



Legal Rights at School

A resource for rainbow young people in Aotearoa

Copies may be downloaded or ordered from
InsideOUT online at
<http://insideout.org.nz/resources/>

Published 2021 by InsideOUT Kōaro
138 Wakefield Street, Te Aro, Wellington 6011

<http://insideout.org.nz/>

All rights reserved.

Enquiries should be made to the publisher

ISBN (Softcover): 978-0-473-60162-1

ISBN (PDF): 978-0-473-60163-8†



Contents

A note on language	6
Legal frameworks	7
Harassment and bullying	9
What is harassment?	9
What is bullying?	10
What can I do about harassment and bullying at school?	10
What can I do about bullying or harassment outside of school?.....	11
What can I do if my school does nothing about bullying or harassment?	12
My teacher has said things in class that discriminate against people based on their sex, sexuality or gender. Are they allowed to do that?	13
Safety at school	16
Legally, what does my school have to have in place to make sure school is a safe place for me as a rainbow student?.....	16
I am a rainbow young person, but not everyone at my school knows. Can my school ‘out’ me without my consent?.....	16
Trans, gender diverse and intersex students	17
Does my school have to provide the appropriate toilets and changing facilities for me?	17
What uniform can I wear at school?	18
What are the rules around changing my name/pronouns/ gender at school?	18
I’m a trans girl, can I enrol in a girls’ school? I’m a trans boy, can I enrol in a boys’ school?.....	20
If I was assigned female at birth and transition while I’m at a girls’ school (or vice versa), can the school transfer me out? What are the rules surrounding that?.....	20
I’m going to school camp. Can I sleep in a tent or cabin with students of my affirmed gender?.....	21

Sports and physical education	22
If I am uncomfortable taking part in PE or swimming because of gender dysphoria or physical discomfort, am I still required to take part?.....	22
Where can I get changed when taking part in PE or sports at school?	22
Can I play in the sports team of my affirmed gender? Does this still apply in competitive sports.....	23
Queer Straight Alliances and Rainbow Diversity Groups.....	25
My school is stopping me from setting up a queer straight alliance or rainbow diversity group. Are they allowed to do that? What can I do?.....	25
Can a religious or private school stop me from setting up a queer straight alliance or rainbow diversity group?	25
My school won't let us use the word 'queer' or 'gay' in association with our group. Can they stop us from doing this?.....	26
Can my school put a restriction on who attends the group based on their age/year level?	26
Can my school stop us from advertising the group within the school? For example, putting meeting times in school notices, putting posters up, or speaking in assemblies.....	27
Can my school enforce having a staff member at our group meetings?	27
Freedom of speech	28
Can my school stop me from wearing something that shows my support of the rainbow community? (e.g. a rainbow wristband or badge).....	28
Can my school stop me from talking about issues related to rainbow communities in an assignment such as a speech or essay?.....	28
Can my school block websites such as InsideOUT from being accessed at school?	29

School balls and public displays of affection30
Can I take my same-gender partner to the ball as my date? ...30
Can my school have a rule that girls have to wear dresses and
guys have to wear pants at the school ball?.....30
Can my school stop me from hugging/kissing my partner
at school?30
Complaints: Who deals with them?31
School board31
Human Rights Commission.....31
Ombudsman.....32
Office of the Privacy Commissioner32
The Teaching Council of Aotearoa New Zealand | Matatū
Aotearoa.....33
Helpful resources34
Acknowledgments34



A note on language

Throughout this resource, we use the term 'rainbow' as an umbrella term to describe people of diverse genders, sexualities and variations of sex characteristics (also known as intersex). Everyone has a unique relationship to the words they choose to use to define themselves. For example, a word such as 'non-binary' might mean something slightly different to each person using this word.

Rainbow young people often experience discrimination at school, which can take many different forms. This resource aims to give rainbow young people in Aotearoa an overview of their legal rights at school, covering issues that might affect both individuals and queer straight alliances or rainbow diversity groups.

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

InsideOUT is here to support you too. We have a team of Schools Coordinators around Aotearoa who can support you and your school. We also have a set of resources designed to help schools support rainbow students. Get in touch with us at hello@insideout.org.nz for more information.

Legal frameworks

There are a few different laws and guidelines that relate to rainbow students at school. These outline your rights as a rainbow student and tell schools what they can and cannot do. There are a few rights and guidelines which can be helpful for you to know about when advocating for your rights at school.

