



Briefing Note: Supporting LGBTQIA+ children and young people

To:	Hon Chris Hipkins, Minister of Education		
Cc:	Hon Jan Tinetti, Associate Minister of Education		
Date:	24/02/2021	Priority:	Medium
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Purpose of Report

This paper responds to your request for an update on what work the Ministry of Education (the Ministry) is currently doing to support LGBTQIA+ children and young people, what we are planning to do and any opportunities we have identified for future work.

Summary

- Schools are required to create safe and inclusive environments, free from discrimination, for all children and young people. The Ministry currently supports schools to meet the needs of LGBTQIA+ students through curriculum materials, guidance, Curriculum Leads and individual amendments to name and/or gender in our data systems.
- The Ministry receives a range of requests from across the education sector on how best to support LGBTQIA+ students. In particular, we hear schools are most uncertain in supporting transgender and non-binary students. From these requests we have identified opportunities to improve our practices including streamlining education sector data systems to more easily amend student records. We see work supporting LGBTQIA+ students connecting with the Racism and Discrimination and the Bullying Prevention and Response workstreams.
- LGBTQIA+ students, in particular transgender and non-binary students, have differing needs for gendered facilities. Some students prefer to access a gendered facility of their choice and the Ministry supports schools to work with students and families to enable this. Some students require gender-neutral facilities to meet their needs, self-contained units in new builds often better meet the needs of every student. Self-contained units in renovations require careful consideration on the location and the number of facilities or else they risk further stigmatising transgender and non-binary students.

Proactive Release

Agree that this briefing will **not** be proactively released at this time until decisions on further advice have been reached.

Agree / Disagree



Andrea Schöllmann
Deputy Secretary
Education System Policy

24/02/2021

Hon Chris Hipkins
Minister of Education

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Background

1. Students in Aotearoa are diverse in terms of gender, sex and sexuality. In the Youth 2012 survey, 9% of students identified as a sexual and/or gender minority.¹ The same Youth 2012 survey revealed that four in 100 surveyed secondary students indicated that they were either transgender or not sure of their gender.²
2. LGBTQIA+ students of all ages have told us about their identities and experiences, including through correspondence and in Kōrero Mātauranga | Education Conversation engagements. LGBTQIA+ students do not always have positive education experiences and report discrimination, including teacher unfairness and frequent bullying from peers.³ Students indicate low levels of support from and connection with their schools, including support from teachers and peers.⁴ Transgender and non-binary students in particular report frequent and concerning levels of bullying. School policies and practices can prevent LGBTQIA+ students from engaging fully in education.
3. The Labour Party's Manifesto has a focus on Rainbow communities with a commitment to create more inclusive school environments, including working with schools to ensure they have gender-neutral toilets. The Ministry accepts the cultures, languages and identities, including gender, sex and sexuality identities, of all learners and is committed to supporting learners to ensure our education system delivers equitable and excellent outcomes.
4. We refer to Rainbow communities in this paper using the term LGBTQIA+ and acknowledge that there are many different cultural understandings and terms for sexuality and gender diversity such as "takatāpui", "whakawāhine", and "tangata iratāne" (Māori), "hijra" (Bengali), "fa'afafine" Samoan, and "fakaleiti" Tongan.
5. **9(2)(f)(iv)**


Current Support for LGBTQIA+ Children and Young People in Education

Requirements for Learning Providers highlight Inclusion

6. School policies and practices in relation to LGBTQIA+ children and young people should aim to protect and promote safety and inclusion. The Education and Training Act 2020 (section 127(1)(b)) provides that a board's primary objectives are to ensure that schools:
 - are a physically and emotionally safe place for all students and staff; and
 - give effect to relevant student rights set out in this Act, the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993; and

¹ <https://www.cambridge.org/core/journals/public-health-nutrition/article/body-size-and-weight-and-the-nutrition-and-activity-behaviours-of-sexual-and-gender-minority-youth-findings-and-implications-from-new-zealand/DB885AB9AB0869AE333B9EF4F723B63D>

² <https://www.fmhs.auckland.ac.nz/assets/fmhs/faculty/ahrg/docs/Youth12-transgender-young-people-fact-sheet.pdf>

