



PROTECTING LGBTQ+ STUDENTS' RIGHTS AT SCHOOL

A Toolkit by the ACLU of Kansas

$$d = \sqrt{(x_2 - x_1)^2 + (y_2 - y_1)^2}$$



INTRODUCTION

Welcome to the Protecting LGBTQ+ Students' Rights at School toolkit! This toolkit is designed to help students, parents, guardians, and advocates seek full equality and dignity for LGBTQ+ students in Kansas schools. There are thousands of LGBTQ+ students across Kansas, living as their true and authentic selves and trying to learn and thrive at school. But we know that it's not easy being openly LGBTQ+ in Kansas schools, and it's especially difficult for students who are transgender and/or gender diverse.

Among LGBTQ+ students in Kansas:

- 73% report experiencing verbal harassment at school because of their sexual orientation.¹
- 60% report experiencing verbal harassment at school because of their gender expression.²
- Nearly two-thirds (63%) of transgender students report being unable to use the bathroom at school that aligns with their gender.³
- 25% of LGBTQ+ students and 43% of transgender students have been prevented from using their chosen name and pronouns at school.⁴
- A quarter (25%) of LGBTQ+ students attending a Kansas K-12 school or college/university report that they do not feel safe and supported at their school.⁵

The ACLU of Kansas has seen these harms occurring in school districts across the state. We have received an increasing number of complaints related to LGBTQ+ students in Kansas schools experiencing harassment, bullying, and discrimination because of their LGBTQ+ identity. There has also been an

increase in school boards and administrators adopting harmful anti-trans and anti-LGBTQ+ policies, some of which infringe on the rights of LGBTQ+ students in Kansas.

There are thousands of LGBTQ+ students across Kansas, living as their true and authentic selves and trying to learn and thrive at school. But we know that it's not easy being openly LGBTQ+ in Kansas schools, and it's especially difficult for students who are transgender and/or gender diverse.

In response to this increasingly concerning climate we are seeing unfold in schools across the state, we decided to create this toolkit to make Kansas schools safer and more affirming by giving you the tools you need to fight against LGBTQ+ discrimination. The toolkit has three sections:

Part 1 provides an explanation of what LGBTQ+ students' rights are in Kansas schools, with a particular focus on transgender and/or gender diverse students and discusses how these rights have been applied across Kansas.

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We must all work together to ensure that LGBTQ+ students are safe, supported, and affirmed in Kansas schools, and hope you'll join us in advocacy and action for LGBTQ+ students in Kansas.

- Part 2 details how students, parents, guardians, and advocates can take action to protect LGBTQ+ students' rights in Kansas schools through both informal and formal means. This includes an outline of how to file complaints with school districts and the federal government.
- Part 3 provides a resource list with organizations and support groups that you can reach out to if you need more resources or support. It also includes the ACLU of Kansas' contact information in case you have questions about this toolkit or want to get in touch regarding a specific instance of LGBTQ+ discrimination in Kansas schools.

We hope this toolkit is informative and empowering as you navigate advocating for yourself or other LGBTQ+ students in Kansas. We must all work together to ensure that LGBTQ+ students are safe, supported, and affirmed in Kansas schools, and hope you'll join us in advocacy and action for LGBTQ+ students in Kansas. If you are ready to get involved, you can sign up to become an ACLU of Kansas activist and join the fight for LGBTQ+ Kansans' civil rights at aclukansas.org/take-action.

The content in this toolkit is intended to serve as general information and is not legal advice, nor is it intended as legal advice. You should contact an attorney directly if you are seeking legal advice or legal services, and you may do so by reaching out to some of the resources at the end of this toolkit or contacting the Kansas Bar Association's lawyer referral service at 800-928-3111.

PART 1: KNOW YOUR RIGHTS

To ensure that LGBTQ+ students are treated with full equality and dignity in Kansas schools, it is important to know what LGBTQ+ students rights are in the first place. In this section, we discuss LGBTQ+ students legal rights across various issues areas—including bullying and harassment, names and pronouns, LGBTQ+ student organizations, dress codes and school events, access to gender-separated facilities like restrooms and locker rooms, sports and extracurricular activities, free speech, and privacy protections. The rights discussed below apply to all students, but this toolkit focuses primarily on the rights of transgender and gender diverse students—as the majority of the discrimination we have seen against LGBTQ+ students in Kansas has targeted this population specifically.

Of note, many of the rights detailed in this section come from the U.S. Constitution and federal law, so they are most applicable to public school districts and charter schools. Private schools may also be required to comply with federal law if they receive federal funding, and students at private schools

may have some protections under Kansas law or their own school policies. But most of this toolkit focuses on and applies to students' rights in public and charter schools.