- **Your right to privacy.** Under the Privacy Act 2020,¹ your personal information such as your sex, sexual orientation or gender cannot be disclosed by a school. Principle 11 under section 22 of the Privacy Act contains a list of exceptions to this, but they are unlikely to apply in a school situation. Any move by a school to disclose your sex, sexual orientation or gender without your consent could count as a breach of privacy under the Privacy Act.
- **Your right to freedom of expression.** Section 14 of the Bill of Rights Act 1990² affirms your rights to express yourself in a manner that aligns with your gender and sexuality, as well as the freedom to seek and receive information about the identities, rights, and support available to you.



¹ <https://www.legislation.govt.nz/act/public/2020/0031/latest/whole.html#LMS23223>

² <https://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html#DLM225513>

- **Your right to protection from discrimination on the ground of sexual orientation.** The Human Rights Act 1993³ states that schools are legally not allowed to treat you unfairly or negatively based upon your sex or sexual orientation. There is currently no explicit reference to gender identity or expression in the Human Rights Act. The Human Rights Commission's report on rainbow people's rights states that "[A]n environment which is unsupportive of students with a diverse sexual orientation, gender identity and expression, or sex characteristics may be in breach of health and safety legislation and the Human Rights Act."⁴
- **Your right to safe and inclusive learning environments.** Section 127(1) of the Education and Training Act 2020⁵ states that part of a school board's main purpose is to ensure that the school is a physically and emotionally safe place for all students and staff; upholds students' rights (outlined above); takes all reasonable steps to eliminate racism, stigma, bullying, and any other forms of discrimination within the school; and is inclusive of and caters for students with differing needs. Guideline 5(a) of the National Administration Guidelines⁶ also states that each school board is required to provide a safe physical and emotional environment for students.



³<https://www.legislation.govt.nz/act/public/1993/0082/latest/whole.html#DLM304636>

⁴See p. 48 in New Zealand Human Rights Commission. (2020). Prism: Human rights issues relating to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGI-ESC) in Aotearoa New Zealand - A report with recommendations. Wellington: New Zealand. Available at <https://www.hrc.co.nz/news/human-rights-commission-issues-report-rainbow-human-rights-aotearoa-new-zealand/>

⁵<https://www.legislation.govt.nz/act/public/2020/0038/latest/whole.html#LMS274508>

⁶<https://www.education.govt.nz/our-work/legislation/nags/#five>

Harassment and bullying

What is harassment?

Harassment can be defined broadly as any behaviour aimed at an individual or group that would be expected to insult, intimidate, victimise or disadvantage the recipient, based on the circumstance, and which is:

- *unwelcome, hurtful or offensive to the recipient; and/or*
- *repeated, or is so significant that it negatively affects the recipient's wellbeing.*

Harassment includes (but is not limited to) discrimination, which means being treated less favourably based on your sex⁷, age, ethnicity, sexual orientation and other grounds set out in the Human Rights Act 1993. Discrimination may arise from official statements, actions, omissions, decisions or policies as well as from informal or personal statements or behaviour. It may also be indirect, where a person experiences different treatment on one of the prohibited grounds (listed above), even if the discrimination is not explicit.

Harassment also includes sexual harassment, which is unwanted behaviour of a sexual nature. This includes sexually inappropriate jokes, sending someone provocative photos or videos, unwanted sexual comments or unwanted physical contact.

⁷There are no clear rules or guidelines in Aotearoa about whether being trans or gender diverse falls within the definition of 'sex'. However, Crown Law suggests that gender identity is protected under the ground of 'sex'. Similarly, the Human Rights Commission considers trans people to be protected under the ground of 'sex'. In overseas legal systems similar to Aotearoa, 'sex' has been defined as including trans people. This indicates that if a case regarding trans rights reached court, it is more likely to recognise trans people as being protected by the Human Rights Act 1993.

What is bullying?

Bullying is when an individual or a group deliberately and repeatedly misuses their power in order to cause harm or fear to another group or person. Bullying includes physical or verbal/emotional attacks, and can take place in person or online. It will often continue if no action is taken against it, and can appear obvious or may be discrete.^{8,9}

Bullying or personal harassment is behaviour that explicitly or implicitly intimidates, humiliates, undermines or dominates another person; involves the use of abusive and/or threatening language, verbal or physical threats; or any form of physical assault.