³ <https://www.educationcounts.govt.nz/publications/schooling/he-whakaaro-what-do-we-know-about-discrimination-in-schools>

⁴ https://countingourselves.nz/wp-content/uploads/2020/01/Counting-Ourselves_Report-Dec-19-Online.pdf

- take all reasonable steps to eliminate racism, stigma, bullying, and any other forms of discrimination within the school.
7. The Education and Training Act 2020 also provides that schools are to ensure that they are inclusive of and cater for students with differing needs (section 127(1)(c)).
 8. The National Education Learning Priorities and the Tertiary Education Strategy sets out the educational priorities for governing bodies, including:
 - a. *Priority 1: Ensure places of learning are safe, inclusive, and free from racism, discrimination, and bullying.*

This includes the action for the NELP: *Create a safe and inclusive culture where diversity is valued and all learners/ākonga and staff, including those who identify as LGBTQIA+, are disabled, have learning support needs, are neurodiverse, or from diverse ethnic communities, feel they belong.*
 9. Schools are subject to the Human Rights Act 1993 which prohibits discrimination on a number of grounds, including sex and sexual orientation. The Human Rights Commission and Crown Law opinion indicate that sex includes gender identity.⁵ The Labour Party Manifesto has outlined a review of the Human Rights Act 1993 and a commitment to include gender identity as a prohibited ground of discrimination.

There is guidance and curriculum support for schools to support LGBTQIA+ children and young people

10. The Ministry has developed guidance for schools to support LGBTQIA+ students. The guides are not mandatory for schools to implement and it is up to each school on how they choose to interpret and implement the guidance.

Inclusive Education: Guide to LGBTQIA+ students

11. In partnership with a Rainbow organisation, the Ministry has developed the online resource *Inclusive Education: Guide to LGBTQIA+ students*.⁶ Schools are encouraged to use this guidance when creating a school-wide inclusive environment for young people.

Relationships and Sexuality Education

12. *Relationships and Sexuality Education (Ministry of Education, 2020)* is a guide for teachers, leaders, and boards of trustees that focuses on consensual, healthy and respectful relationships as being essential to student wellbeing.⁷ This is a refresh of a 2015 resource, and contains strengthened information about LGBTQIA+ concepts and issues in response to calls from the sector to better support this learning. The guide also gives high-level advice about designing inclusive school environments to support LGBTQIA+ learners.
13. We are developing a suite of support materials aligning with *Relationships and Sexuality Education* that go into further detail about delivering this learning. These will ensure that

⁵ Cheryl Gwyn “[Crown Law opinion on transgender discrimination](#)” (23 August 2006). The opinion by the acting Solicitor-General cited decisions by Canadian, United Kingdom, and European courts, and found that the prohibition of discrimination on the ground of sex in the Human Rights Act includes prohibition of discrimination on the ground of gender identity.

⁶ The guide is available at <https://www.inclusive.tki.org.nz/guides/supporting-lgbtiga-students/>

⁷ This is available at <https://health.tki.org.nz/Teaching-in-HPE/Policy-Guidelines/Relationships-and-Sexuality-Education>

teachers have access to the information they need to deliver relationships and sexuality education in a safe and inclusive way.

14. The Ministry has established new Curriculum Lead positions to provide frontline support to schools, kura, early learning services and ngā kōhanga reo. Curriculum Leads work directly with teachers and kaiako and will be designing rich local curriculum experiences for young people. This will include helping in the implementation of the new *Relationships and Sexuality Education* guides.

Human Rights Commission resources to support transgender students

15. The Human Rights Commission has also produced resources supporting transgender and non-binary students and their families.⁸ It includes guidance on aspects such as uniforms and pronoun use. The Ministry often refers to this guidance when we provide advice to schools and school leaders.

There is upcoming detailed guidance for schools to implement LGBTQIA+ supportive policies

16. The national charity InsideOUT led by and for rainbow youth is working with the Ministry to create guidance for schools in developing inclusive policies and processes. We expect this to be available later this year (by mid-2021). While this guidance is not compulsory, it will provide comprehensive information and advice for school boards, leaders, teachers, and school communities.