Finally, we want to affirm that LGBTQ+ students should be respected and protected in Kansas schools even if they do not have the full support of their parents or guardians. That said, some of the steps described

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in this toolkit are more difficult for a young person to take without the support of their parent(s) or guardian(s), because some legal rights can only be exercised when a young person turns 18 or is legally emancipated. But even if some legal rights cannot yet be exercised due to age, every LGBTQ+ young person still has rights and can seek help through some of the resources in the last section of this toolkit.

Bullying and Harassment

Every Kansas school district has a legal duty to

protect students from bullying and harassment. Under federal and state law, as well as individual school district policies, every student has a right to be safe and supported at school.

The U.S. Constitution and Title IX of the Education Amendments of 1972 both prohibit school districts from being deliberately indifferent to any bullying or harassment that is severe or pervasive.⁶ A school district is required to take action to stop bullying or harassment, especially if teachers or administrators are aware of what is happening. It is very important to document and report bullying and harassment, since that is typically what triggers the school district's legal obligation to respond.

Kansas law defines bullying as any intentional gesture, communication, physical act, or threat that is "sufficiently severe, persistent or pervasive" such that it creates an "intimidating, threatening or abusive educational environment" that a reasonable person knows or should know will have the effect of harming a student, damaging their property, or placing them in fear of such harm or damage.⁷ Kansas law includes cyberbullying within its definition of bullying, but does not allow for school districts to address student behavior that occurs off campus.

If you report bullying or harassment to your school, your district has an obligation to address it in accordance with the district's policy—which can usually be found on the district's website or in the school's student handbook. However, Kansas law does not require specific content or procedures be included in a school district's bullying and harassment policy—it only requires a district to adopt a policy to "prohibit bullying" and adopt

UNDERSTANDING MISGENDERING

Misgendering occurs when someone uses language to describe a person that does not align with that person's gender; deadnaming is the act of using a trans person's old name from before they transitioned.

A gender marker refers to someone's gender listed on legal documents, such as a birth certificate or driver's license. For more information on name and gender marker changes in Kansas, check out the Kansas Name Change Project at <https://www.kansaslegalservices.org/node/2481/kansas-name-change-project>.

and implement a plan to "address bullying."⁸ Districts anti-bullying plans must include provisions for the training and education of staff members and students related to bullying and the district's policy.⁹

If you or someone you know are experiencing bullying or harassment and need help, you can visit StopBullying.gov and other resources in the last section of this toolkit.

Names and Pronouns

Every Kansas student has the right to be called by their gender-affirming name and pronouns. Schools have a legal obligation to respect every student's gender identity, even before students are able to legally update their names or gender markers.¹⁰ Misgendering occurs when someone uses language to describe a person that does not align with that person's gender; deadnaming is the act of using a trans person's old name from before they transitioned. Students have a right not to be misgendered or deadnamed at school under both federal law and certain school district policies. Consistent misgendering or deadnaming may constitute harassment in violation of Title IX, as explained below.

What does the law require?

Under Kansas law, when a child is enrolled in a school for the first time, schools must require presentation of "proof of identity."¹¹ This proof of identity can be a certified copy of the child's birth certificate, a certified transcript or other similar student records for children between the grades of 2nd and 12th, or any other documentary evidence the school board deems satisfactory.¹² While documentary proof of identity must be presented whenever a child is enrolled in a school for the first time, there is no Kansas or federal law obligating a school (including the school board, school administrators, teachers or other employees) to refer to a student by the name specified in the

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student's documentary proof of identity. Likewise, there is no Kansas or federal law obligating a school, school board, school administrators, or teachers to refer to a student by pronouns that correspond with the student's gender assigned at birth or the original gender marker listed in the student's birth certificate or other documentary proof of identity.

This means it is legally appropriate for a school—including administrators, teachers, and other employees—to use a student's gender-affirming name and pronouns in the ordinary course of daily usage, regardless of whether that name or pronouns are reflected in the student's proof of identity document. In fact, denying students the right to use their gender-affirming name or pronouns at school may constitute a violation of Title IX and the Equal Protection Clause of the U.S. Constitution. Courts across the country have found that refusing to use someone's gender-affirming name and pronouns can constitute gender-based harassment in violation of the Equal Protection Clause.¹³ The Department of Education's Office for Civil Rights and the Department of Justice's Civil Rights Division have stated that they will investigate the refusal to use a student's gender-affirming name and pronouns as gender-based harassment in violation of Title IX.¹⁴

How have Kansas schools addressed this?

