

Human Rights Legislation

The Human Rights Code of Manitoba (The Code) was amended in June of 2012 specifically to incorporate the protection of transgender people from discrimination. *Discrimination* is a term often used in *human rights* law to distinguish the *adverse* differential treatment of an individual because of a prohibited ground (such as sex, gender identity, sexual orientation, race, colour, religious belief, or other characteristic).

According to The Manitoba Human Rights Commission,

Gender identity is a person's internal, individual experience of gender.¹ Gender refers to the "roles, behaviour, activities and attributes that a particular society considers appropriate for men and women."²

Persons who are transgender have a gender identity that differs from their biological sex. Persons who are transsexual have a gender identity that differs from their biological sex and take steps, or seek to take steps, to align their physical appearance with their felt sense of being male or female. Steps might include changes to their physical appearance and dress, and medical treatment such as hormonal therapy and surgery. Persons who are gender variant have an expression of gender identity that does not conform to the dominant norms for boys and girls, men and women. (The Manitoba Human Rights Commission, "Protections from Discrimination Based on Gender Identity")

- 1 International Commission of Jurists and International Service for Human Rights. *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*. Mar. 2007. www.yogyakartaprinciples.org/principles_en.pdf. Page 6.
- 2 World Health Organization. "Gender, Equity, and Human Rights." *Health Topics*. www.searo.who.int/topics/gender/en/.



In working with trans and gender diverse students to meet their needs, schools need to be aware of the difference between *differential treatment* and *reasonable accommodation*.

Change of Sex Designation in Manitoba

With amendments to *The Vital Statistics Act*, Manitoba significantly changed the process for change of sex designation in February 2015 (Manitoba Vital Statistics Agency).

Manitoba changed its legislation to remove the requirement for transsexual surgery to change the sex designation on a Manitoba birth registration and birth certificate. A person whose birth is registered in Manitoba may apply for this change through an application that includes a statutory declaration and a letter from a health care professional (physician, psychiatrist, surgeon, nurse practitioner, psychologist, or other relevant health care professional).

Youth under the age of majority (18) may be able to change their sex designation *without parental consent*. To do so, they must be declared a “mature minor” by a recognized health care professional and follow the same requirements as those outlined above. The mature minor doctrine states that, regardless of age,

a child is capable of consenting (or refusing to consent) to treatment if he or she is able to appreciate the nature and purpose of the treatment and the consequences of giving or refusing consent. If the child has the requisite capacity, then the child’s consent is both necessary and sufficient; the parent’s consent is not required, nor can the parent override the child’s decision²⁹ (Women’s Health Clinic, quoted in Healthy Child Manitoba 29).

Differential Treatment

According to *The Human Rights Code* (Manitoba), discrimination is deemed to have occurred when there is differential treatment:

In this Code, “**discrimination**” means

- a. differential treatment of an individual on the basis of the individual’s actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or
- b. differential treatment of an individual or group on the basis of any [protected] characteristic . . . ; or
- c. differential treatment of an individual or group on the basis of the individual’s or group’s actual or presumed association with another individual or group whose identity or membership is determined by any [protected] characteristic . . . ; or
- d. failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any [protected] characteristic . . . (9[1])

Unless the differential treatment can be justified under the rigorous test set out in the legislation and as set by legal precedents, it is deemed to be discriminatory.

Reasonable Accommodation

The Manitoba Human Rights Commission describes reasonable accommodation as

providing or modifying devices, goods, services or facilities or changing practices or procedures in order to provide access for a particular person with a particular activity. The duty to accommodate is not unlimited. The employer or provider of services need not accommodate to the point of undue hardship. (Burch)

Reasonable accommodation might occur when a school or teacher provides an accommodation that has been requested by a parent or child to meet the child’s specific needs.



It should be noted that the process for legal change of name is governed by *The Change of Name Act* (Manitoba). In the case of a person under the age of 18, the application must be made by a custodial parent or legal guardian and may require the consent of the other custodial parent, the consent of the child, and/or notice to a non-custodial parent.