What can I do about harassment and bullying at school?

Your school should have a complaints policy that explains how complaints can be made and addressed. If your school doesn't have a complaints policy, you could talk to your teacher, a guidance counsellor, or a trusted adult. This person could then talk to the principal who can assess how best to respond to the bullying. The principal could be approached directly by you or your rainbow diversity group if you feel comfortable doing so.

When making a complaint to your school about bullying, it is important to have the complaint in writing (such as in a letter or an email) so the school can follow appropriate discipline procedures. This also holds the school accountable if the complaint is not handled properly. If others are affected by the same bullying behaviour, group together and write up your experiences collectively as a complaint. You don't have to do it alone!

⁸See <https://www.bullyingfree.nz/about-bullying/what-is-bullying/>

⁹See <https://www.ncab.org.au/bullying-advice/bullying-for-parents/definition-of-bullying>

Your school may use restorative practices to deal with bullying, which means that the school will help you and the person who bullied you work through your differences. This should depend on the individual case and whether you, as the victim of the bullying, agree to it.

You should expect that your school will listen to you with sensitivity, respond appropriately to the problem, give feedback, protect you from any negative consequences resulting from reporting the bullying, and support you and other victims of the bullying at school.¹⁰ You are entitled to bring a support person (a friend, family member or other trusted adult) with you for any discussions or meetings concerning bullying.

What can I do about bullying or harassment outside of school?

Bullying can impact your wellbeing and experiences at school even if it takes place outside of school grounds, school hours or outside the direct view of teachers and parents. Even if the bullying happens outside of school, you can still make a complaint to your school, which is usually considered the first step in most circumstances.

There are no set rules for how schools need to deal with bullying that occurs outside of school. However, if you report the bullying to a staff member that you trust, the school should take all practicable steps to take action against the incident/s, in adherence with their legal obligations to provide a safe learning environment for all students.



¹⁰See <https://www.occ.org.nz/assets/Uploads/Reports/Education/School-safety.pdf>

Bullying can also occur online. This could be anything from an offensive email or a mean post about you on social media. It is best to take screenshots of any cyberbullying or save online messages so you have evidence of the bullying. You can report cyberbullying to the police because it might be a breach of the Harmful Digital Communications Act 2015. You can get more information and advice about cyberbullying and the Harmful Digital Communications Act at Netsafe.¹¹

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

Your school principal should act upon any reported incidents of bullying or harassment in a timely and effective manner. If the incident is not adequately addressed, you may want to contact your school board by requesting in writing that your principal (who is also board member) take the incident to the board. The board is responsible for ensuring that the school provides a safe environment and quality education for all its students. It is the first place you should go with a complaint before looking for other ways or external parties.¹²

If you are unhappy with the board's response (including if the principal refuses to take the matter to the board), you can take your complaint to your local Ministry of Education office¹³ or the Office of the Children's Commissioner.¹⁴

If the bullying amounts to discrimination (based on sex, sexual orientation or any one of the other prohibited grounds of discrimination under the Human Rights Act 1993), you could contact the Human Rights Commission.¹⁵ However, you need to try to resolve the issue with the school directly before you escalate the complaint.

¹¹ See <https://www.netsafe.org.nz/>

¹² See <https://www.nzsta.org.nz/trustee-elections-and-appendix-2/board-of-trustees/>

¹³ <https://www.education.govt.nz/our-work/contact-us/regional-ministry-contacts/>

¹⁴ <https://www.occ.org.nz/>

¹⁵ <https://www.hrc.co.nz/>

If you need legal information about communicating with your school, you can call the Students Rights Service¹⁶ or Youth Law for free.¹⁷

My teacher has said things in class that discriminate against people based on their sex, sexuality or gender. Are they allowed to do that?

No teacher can discriminate on the basis of sex, sexual orientation or gender. As mentioned earlier, the school must provide a safe physical and emotional environment for students under the Education and Training Act 2020.