Some Kansas school boards have adopted policies¹⁵ protecting the right of all students to be addressed and referred to by a name, pronouns, and other terms that affirm their gender identity, regardless of whether that gender identity corresponds with the information included on the student's documentary proof of identity.¹⁶ Students' interests in privacy and safety are closely related to their rights to be referred to by names and pronouns

consistent with gender identity. School administrators, teachers, and other employees who insist on using a student's "official" name or pronouns that do not correspond with the student's gender identity risk disclosure of matters of a highly sensitive and personal nature and potentially increase the risk that the student will suffer discrimination, harassment, and violence.¹⁷

Why is it important to respect students' names and pronouns?

Respecting students' names and pronouns is necessary to protect transgender and gender diverse students from bullying and discrimination at school. When teachers or staff misgender or deadname a student, it opens the door for the student's peers to do the same and creates an environment where the student is more likely to get bullied or harassed. But when trans students' names and pronouns are respected at school and in other contexts, they report 71% fewer symptoms of severe depression, a 34% decrease in reported thoughts of suicide, and a 65% decrease in suicide attempts.¹⁸

LGBTQ+ Student Clubs

Student-led and student-organized LGBTQ+ student clubs, like Gender and Sexuality Alliances ("GSAs"), are clubs that aim to create a safe, welcoming, and accepting school environment for all young people, regardless of sexual orientation or gender identity.

You have a right to start an LGBTQ+ student club at a public school, so long as the school allows for clubs to be created that are not directly tied to academics and what is taught in school. If your school allows for such clubs, the federal Equal Access Act requires such clubs be created equally and ensures that schools cannot treat LGBTQ+ student clubs differently than other student clubs.¹⁹ This means that school administrators typically cannot force your LGBTQ+ student club to change its name, make parents sign waivers for students to attend, or stop you from holding events like other student groups. This is important, because research shows that having an LGBTQ+ student club on campus leads to safer, more supportive, and more enjoyable school environments for LGBTQ+ students.²⁰

If you want to start an LGBTQ+ student club at your school, you can visit glsen.org for information and resources about starting and registering a GSA. This resource is also included in the last section of this toolkit.

Dress Codes and School Events

While school districts may require students to follow certain dress and grooming codes, like requiring students to wear uniforms, they cannot discriminate on the basis of race, gender, religion, or other aspects of students' identities. Every student has the right to dress in accordance with their gender identity at school. School districts may not force students to conform to gender stereotypes, nor require students to dress in accordance with their gender assigned at birth.²¹

The U.S. Supreme Court and federal courts across the country have repeatedly found that government entities—like school districts or charter schools—cannot treat students different based on gender without an exceedingly persuasive justification.²² And forcing students to conform to gender norms or stereotypes does not constitute an exceedingly persuasive justification and violates the U.S. Constitution and Title IX.

This applies in the context of school events, as well. LGBTQ+ students have a right to participate fully and equally in school events like dances, homecoming, and prom—and they have a right to be their true and authentic selves when participating in these events, including wearing clothes that affirm their gender. Since federal law prohibits schools from discriminating against students based on gender or forcing students to conform to gender stereotypes, schools cannot prohibit students from participating in “homecoming court” or becoming “prom royalty” based on a student’s gender identity or sexual orientation. LGBTQ+ students also have a right to bring same-gender dates with them to these school events—as federal courts have found it is unconstitutional to prohibit students from bringing same-gender dates to school events like homecoming and prom.²³

Access to Restrooms or Locker Rooms

Every student deserves a safe and affirming place to use the restroom and locker room at school, and many school districts across the country already allow trans and gender diverse students full and equal access to restrooms and locker rooms that

align with their gender identity. And there are no federal or state laws that require school districts to force students to use facilities based off the student’s gender assigned at birth.

In fact, schools that deny students the right to use facilities that align with their gender identity and instead force them to use facilities that correspond with their gender assigned at birth or a separate, single-user facility

are violating Title IX and the U.S. Constitution.²⁴ In contrast, we are not aware of any court cases in Kansas finding a public or private school liable for damages for allowing trans and gender diverse students to use facilities that align with their gender identity. In fact, courts in other jurisdictions have rejected claims under the U.S. Constitution, Title IX, and other applicable law brought by cisgender students or their parents alleging that their rights were violated by schools allowing students to use facilities that align with their gender identity.²⁵

