



## SUMMARY OF SUPPORTIVE FEDERAL LAWS AND CONSTITUTIONAL RIGHTS FOR TRANSGENDER STUDENTS

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### First Amendment

- The First Amendment protects both freedom of speech and expression.
- Schools may not restrain student speech unless it will reasonably substantially disrupt the school environment or harm others.<sup>1</sup>
- Schools cannot prevent students from expressing their identity or discussing same-sex families.
- Based on a Supreme Court decision, the First Amendment prevents school districts from censoring or removing books from school libraries “because they dislike the ideas contained in [the] books.”<sup>2</sup>

### Equal Protection Clause of the 14th Amendment

- This clause guarantees every citizen equal protection under the law.
- This clause is frequently used to protect LGBTQ youth in schools who have faced unfair or discriminatory school actions.<sup>3</sup>
- This clause was also used in *Brown vs. the Board of Education* to strike down state-sponsored racial segregation in schools.<sup>4</sup>

### Title IX of the Education Amendments of 1972

- Title IX prohibits schools that receive federal financial assistance from limiting or denying a student’s participation in any school program on the basis of sex.
- Based on court cases, this can be understood to prohibit discrimination, including sexual harassment, based on sex stereotypes, sexual orientation and gender identity or transgender status.
- For example, courts in Kansas, Connecticut, and New York have ruled that Title IX applies to gender identity.<sup>5</sup>

### Family Educational Rights and Privacy Act (FERPA)

- The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student educational records.
- FERPA specifically prohibits the improper disclosure of personally identifiable information (PII) from students’ records.
- With regard to LGBTQ students, information relating to gender identity or sexual orientation may constitute personally identifiable information (PII) as an indirect identifier.<sup>6</sup> Therefore, school officials should use caution and follow FERPA disclosure guidelines when considering the release of such information.
- Disclosure by school staff has the potential to create a hostile environment at school and can negatively impact a student’s life at home if the family is not supportive.

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<sup>1</sup> *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969).

<sup>2</sup> *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853, 853 (1982).

<sup>3</sup> *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996).

<sup>4</sup> *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954).

<sup>5</sup> *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 377 F. Supp. 2d 952 (D. Kan. 2005); *Riccio v. New Haven Bd. of Educ.*, 467 F. Supp. 2d 219 (D. Conn. 2006); *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135 (N.D.N.Y. 2011)

<sup>6</sup> 34 C.F.R. § 99.3.