Every teacher in New Zealand is required to follow the *Code of Professional Responsibility and Standards for the Teaching Profession | Ngā Tikanga Matatika mō te Haepapa Ngāiotanga me ngā Paerewa mō te Umanga Whakaakoranga*.¹⁸ The Code | Ngā Tikanga Matatika says that teachers must make commitments to the teaching profession, learners, families and whānau, and society. The commitment to learners is particularly relevant to the rights of rainbow learners. It says that teachers will work in the best interests of learners by:

- promoting the wellbeing of learners and protecting them from harm
- engaging in ethical and professional relationships with learners that respect professional boundaries
- respecting the diversity of the heritage, language, identity and culture of all learners
- affirming Māori learners as tangata whenua and supporting their educational aspirations
- promoting inclusive practices to support the needs and abilities of all learners
- being fair and effectively managing their assumptions and personal beliefs.



¹⁶Contact the Students Rights service on 0800 499 488 or at <https://studentrights.nz/>

¹⁷Contact Youth Law on 0800 884 529 or at <http://youthlaw.co.nz/>

¹⁸See <https://teachingcouncil.nz/content/our-code-our-standards>

The Teaching Council gives teachers examples of what the commitment to learners looks like in practice.¹⁹ Teachers who are following the Code | Ngā Tikanga Matatika should do things like:

- creating learning environments (including online spaces) that are safe and inclusive, and that promote the dignity and emotional wellbeing of all learners
- informing learners of the extent of confidentiality and the situations where information may be disclosed
- fostering a learning culture that celebrates diversity and inclusion, and protects against discrimination
- using the correct pronoun for a learner's affirmed gender critically reflecting on how their own beliefs or bias may impact on their teaching practice and the achievement of learners with different abilities and needs, backgrounds, genders, identities, and cultures
- treating learners equitably – recognising that treating learners fairly does not always mean treating them equally.

If you think your teacher isn't following the Code | Ngā Tikanga Matatika (for example by discriminating against you), the first step is to talk to the principal or a staff member you trust. If the principal doesn't deal with your concerns, your next step should be a complaint to the school board, which is the teacher's employer. If you're not happy with how the board has dealt with your complaint (including if the principal does not take the matter to the board), then you can raise your concerns with the Teaching Council.²⁰

If there's a serious reason why you can't complain to your school's board (like a conflict of interest or a major relationship breakdown) you can complain directly to the Teaching Council. More information can be found at the end of this resource. Remember that a support person, such as a family, friend, or advocate, can help you throughout this whole process.

¹⁹The Code of Professional Responsibility, Examples in Practice. See <https://teachingcouncil.nz/resource-centre/our-code-our-standards>

²⁰<https://teachingcouncil.nz/content/reporting-concern>



Safety at school

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

Under the Education and Training Act 2020, your school has to provide a safe physical and emotional environment for all students. This includes allowing you to express yourself without being discriminated against or harassed. Though it's not legally required, your school should ideally name and define rainbow people in their formal policies and procedures. For example, the school might define transphobic bullying in their anti-discrimination policies, and ensure that it has appropriate processes in place to prevent and respond to incidents of bullying.

I am a rainbow young person, but not everyone at my school knows. Can my school 'out' me without my consent?

No. Any move by a school to out you without your consent would be a breach of your privacy. This includes 'outing' you to other students' families, such as when going on a school overnight trip. Under the Privacy Act 2020, personal information about a student cannot be disclosed by a school (with a few exceptions, which are highly unlikely in situations regarding respecting rainbow students' privacy). You can make a complaint about a breach of your privacy to the Office of the Privacy Commissioner.



Trans, gender diverse and intersex students

Does my school have to provide the appropriate toilets and changing facilities for me?

You have the right to learn in an environment that will not negatively affect your health. Your school needs to take all reasonable steps to minimise or eliminate risks to your mental and physical health. There are no rules or requirements in the Education and Training Act 2020 or elsewhere that says schools cannot allow trans and intersex students to use gender-segregated toilets, or use a mix of gender-neutral and gendered toilets. You should be able to use the facilities you feel most comfortable using.

The Education and Training Act 2020 states that school boards must ensure that the school is inclusive of, and caters for, students of differing needs. This means that your school should offer gender-neutral toilets and changing facilities to increase students' sense of safety. Gender-neutral facilities need to be easily accessible, safe and available for all students who want to use them.

