social media. Regardless of where the bullying occurs – it can still affect your wellbeing.

There are no hard and fast rules for how schools need to deal with bullying that occurs outside of school. However, if you report it to a staff member that you trust, they should investigate it and act on it if it is within the school's legal ability to do so. Also remember that you can report cyber-bullying to the police although be aware that the police won't generally get involved in other bullying complaints (unless the bullying constitutes threats of harm that would amount to a criminal activity). It is best to take screenshots of any cyber-bullying or hold onto texts so you have evidence of the bullying.

You can find information and advice about cyberbullying from Netsafe ([netsafe.org.nz](https://www.netsafe.org.nz))

What can I do if my school does nothing about bullying or harassment?

If your school fails to act on an incident of bullying or harassment, you could contact the School Board of Trustees, the Education Review Office, the Ministry of Education or the Commissioner for Children.

If the bullying amounts to discrimination (based on sex or any one of the other prohibited grounds of discrimination under the Human Rights Act 1993), you could contact the Human Rights Commission.

If failing to address the bullying results in a breach of health and safety law, you could also make a complaint to WorkSafe. If you need legal information about dealing with schools you can ring the Students Rights Service or Youthlaw for free.

My teacher keeps saying homo/bi/transphobic things in class. Are they allowed to do that?

No teacher can discriminate on the basis of sexual orientation or gender identity. The school must provide a safe physical and emotional environment for students. Amongst other things, any teacher that says homo/bi/transphobic things in class is likely to be in breach of the Human Rights Act.

You should tell your school principal if this is happening. If the school doesn't deal with it, you can make a complaint to the Human Rights Commission.



TRANS AND GENDER DIVERSE STUDENTS

Does my school have to provide the appropriate facilities for me? (e.g. unisex bathrooms, uniform)

Transgender students have the right to an environment that will not damage their mental health. Schools need to, as far as reasonably practicable, eliminate risks to your mental health or if that is not possible, minimise those risks. A school can discriminate on the basis of sex when deciding to admit a student to a school but not after a student is enrolled.

Considering these laws a school needs to make some provisions to provide appropriate facilities for trans students. What a school may need to do will vary depending on individual circumstances. But some reasonable, low cost options would include – allowing you to change

elements of the uniform so it is comfortable for you e.g. still wearing the school blazer but changing the uniform to tidy pants. Another option would be a school making at least one central toilet gender-neutral or a similar option for a changing room.

A school can require you to wear a uniform and there is no case law regarding whether a single sex school has to develop a new uniform for a student who is transitioning.

The Human Rights Commission has publications and case studies about transgender issues that might be useful when raising these issues with your school.

I'm transitioning from male to female (or vice versa), can I enrol in a girls' school?

This has never been legally tested in New Zealand. There is a case study from the Human Rights Commission where a trans woman was allowed to play cricket for a women's cricket team. If this principle was upheld in court then trans women would be allowed to enrol in a girls' only school and vice versa. Some girls' schools in New Zealand have previously accepted trans women into their schools.



If a student transitions from female to male in an all girls' school can the school transfer them out? What are the rules surrounding that?

Probably not. This has never been legally tested in New Zealand, therefore there are no clear rules about this. Schools are allowed to discriminate on the basis of gender but only in relation to admitting a student. There is no provision in the Human Rights Act to allow discrimination on the basis of gender when it comes to expelling or excluding a student. There are no specific rules in relation to this issue and if it was raised before the Human Rights Tribunal, the outcome would depend on the individual circumstances of the case.

Legally, what does my school have to have in place to make sure school is safe place for me as a transgender student?

Schools have to provide a safe physical and emotional environment for all students. Amongst other things, this includes allowing transgender students to identify with their chosen gender without being discriminated or harassed. Although transgender students can often be a target for bullies, schools should have discipline policies in place for dealing with bullies. Using students chosen name and pronouns are another way that schools can look after students mental health and help them feel safe at school.



TRANS STUDENTS AND SPORTS

If a trans student is uncomfortable taking part in PE or swimming due to having to wear tight-fitting clothes, can they still be required to take part?