Name and gender details can be amended in education records

17. 9(2)(f)(iv)
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Opportunities to Improve Support for LGBTQIA+ Children and Young People

There are opportunities to strengthen, streamline and improve our practices

18. The Ministry receives a range of requests for guidance to support LGBTQIA+ children and young people. These requests come from LGBTQIA+ students, parents, caregivers, families, school staff, school leaders and boards of trustees. Many of these requests ask about similar issues, on topics such as clarifying Ministry rules and expectations, best practice in relation to toilets and school sports and seeking advice on updating a student's name and/or gender in education records. There is a particular emphasis on supporting transgender and non-binary students. For example, we have been asked by schools to confirm whether schools should use a student's preferred name and gender if this differs from the details in their student records. Our legislation does not specifically include this level of detail and schools are unsure if they are allowed or required to.
19. We have identified some opportunities to strengthen, streamline and improve our practices and the support we provide to the sector in relation to LGBTQIA+ students.

⁸ This is available at <https://www.hrc.co.nz/our-work/sogiesc/resources/trans-people-facts-information/>

We are streamlining Education Data Services

20. The National Student Index database is aligned with the Statistics NZ standard for gender. However, other data systems across the Ministry and education sector are not. We expect all our systems and collections to accept gender capturing and reporting in accordance with the Stats NZ standard and are working to progress this. 9(2)(f)(iv)
[REDACTED]
21. We are also progressing changes to our database systems which are set to be updated with the introduction of Te Rito. This platform will allow for a more streamlined process to amend a student's gender. In March 2020, the Pūtauaki ki Rangitaiki Kāhui Ako in the Bay of Plenty were the first schools and kura in the country to have access to Te Rito in an early stage rollout of the platform.

There are connections with broader work to create more inclusive environments

22. A key element in supporting LGBTQIA+ children and young people is ensuring they are accepted, respected and connected at school. The Racism and Discrimination and Bullying Prevention and Response workstreams have a broad focus on ensuring all students feel a sense of belonging at school, including LGBTQIA+ children and young people.

Racism and Discrimination

23. The Department of the Prime Minister and Cabinet has developed New Zealand's first Child and Youth Wellbeing Strategy. A priority focus of the strategy is that children and young people live free from racism and discrimination. As this work progresses, consideration will be given to the experiences of LGBTQIA+ students, and what can be done to make schools more inclusive and safe.

Bullying Prevention and Response

24. The Ministry is supported by the cross-agency Bullying Prevention Advisory Group (BPAG) to provide a wide range of evidence informed resources and guidance to help schools address bullying. These are made available on the Bullying-Free NZ website and include specific information on supporting LGBTQIA+ students.
25. The Ministry also provides schools with the online Wellbeing@School Toolkit. This supports schools to undertake a self-review around the factors that contribute to or undermine a safe and positive student climate that deters bullying. The anonymous student surveys include questions that relate to learner belonging and include a non-binary gender identification option.
26. The Ministry supports Netsafe to provide online safety and digital citizenship tools, advice and support to schools. This includes information relating to online bullying and abuse to support LGBTQIA+ people.
27. The Ministry is currently working on a project with the Office of the Children's Commissioner to strengthen our understanding of how schools and kura can provide safe, inclusive environments for their students that are free from bullying. We provided a briefing on this in January 2021 [METIS 1248458 refers]. Findings from this project will inform next steps.

We know LGBTQIA+ students have differing needs for gendered facilities.

28. The manifesto commitment has identified that the toilet facilities available in schools are an issue, particularly for transgender and non-binary students. Previously you have requested advice on gender-neutral toilets in schools [METIS 1241037 refers]. Transgender and non-binary students face issues accessing the toilet and changing facilities that meet their needs.

Some transgender and non-binary students require support to access the gendered facility of their choice

29. Transgender and non-binary students, their families and schools have requested support from the Ministry to access the gendered facilities of their choice, including at schools where gender-neutral toilets are available. In line with Human Rights Commission guidelines, much of our advice focuses on supporting schools to work with students and families on accessing facilities, including changing rooms, that meet the students' needs. For many transgender and non-binary students, these needs can be met through the use of the gendered toilet and changing room of their choice.

Some students require gender neutral facilities to meet their needs

30. The implementation of gender-neutral facilities impacts new builds and renovations differently. Ultimately Boards are responsible for school management decisions, and therefore have the discretion to designate toilets by gender or to support a unisex approach to toilets.