If your school does not currently have an accessible gender-neutral toilet or changing facility, you or a trusted adult could ask the school board to build these facilities. Keep in mind that the ability for schools to provide gender-neutral facilities may differ depending on each school's resources and current buildings.²¹

²¹See the New Zealand Building Code for more information on the building requirements for toilets and changing areas. The Code states that each gender-neutral bathroom must be a self-contained unit with a toilet, basin and a sanitary disposal bin. Building Performance. (n.d.). G1 Personal hygiene. <https://www.building.govt.nz/building-code-compliance/g-services-and-facilities/g1-personal-hygiene/>

What uniform can I wear at school?

A school can require you to wear a uniform. However, there are no clear rules or guidelines about whether a single-sex school has to develop a new uniform for a student who is transitioning.

You should be allowed to wear the uniform items you feel most comfortable in, regardless of your gender or sex, as long as it follows your school's uniform or dress code. For example, you could change elements of the uniform, such as wearing a skirt instead of pants.

If your school dress code does not work for you because of the way it is gendered, you or a trusted adult can ask your school to reconsider gender-neutral inclusive options. You can visit the Youth Law website²² for more information about the law around uniforms and hairstyles at school.

What are the rules around changing my name/pronouns/gender at school?

Schools have to provide a safe physical and emotional environment for all students. This includes respecting and recording your correct name, pronouns, and/or gender on student records wherever possible. You have the right to correct any information, such as the above, held about you by an organisation under section 22, principle 7 of the Privacy Act 2020. Legally, there is no minimum age at which you can request to change your personal information.

If enrolling in Aotearoa New Zealand's education system for the first time, your parents or caregivers are legally required to provide an official identification document, such as a birth certificate, to verify that you are entitled to enrol for free education. If you are changing this information at your existing school, you do not need to have legally changed your name or gender on identity documents first to change your name or gender in the school's student management system. If you have legally

changed your gender marker on official identity documents, there is no need for the school to record your sex assigned at birth.

You can let your school know of the changes you want to make through a verbal or written request. You do not need to provide the school with evidence such as a mental health assessment or diagnosis of gender dysphoria when requesting to change your name or gender marker. Once your school has received your request, a trusted staff member will ideally discuss with you the types of changes you'd like to make, and who you would like to know this information. These changes might include you using a different name and/or pronouns at school day-to-day, and/or changing your name more formally on the school's roll and student records. You might like to ask a supportive friend or whānau member to help you with this process.

Your personal information is recorded both within your school's management system, and on a National Student Index managed by the Ministry of Education (NSI or ENROL). There are currently some differences between the ways that these systems record gender and names. For example, the NSI only have 'M' and 'F' options for recording gender, but your school system might have a 'Gender diverse' option. You can ask your school administration about what information is possible to record in their student management system.

If you have requested that your personal information such as your self-determined name, pronouns and/or gender is not shared with your parents/whānau, then the school must respect this request (unless they are legally required to share this information). To maintain your privacy, your school should consider how any changes made to your records in the student management system may come across when communicating with your parents/whānau (such as in reports or notifications



²²<http://www.naming.nz/do-it-yourself>

about absences). The school should do what they can to ensure that they use the appropriate name and/or pronouns in these communications, if they are different from the ones you use at home.

If you are interested in updating your legal identity documents, there are a number of ways you can go about this. For more information, you can contact Naming New Zealand.²³

See InsideOUT's resource *Creating rainbow-inclusive school policies and procedures*²⁴ for detailed information about how to change your name and gender marker on student records, and schools' obligations in this process.

I'm a trans girl, can I enrol in a girls' school? I'm a trans boy, can I enrol in a boys' school?

This situation has not been legally tested in Aotearoa, but there are some good examples of schools that have been responsive and inclusive when dealing with these situations. The terms 'boys' and 'girls' are not defined in any legal way, and most schools interpret the terms as meaning a person presenting as such, regardless of what their birth certificate may say.

A school can discriminate on the basis of a person's sex when deciding to admit a student to a school, but not after a student is enrolled. Unless the Minister of Education has specifically put a limit on the number of boys at a girls' school (or vice versa),²⁵ a school should allow trans students to continue attending.

If I was assigned female at birth and transition while I'm at a girls' school (or vice versa), can the school transfer me out? What are the rules surrounding that?

Probably not. This has never been legally tested in Aotearoa, therefore there are no clear rules about this. Schools are allowed

²⁴You can view and download this resource at <https://insideout.org.nz/resources/>

²⁵The Education and Training Act 2020 (s 191) enables the Minister to put a limit on the number of boys at a girls' school and vice-versa.

to discriminate on the basis of sex but only in relation to admitting a student.