(Health and Safety at Work Act 2015)

As discussed previously, schools have a duty to protect your mental health. This must be balanced against the curriculum requirement to provide Physical Education. If you wish to be excused from PE we would recommend getting a medical opinion to support your request to be excused. For example, if swimming causes dysphoria then a doctor's note might be able to support this. Schools should also allow you alter your PE uniform to help alleviate dysphoria, e.g. allow you to wear a baggy shirt, wear shorts over a bathing suit.

If your binder doesn't allow you to do some sorts of physical activities, you could have a doctor's note supporting what you can and can not do.



Can trans students play in the sports team of their chosen gender? Does this still apply in competitive sports?

The Human Rights Commission suggests under '12 year olds' should be allowed to play in the sports team of their chosen gender. For older students the International Olympic Committee's standards may be one place a school could look for guidance. The Olympic Committee standard is that those who transition from female to male are eligible to compete in the male category without restriction. For those who transition from male to female, they must identify as female and they must have had testosterone before 10nmol/L for at least 12 months (which for a lot of people is just being on testosterone blockers for a year) and this may be monitored by testing. High school level competition is generally lower stacks than Olympic level competition so it might be expected that a lower or less intensive standard be used for high school level competition.

Where should a trans student get changed if taking part in PE or sports at school?

A trans student should be able to change either in the changing room of their gender identity or in a private unisex changing room or toilet which allows them to feel safe.



Can my school stop me from wearing something that shows my support to the LGBTQIA+ community? - eg. a rainbow Pride wrist band, a badge

In New Zealand, people can express themselves as they like – this includes wearing what they want. However, your school may have a policy that says you can't wear jewellery at school, which could extend to not being able to wear wrist bands, regardless of the cause. This means that during school time you might not be allowed to wear something on your body that expresses your support but you should be able to attach a badge to your backpack or duraseal a poster on your school books if other students are also allowed to wear badges or have non-uniform duraseal.

Can my school stop me from talking about issues of homophobia, biphobia and transphobia in an assignment eg. speech or essay?

In New Zealand people can express their views and share any information they like. You will just need to make sure that the topic you want to write or speak about fits with the assignment topic (e.g. if you are asked to prepare a speech on native trees, a speech on homophobia would not fit the assignment brief. However, if you are asked to write an essay on a particular book that has homosexual subtext it may be appropriate to focus on the subtext). If you believe the school is not giving you freedom of speech and it does fit within your assignment context, you can make a complaint to the Human Rights Commission.

Can my school block websites such as InsideOUT from being accessed at school?

Yes, your school can block websites from being accessed at school. If this is done in a discriminatory way it may be a breach of the Human Rights Act, otherwise it may be lawful.

QUEER STRAIGHT ALLIANCES (AND) Rainbow Diversity Groups

My school is stopping me from setting up a queer straight alliance. Am I allowed to and what can I do?

Your school needs to treat your queer straight alliance as they would any other club. This means if your school allows other groups to be set up and you meet all the same requirements as other groups, they should allow you to set up a queer straight alliance. If your school bans all clubs then you will probably not be allowed to set up a queer straight alliance. Schools may have procedures you need to go through or criteria you need to meet in order to be able to set up a group. If there is a school rule that specifically bans LGBTQIA+ groups this could be a

breach of the Human Rights Act and you should seek specific advice on your individual situation. You could make a complaint to the Human Rights Commission.

If your school stops you setting up a queer straight alliance you could talk to your school principal or the Board of Trustees and explain why it is important and see if there are any other options available. Once they understand what the group is about and what you intend to do they may change their mind. InsideOUT can support you to do this.

Can a religious or private school stop you from setting up a queer straight alliance?

Generally no, a religious or private school can't stop you from setting up a queer straight alliance if this would involve treating your group differently from other student groups. The Human Rights Act allows religious schools to discriminate only when admitting students to the school, they cannot treat students differently once a student has been admitted to the school. Therefore if other groups are allowed to be set up and you meet the same standard then you should be allowed to set up a queer straight alliance.

My school won't let us use the word 'queer' or 'gay' etc. in association with our group, can they stop us from doing this?

Schools have broad power to make rules regarding school control, management, organisation and student conduct, and this could include naming conventions for student groups. However they cannot discriminate on the basis of sexual orientation. For example, there would be a difference between a school not allowing the term 'queer' on the basis it represents queer students compared to a school not allowing the term 'queer' because they have concerns about its historic use as a homophobic slur.