31. The Ministry has developed a Toilet Reference Design Guide (the Design Guide) that we follow for all new builds and redevelopments. Existing schools often have the required infrastructure to provide gender-neutral facilities, however, schools are also able to prioritise their Five Year Agreement funding to upgrade their toilets. When toilets comply with the Design Guide, schools will have the infrastructure required to have gender-neutral toilets.

a. Self-contained facilities in new builds can meet the needs of every student

We provide advice to schools and boards on creating self-contained cubicles, with their own toilet and sink, for new builds and renovations. These often better meet the needs of all students, as they provide greater privacy and safety.

b. There are challenges implementing self-contained facilities in school renovations

Older school buildings often have gendered facilities with shared elements, e.g. a row of toilets, shared sinks, and shared urinals. The addition of gender-neutral facilities in older school buildings does not automatically meet the needs of the transgender and non-binary students who would prefer to use these facilities. These additions are often self-contained accessible cubicles, which can take months to build. Without careful consideration these facilities can be stigmatising for students to access as school building restrictions can mean that they are often placed in visible locations. They can also be difficult to access, as there may be only one gender-neutral facility available in a large secondary school, making trips to the facility time-consuming for the student.

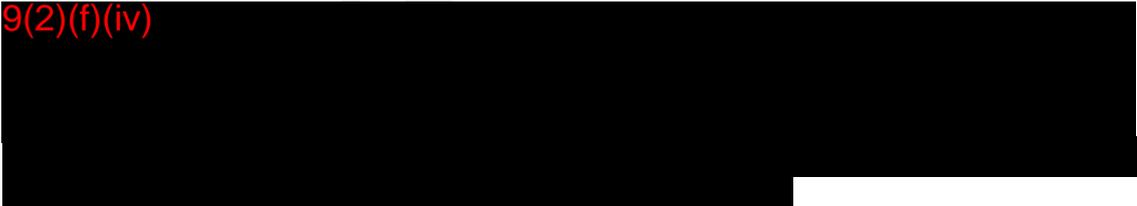
32. The Ministry does not currently collate data on the number of toilets across the state school portfolio that comply with the Design Guide. We will undertake a review of the projects delivered as part of the National Education Growth Plan and report back to you on this by 31 March as requested. Going forward, the Ministry will record the numbers

of toilets that are built, upgraded or modified that comply with the Design Guide and can therefore provide gender-neutral toilets.

Next steps

We have identified an opportunity to clarify requirements for schools

33. There is an opportunity to clarify and better communicate the Ministry's expectations for how schools support LGBTQIA+ students in ways that meet their legislative obligations and other requirements. The Bill of Rights Acts 1990, the Human Rights Act 1993 and Education and Training Act 2020 outline requirements that support inclusion of LGBTQIA+ students at a high level. Schools are also expected to implement the NELP.
34. Our current guidance for schools is best practice advice but is not mandatory. This leaves confusion for schools on what the Ministry of Education expects schools should do in day-to-day practice, particularly regarding support for transgender and non-binary students.
35. In our direct advice, we include an expectation that schools will discuss these kinds of matters with student and whānau and act accordingly (for example, by using a student's requested name and gender). 9(2)(g)(i)

36. We will actively seek out the voices of LGBTQIA+ students and their whānau to inform our work as appropriate. We will utilise insights we have gathered from LGBTQIA+ students from previous Ministry engagements such as the Pacific Fono and the National Education Learning Priorities engagements. We will include insights from what LGBTQIA+ children and young people, in particular our transgender and non-binary students, have written to the Ministry requesting support on.
37. 9(2)(f)(iv)

38. We will continue to identify opportunities to improve our support for LGBTQIA+ students, schools and whānau through existing roles and ongoing connected workstreams. In recent advice on bullying [METIS 1248458 refers], we noted whole school approaches, involving students, staff, whānau and communities working together, are the best approaches to prevent bullying. These involve the whole school community working on a broad range of social and environmental factors that foster positive, caring and inclusive cultures. When done well, whole school approaches can deliver benefits such as increasing safety and engagement, and reducing racism and discrimination. As we explore how to better support schools to implement these approaches, we will consider how we can include clear focusses on LGBTQIA+ learners.

9(2)(f)(iv)