

What legal rights do you have at school as a trans and gender diverse young person?

A resource for trans and gender diverse young people and their families in NSW

Fact Sheet

This fact sheet answers some common questions trans and gender diverse young people, and their families, have about their rights at school in relation to school uniforms, bathrooms, camps and sports teams.

By reading this resource you will get a better understanding of your rights at school in New South Wales.

You have rights

As a trans and gender diverse student in Australia, you have the same rights and protections under the law which is afforded to all students.

Schools have a legal duty of care to protect students from risks of harm (that the school should be able to anticipate) and to do what is reasonable to ensure you are safe at school, so that you feel safe and protected when you are attending school.

In spite of these obligations, it can still be daunting to navigate the different gendered facilities and activities at school. For example, wearing a gendered school uniform, using gendered bathrooms, going on school camps and participating in school sports teams.

Further, many trans and gender diverse students have found their schools to be unsupportive of their gender status, and therefore fail to make the student feel safe at school.

Discrimination at school

What is discrimination?

Generally speaking, discrimination means treating (or proposing to treat) someone unfairly or less favourably than others because of one or more of their personal characteristics. This can happen in different places and contexts.

Discrimination is only against the law when it happens in an area of public life, including schools. This means it is against the law for schools and teachers to

discriminate against you, either directly or indirectly, on the basis of your gender identity.

What counts as discrimination?

It is discriminatory, and therefore unlawful, for a school to treat you less favourably than other students because you are trans and gender diverse, such as by:

- Refusing or failing to accept your application for admission as a student
- Only admitting you as a student on certain terms (that would not otherwise apply)
- Denying you access, or limiting your access, to any benefit provided by the school
- Expelling or subjecting you to any disadvantage

Are there any exceptions?

Yes, there are some. For example, it is usually not against the law to discriminate against someone in sport on the basis of their gender where the activity is a competitive sport and some competitive advantage may be gained (and where children are aged over 12). This could involve refusing or failing to select someone for a sporting team or excluding them from participating in the sporting team.

What can you do if you are being discriminated against?

If you are being discriminated against by a school and or teacher because you are trans and gender diverse, you have the right to make a complaint or take legal action.

For more information, read our Fact Sheet on 'How to deal with gender discrimination' in NSW (link provided below under 'Where to get help and more information').

Do any other laws exist in Australia to specifically protect the rights of trans and gender diverse students?

No, but education policies and guidelines exist which address aspects of schooling for trans and gender diverse students such as:

- changing your name/gender used at school
- school uniforms
- bathrooms
- school camps
- sports teams

Policies and guidelines are important and do help protect trans rights at school. Some states have started to implement policies in line with broader anti-discrimination legislation. However, they don't carry the same authority as legislation.

The policies that guide schools vary depending on which state or territory you live in, as well as which school you go to.

What about in NSW?

The NSW Department of Education & Communities has provided the following guidance to public schools and teachers in relation to trans and gender diverse students:

- While students under the age of 18 are enrolled according to the name on their birth certificate, they may change their name on existing records where a birth certificate has been issued in the new name or a signed consent from both parents approving use of the new name is provided
- Students may change the way their first name is recorded and used with the consent of both parents. If one parent disagrees, the principal needs to make a decision about what is in the child's best interests (on the basis of the age, capability and maturity of the student and advice from the child's doctor). Records can be updated to reflect the student's identified gender at the time the name is changed. The pronoun used should then be consistent with the gender recorded by the school
- Schools should consider individual student circumstances when considering the school's uniform. Decisions about school uniforms should be consistent with anti-discrimination legislation and not disadvantage any student
- When schools are considering how to support a student who has identified as transgender, it is important for them to talk to the student and their parents or carers, where possible. The student's safety and wellbeing should always be considered in relation to activities they will be involved in and facilities they will access at school. For example:
 - Toilets: students should not be required to use the toilets and change rooms used by persons of the sex they were assigned at birth if they identify as a different gender
 - Excursions including overnight excursions: a transgender student should use the facilities of their identified gender or unisex facilities where available

- School sport: a transgender student to be permitted to participate in most school based sports as their identified gender

Where to get help and more information

- Justice Connect has a fact sheet on *How to deal with gender discrimination* available online at: <https://www.justiceconnect.org.au/resources/how-to-deal-with-gender-discrimination-and-transphobia-nsw>
- Parents of Gender Diverse Children provides peer support nationally to parents and those parenting trans and gender diverse children. To access their resources or make an enquiry, visit their website at <https://www.pgdc.org.au>.
- The ICLC Trans and Gender Diverse Legal Service provides legal information, advice and assistance. To make an appointment, call (02) 9332 1966 or visit <http://www.iclc.org.au/iclc-services> for more information
- The Gender Centre offers a wide range of services to people with gender issues, their partners, family members and friends in New South Wales. To find out more, visit <https://gendercentre.org.au>
- The NSW Department of Education provides a useful guide for schools regarding the legal rights and responsibilities around transgender students in schools: <https://education.nsw.gov.au/about-us/rights-and-accountability/media/documents/public-legal-issues-bulletins/LIB-55-Transgender-students-in-schools-legal-rights-and-responsibilities.pdf>