For more information on legal change of sex designation, see:

- Manitoba. *The Vital Statistics Act*. C.C.S.M. c. V60. Winnipeg, MB: Queen's Printer—Statutory Publications, 1987. Available online at <https://web2.gov.mb.ca/laws/statutes/ccsm/v060e.php>.
- Manitoba Vital Statistics Agency. Home Page. <http://vitalstats.gov.mb.ca/>.

For more information on legal change of name, see:

- Manitoba. *The Change of Name Act*. C.C.S.M. c. C50. Winnipeg, MB: Queen's Printer—Statutory Publications, 1987. Available online at <http://web2.gov.mb.ca/laws/statutes/ccsm/c050e.php>.

Safe and Caring Schools

In 2013, amendments were made to *The Public Schools Act* (Manitoba) concerning safe and inclusive schools. The amendments require school boards to have a policy concerning respect for human diversity and to ensure that the policy is implemented in each school in the school division. This policy is also meant to “address training for teachers and other staff about bullying prevention and strategies for promoting respect for human diversity and a positive school environment” (41[1.6][b]).

The Act requires each school board to establish a respect for human diversity policy:

The policy is to promote acceptance of and respect for others in a safe, caring, and inclusive school environment. The policy must accommodate student activity that promotes the school environment as being inclusive of all pupils, including student activities and organizations that use the name “gay-straight alliance” (*The Public Schools Amendment Act [Safe and Inclusive Schools]*, Explanatory Note).

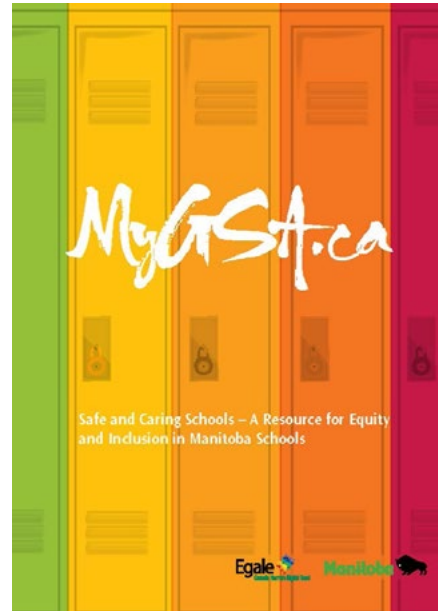


In 2014, Egale Canada Human Rights Trust and Manitoba Education and Advanced Learning collaborated in developing *Safe and Caring Schools: A Resource for Equity and Inclusion in Manitoba Schools (MB MyGSA.ca)*. This document is intended as a tool for educators, students, and parents/guardians in working together to create more equitable and inclusive schools, especially with respect to diversity of sexuality and gender identity and expression.

The importance of inclusion and social justice and their relationship to health and well-being is reflected in *Guide for Sustainable Schools in Manitoba*:

Sustainable schools aim to be models of social inclusion, health, and well-being. Sustainable schools enable all learners to participate fully in school life while instilling a long-lasting respect for human rights, freedoms, culture and creative expression Sustainable schools promote community cohesion by providing an inclusive, welcoming atmosphere that values everyone’s participation and contributions—irrespective of background, culture, age, religion, or ability—and by challenging prejudice and injustice in all its forms. (International Institute for Sustainable Development and Manitoba Education and Advanced Learning 40)

These examples of Manitoba’s educational resources, along with the amendments made to *The Public Schools Act*, underscore Manitoba Education and Training’s commitment to upholding the values of equity and genuine acceptance and respect for diversity in all schools and learning environments.



For more information and resources on safe and caring schools, see:

- Egale Canada Human Rights Trust, and Manitoba Education and Advanced Learning. *Safe and Caring Schools: A Resource for Equity and Inclusion in Manitoba Schools (MB MyGSA.ca)*. Winnipeg, MB: Egale Canada Human Rights Trust and Manitoba Education and Advanced Learning, 2014. Available online at www.edu.gov.mb.ca/k12/safe_schools/mygsa/index.html.
- Manitoba Education and Training. *Safe and Caring Schools*. www.edu.gov.mb.ca/k12/safe_schools/.