Can my school put a restriction on who attends the group based on their age/year level?

Schools have very wide ranging powers to place limitations on students. Generally we believe that any restrictions imposed must be reasonable and appropriate. For example, the school may place an age limit on the group if sex will be discussed. A reasonable limit would therefore be to allow only those who are learning safe sex in their classes to attend the meeting. It is important that QSA/rainbow diversity groups aren't discriminated against. If other groups in the school don't have age restrictions, your group should not be given one simply because it is LGBTQIA+ focused.



Can my school enforce having a staff member at our group meetings?

The school can enforce having a staff member at the group meetings if they require staff members to be present for other groups. InsideOUT recommend having a staff member supporting your group, even if they don't attend all your meetings.



Can my school stop us from advertising our group within the school? This could involve things such as putting meeting times in school notices, putting posters up or speaking in assemblies.

Advertising can take place in a number of ways within the school. Similar to the question above, the school can limit these, but not in a discriminatory fashion. If other groups are not able to advertise then equally any QSA/rainbow diversity group created may not be allowed to either. Similarly, if the school has restrictions on where advertising can take place, then these should apply to all groups equally. If the school is opposed to advertising, students could suggest limited

advertising, for example advertising on the designated notice boards only. Students should ensure that the advertising is not offensive to others.

If a school has special character (for example a religious school), that does not give them the right to discriminate on the basis of sexual orientation or gender. Therefore, they cannot stop you from advertising your group just because it has an LGBTQIA+ focus.

Can my school put a restriction on how many students are allowed to be involved in the group?

The general standard for groups such as this is that restrictions can only be placed on this group if there are similar restrictions on other groups. For example, if a group of students meet weekly to discuss a particular religion or to speak a particular language and these are restricted in numbers, then it would be reasonable for the school to limit numbers in the QSA/rainbow diversity group too. Further, there may be practicable reasonable reasons for limiting the number of students involved, such as size of the room being used. If this is the case, then students could look for a larger room, or suggest they gather on alternate weeks or split into two groups.

The Human Rights Act makes it unlawful to discriminate on the grounds of sexual orientation, although this is not directly related to the number of students who would be allowed to be involved in the group. The school cannot prevent students from joining the group based on their sexual orientation and cannot limit the students joining to those who identify as part of the LGBTQIA+ community.

SCHOOL BALLS

AND

PUBLIC DISPLAYS OF AFFECTION

Can I take my same-gender partner to the ball as my date?

It is in breach of the Human Rights Act to discriminate against someone based on their sexual orientation. As such, students should be able to take same-gender partners to their ball. This issue has been the subject of several complaints to the Human Rights Commission and the issue has often been resolved satisfactorily within the school community.



Can my school have a rule that girls have to wear dresses and guys have to wear pants at the school ball?

In New Zealand, people can express themselves however they like – this includes wearing what they want to a school ball. Of course, this is within reason and can't be offensive to others.

Can my school stop me from hugging/kissing my partner at school?

Schools are allowed to have rules and policies about anyone hugging/kissing at school – regardless of sexual orientation. They should not have different rules for same gender couples.

THE LEGAL RIGHT

FOR TRANSGENDER PEOPLE TO BE FREE FROM DISCRIMINATION IN NEW ZEALAND

In New Zealand you have the right to be free from discrimination on the basis of sex. There is no clear case law in New Zealand that states being transgender falls within the definition of 'sex'. However Crown Law has released an opinion saying they believe transgender people are protected under the grounds of 'sex'. Similarly the Human Rights Commission considers transgender people to be protected. In overseas legal systems similar to New Zealand 'sex' has been defined as including transgender. All this indicates that if a case regarding transgender rights reached court – it would be likely recognise transgender people as being protected by the Human Rights Act.

OTHER RESOURCES

The Human Rights Commission:

HRC Enquiries and Complaints

HRC Human Rights - School Violence

HRC Bullying At School

Bullying Prevention and Response a Guide for Schools:

TKI Deter Bullying

Affirming diversity of sexualities and gender identities in the school community guidelines:

PPTA GLBTI Teachers

Community Law:

Community Law NZ

Youth Law:

Youth Law NZ

InsideOUT:

InsideOUT NZ



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