There is no provision in the Human Rights Act 1993 to allow discrimination on the basis of gender identity or expression when it comes to expelling or excluding a student. There are no specific rules around this issue and if it was raised before the Human Rights Review Tribunal, the outcome would depend on the individual circumstances of the case.

I'm going to school camp. Can I sleep in a tent or cabin with students of my affirmed gender?

There are no legal rules or requirements that would prevent your school from allowing you to sleep in a tent or cabin with other students of your affirmed gender.



Sports and physical education

If I am uncomfortable taking part in PE or swimming because of gender dysphoria or physical discomfort, am I still required to take part?

Your school has a duty to protect your mental health. However, this must be balanced against the curriculum requirement to provide Physical Education (PE). Where a student experiences dysphoria during a PE class, InsideOUT and the Ministry of Education encourages that students may be excused from the activity. Teachers should not require a medical certificate or a note from parents or caregivers for this. If appropriate, teachers could arrange an alternative activity that does not require the student to participate in the physical activity itself, such as refereeing, scoring, helping set up activities, or completing a theoretical activity.

Your school is also encouraged to allow you to alter your PE uniform to help alleviate dysphoria, such as allowing you to wear a baggy shirt, or wear shorts over a bathing suit for swimming. The Human Rights Commission encourages schools to allow students to wear any uniform, including a sports uniform, as long as it complies with the school's dress code.²⁶

Where can I get changed when taking part in PE or sports at school?

Just as your school needs to provide safe bathroom facilities, your school should support you to use the changing area that aligns with your gender if this is what you feel most comfortable doing. This means you should have the option of changing in the area of your choice, such as in a private space such as a single stall/cubicle within a larger changing room, or a separate space nearby.

²⁶Human Rights Commission (n.d.). FAQ: Supporting Trans Students. Retrieved from <https://www.hrc.co.nz/our-work/sogiesc/resources/trans-people-facts-information/>

You could consider completing a gender transition support plan²⁷ alongside school staff that you trust to help make a plan and communicate it to relevant teachers.

Can I play in the sports team of my affirmed gender? Does this still apply in competitive sports?

If you are 12 years old or younger, you should be allowed to play in the sports team of your affirmed gender. There are no official rules or requirements in the Education and Training Act 2020 that would prevent you from playing on a sports team at school that aligns with your gender. The school should therefore allow you to participate in the team that corresponds with your gender, or whichever team you feel most comfortable in, in schoolwide sports and physical education classes. This includes allowing you to wear the sports uniform you feel most comfortable in, regardless of your sex characteristics or gender.

When entering competitive school sports, InsideOUT and the Ministry of Education encourages schools to allow students to participate in the team that corresponds with their affirmed gender. Ideally, inclusive school sports associations will allow trans students to participate regardless of whether they are taking gender-affirming hormones. Currently in Aotearoa there are no laws or official best practice guidelines for trans young people in competitive sports.



²⁷You can download this resource at <https://insideout.org.nz/resources/>

²⁸See the regulations at <http://www.nzsssc.org.nz/Events-1/Eligibility-Regulations>

The rules for secondary school sports are set by the individual sport. The rules should also be consistent with the guidelines set by School Sports New Zealand.²⁸ These guidelines state that all cases should be considered on individual merit. They also say that the student should be permitted in the sporting competition of their affirmed gender if event organisers are satisfied that the following areas are not of concern:

- **Health and safety of all participants:** the physical contact nature of some sports may provide an unacceptable safety risk for some of the participants
- **Unfair advantage:** the nature of sport means that the physical capabilities of some participants may advantage a particular group
- The current stage of the young person's **gender transition**.

Competitive and inter-school sports are often managed by governing sports bodies independent of schools. Where possible, your school should check the region's sports council guidelines to see whether there are any specific rules in place for each sport at a primary, intermediate or secondary school level, and whether any references to trans, gender diverse or intersex students have been included in these.



Queer Straight Alliances and Rainbow Diversity Groups

My school is stopping me from setting up a queer straight alliance or rainbow diversity group. Are they allowed to do that? What can I do?

Your school needs to treat your rainbow group as they would any other group. 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 rainbow diversity group.

