

Know Your Rights: Federal Laws Protecting GSAs and LGBTQ+ Students



1st Amendment to the U.S. Constitution

What it says: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble...”

What it means: The Supreme Court has said that students in public schools maintain their 1st Amendment rights to free speech, which means they have a right to be “out”, to voice their opinion about LGBT issues, and to organize peaceful protests (such as Day of Silence). They also have a right to take a same-sex date to the prom and dress and express themselves in a way that best matches their gender identity.

Key Court Case: *Tinker vs. Des Moines*.

Equal Protection Clause of the 14th Amendment to the U.S. Constitution

What it says: “No state shall...deny to any person within its jurisdiction the equal protection of the laws.”

What it means: This guarantees equal protection under the law to **all** citizens, and it applies to public schools. All students have a federal, constitutional right to equal protection, which means that schools have a duty to protect LGBTQ students from harassment on an equal basis with all other students.

Key Court Case: *Nabozny vs. Podlesny*. Jamie Nabozny’s Ashland, WI school was found to have not done its duty in keeping him safe from anti-gay bullying and harassment.

Title IX of the Education Amendments

What it says: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance...”

What it means: This legislation covers all educational activities, with the exception of sex-specific groups (eg. sororities, the Boy Scouts). It prohibits sex-based discrimination and gender-based harassment, including harassment on the basis of a student’s failure to conform to stereotyped notions of masculinity and femininity. In 2010, the Obama administration sent a letter to 15,000 school districts, clarifying that Title IX forbids gender-based harassment.

Equal Access Act

What it says: “It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.”

What it means: If your school allows any extra-curricular activities to form, it has to allow for the formation of a GSA. Additionally, your school may not impose special rules or restrictions on the GSA that are not imposed on other clubs. In 2011, U.S. Secretary of Education Arne Duncan wrote a “Dear Colleague Letter” clarifying that GSAs are protected under the Equal Access Act.