Your school 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 rainbow groups, this may be a breach of the Human Rights Act 1993 and you should seek specific advice from InsideOUT on your individual situation.

If your school stops you from setting up a rainbow diversity group, your first step should be talking to your school principal or the school board and explaining why a group is beneficial. 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 and offer other resources related to rainbow diversity groups.

Can a religious or private school stop me from setting up a queer straight alliance or rainbow diversity group?

Generally no, a religious or private school cannot stop you from setting up a rainbow diversity group if this would involve treating your group differently from other student groups. The Human Rights Act 1993 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. If other groups are allowed to be set up, and you meet the same standard, then you should be allowed to set up a rainbow diversity group.

InsideOUT has a resource, *Join this Chariot*, that supports Christian schools to support rainbow students and groups.²⁹

My school won't let us use the word 'queer' or 'gay' 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. A school may ban certain words if they misunderstand the meaning, but they cannot discriminate on the basis of sexual orientation. So if you can explain that the word is in reference to sexual orientation or gender identity, they may reconsider their rules.

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

Schools have wide-ranging powers to place limitations on students. Generally, any restrictions your school imposes must be reasonable and appropriate. For example, your school may place an age limit on the group if sexual activity will be discussed. A reasonable limit would therefore be to allow only those who are learning about safe sex in their classes to attend the meetings where this is a discussion topic.

It is important that queer straight alliances or 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 rainbow-focused. Your 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 rainbow communities.

²⁹Join this Chariot is available to download at <https://insideout.org.nz/resources/>

Can my school stop us from advertising the group within the school? For example, putting meeting times in school notices, putting posters up, or speaking in assemblies.

Advertising can take place in a number of ways within your school. Similar to the question above, your school can regulate advertising, but not in a discriminatory way. If other groups are not able to advertise, then any queer straight alliance or rainbow diversity group may not be allowed to, either. Similarly, if your school has restrictions on where advertising can take place, then these should apply to all groups equally.

If the school is opposed to advertising, you could suggest limited advertising, such as advertising on the designated notice boards only. Students should ensure that the advertising is not offensive to others. Some schools may be concerned about the safety of the group or group members and may want to prevent advertising for this reason. Steps can be taken to ensure safety, such as not listing the location of meetings on a poster, while still allowing the group to advertise.

If a school has a special character (for example a religious school), this 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 a rainbow focus.

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

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



Freedom of speech

Can my school stop me from wearing something that shows my support of the rainbow community? (e.g. a rainbow wristband or badge)

In Aotearoa, people can express themselves as they like. This includes wearing what they want. However, for example, your school may have a policy that says you can't wear jewellery at school which could extend to wearing wrist bands, regardless of whether or not it's rainbow-specific. 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 if other students are also allowed to wear badges.

Can my school stop me from talking about issues related to rainbow communities in an assignment such as a speech or essay?

People have a right to express their views and share any information they like, and any limits imposed on that right need to be justified. You will need to make sure that the topic you want to write or speak about fits with the assignment topic. For example, 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 a rainbow subtext, it may be appropriate to focus on the subtext.

If you believe the school is trying to stop you from talking about these subjects and it does fit within your assignment context, you could make a complaint to the principal or the school board.

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

Yes, your school can block websites from being accessed at school where there is concern for students' health, safety and wellbeing, but it shouldn't be done in a discriminatory way. You could check your school's web policy for what types of sites are not acceptable at school. If rainbow sites are blocked but don't fall under that description, the school should unblock them.



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 1993 to discriminate against someone based on their sexual orientation. As such, you should be able to take same-gender partners to your 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 Aotearoa, people are able to 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. For example, a school can have a rule stating that the dress code is formal.

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

Your school is allowed to have rules and policies about anyone hugging or kissing at school, regardless of sexual orientation. They should not have different rules for same-gender couples. Your school is also not allowed to apply the rules and policies in discriminatory ways.



Complaints: Who deals with them?

Instances of discrimination at school must first be taken to your principal and/or the school board before a complaint can be taken to the Ministry of Education, the Human Rights Commission, the Office of the Ombudsman or the Office of the Privacy Commissioner. There is some more information about each organisation below.

School board

Your school board is legally required to have a complaints policy in place, as well as a set of procedures for dealing with complaints effectively. The board is required to treat every concern or complaint fairly and consistently.

If you are concerned that your complaint has not been dealt with in a fair manner by the school board, you can contact your local Ministry of Education office³⁰ or the New Zealand School Trustees Association (NZSTA)³¹ in the first instance. NZSTA are able to provide support for the board when dealing with a complaint.³²

Human Rights Commission

If your complaint is about being discriminated against on the basis of your sex, gender or sexual orientation, and it is unable to be resolved with the school board, you can contact the Human Rights Commission.

The Human Rights Commission offers a free, informal and confidential service for anyone enquiring about human rights or complaining of unlawful discrimination or harassment. You can fill out a complaints form³³ explaining the nature of your complaint, and the Human Rights Commission will get in touch about the next steps in the process.^{34,35}

³⁰<https://www.education.govt.nz/our-work/contact-us/regional-ministry-contacts/>

³¹<https://nzsta.org.nz/>

³²See <https://www.nzsta.org.nz/dealing-with-complaints-effectively/>

³³<https://www.hrc.co.nz/enquiries-and-complaints/complaint-form/>

³⁴<https://www.hrc.co.nz/enquiries-and-complaints/what-you-can-complain-about/>

³⁵<https://www.hrc.co.nz/enquiries-and-complaints/how-make-complaint/>

Ombudsman

The Ombudsman³⁶ is an independent officer of Parliament who may be able to help with complaints against public education providers such as school boards of trustees.

You can contact the Ombudsman if your complaint is about poor handling of an issue such as a complaint about bullying or decisions about school rules, and it has not been resolved with the school board. The Ombudsman website³⁷ will determine if your issue is one that the Ombudsman is able to investigate, and filling out a complaint form³⁸ is the first step to get the process started.

Office of the Privacy Commissioner

If your complaint is about a breach of privacy (e.g. being 'outed' by your school) and you are unable to resolve the issue with your school, you can make a complaint to the Office of the Privacy Commissioner (OPC). The OPC works to develop and promote a culture in which personal information is protected and respected. The Privacy Act applies to almost every person, business and organisation in Aotearoa. The Act includes privacy principles that guide how personal information can be collected, used, stored and disclosed.

The OPC can investigate potential breaches of the privacy principles. The OPC can support you with your complaint and hopefully find a resolution for you and your school. The Privacy Commission website³⁹ will give you the information needed regarding making a complaint. To make a complaint, you will need to fill out a form.⁴⁰

³⁶The word Ombudsman is Swedish and loosely translated means grievance person and is a gender neutral term.

³⁷<https://www.ombudsman.parliament.nz/get-help-public>

³⁸You can find the form here: <https://www.ombudsman.parliament.nz/get-help-public/make-complaint-members-public>

³⁹<https://privacy.org.nz/your-rights/making-a-complaint/>

⁴⁰You can find the form here: <https://privacy.org.nz/your-rights/making-a-complaint/complaint-form/>

The Teaching Council of Aotearoa New Zealand | Matatū Aotearoa

If you are concerned about a teacher's behaviour or competence, you should first raise it with the teacher's employer to give them a chance to investigate your concerns. If you are not happy with how the school or centre has dealt with the issue, you can raise your concerns with the Teaching Council.

The Teaching Council is the professional body for, and voice of, the New Zealand teaching profession. They manage any complaints related to the conduct and competence of teachers. Their website⁴¹ will give you the information needed regarding making a complaint.



⁴¹<https://teachingcouncil.nz/content/reporting-concern#complaints>

Helpful Resources

- **Community Law**
<http://communitylaw.org.nz/>
- **Youth Law**
<http://www.youthlaw.co.nz/>
- **Rainbow Rights**
<http://www.rainbowrights.nz/>
- **Bullying prevention and response: A guide for schools**
<http://pb4l.tki.org.nz/Deter-Bullying>
- **InsideOUT resources**
<http://www.insideout.org.nz/>

Acknowledgments

This resource was written and edited by InsideOUT Kōaro. Special thanks to Stella Ivory, Amanda Hill, Rox Soriano, Alex Ker, Tabby Besley and Community Law Wellington and Hutt Valley - Te Awa Kairangi Office for their feedback and contributions to this resource.

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

Design by Chloe Stokes.



Inside OUT

© Copyright InsideOUT Kōaro 2021

ISBN (Softcover): 978-0-473-57681-3

ISBN (PDF): 978-0-473-57682-0