School administrators’ or community members’ fears about allowing transgender students to use multi-user restrooms and locker rooms are unfounded and often rooted in prejudice. Across the country and here in Kansas, many thousands of trans students are using multi-user facilities that align with their gender identity without any incident.²⁶ The evidence shows that schools do no harm by adopting gender-affirming facilities policies. But when schools adopt facilities policies that discriminate against trans students, research shows this significantly increases the odds of those students reporting depressive moods, seriously considering suicide, and attempting suicide one or multiple times.²⁷

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Sports and Extracurricular Activities

Every student has a right to participate in sports and extracurricular activities at school. There is no federal or state law that prohibits transgender students from participating in intermural or interscholastic athletics. In Kansas, schools are responsible for determining the appropriate gender team for a transgender student.²⁸ The Kansas High School Athletic Association (KHSAA) has

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issued recommendations to schools regarding trans student athlete participation in sports and maintains criteria under which to review appeals of a school district's determination.²⁹

Specifically, KHSAA advises school districts to review the following forms of documentation when evaluating the appropriate gender team for a transgender student:

- Gender identity used for school registration record;
- Medical documentation (length and duration of hormonal treatments, gender affirmation surgery, psychological counseling, medical records, etc.);
- Gender identity related advantages to the student if participation would be approved.

To date, there have been no successful legal challenges to a school district or athletics association's decision to permit transgender students to participate in a sport that corresponds

with their affirmed gender.³⁰ On the other hand, a federal court has enjoined Idaho from banning transgender student athletes from participating on sports teams aligning with their gender. The court found that Idaho's statute prohibiting transgender student-athletes from participating in intermural competitions likely violates the U.S. Constitution.³¹

Notably, the Kansas legislature has previously attempted to put restrictions in place for Kansas athletics similar to those challenged in Idaho.³² These previous attempts have all failed, and the current law in Kansas allows for transgender student athletes to participate in sports in accordance with their school's athletic policy under KHSAA.

Privacy Protections for Students Who Are Transitioning

Teachers and administrators do not have an affirmative obligation under state or federal law to inform a parent that a student is transgender. While parents may be able to access certain information that would reveal a student is trans to the extent it appears in their educational records—for example, if the student's chosen name appears on the school's records system—they are not otherwise entitled to know information about a student's sexuality or gender identity that becomes known to educators. Indeed, revealing this information to a parent is inconsistent with a student's constitutional right to privacy and the Family Educational Rights and Privacy Act (FERPA).

PART 2: ADVOCATING FOR YOURSELF

If you are an LGBTQ+ student who has been discriminated against or experienced challenges at school because of your sexual orientation, gender identity, or gender expression, we are here to help. This section describes what you can do to defend and enforce your rights if you are an LGBTQ+ student or a parent, guardian, or advocate for an LGBTQ+ student.

Step 1: Remember that you have rights.

If you experience discrimination or face challenges at school because of your sexual orientation, gender identity, or gender expression, it's important to remember that you have rights. There may be people who mistakenly believe that Kansas schools can freely discriminate against LGBTQ+ students,

and many people might not realize that federal nondiscrimination law protects Kansas students—including transgender and gender diverse students. So, look back at Part 1 to learn what your rights are at school. If you have any questions, you can always reach out to us by contacting us at the links in the resource section below.

Step 2: Stay calm and document what happens.

If you experience discrimination or face challenges at school because of your sexual orientation, gender identity, or gender expression, it's important to remember that you have rights. There may be people who mistakenly believe that Kansas schools can freely discriminate against LGBTQ+ students, and many people might not realize that federal nondiscrimination law protects Kansas students—including transgender and gender diverse students. So, look back at Part 1 to learn what your rights are at school. If you have any questions, you can always reach out to us by contacting us at the links in the resource section below.

Step 3: Try to resolve things informally.

When possible, it is typically a good approach to try and resolve things informally with your school administrators. Discrimination against LGBTQ+ students is often rooted in ignorance or indifference, and many Kansas principals, teachers, and counselors may be willing and eager to help once they are aware of the situation.

For this reason, it is a good idea to try and find allies at your school to help you solve these problems. When you are experiencing an issue at school, try to ask yourself who might be willing to listen to you and assist you. Is there someone—a teacher, a counselor, an assistant principal—you think might be understanding and helpful? If you cannot think of someone like this at your school, you can always report things to the school principal, as they have the ultimate responsibility to respond to incidents of discrimination, bullying, and harassment in most Kansas schools.

If you try to resolve things informally, it is still helpful to create a record to document what has happened. If you are attempting to make a report of

what happened with the school and have identified an ally to ask for help, try to communicate with them in writing or over e-mail. When you're drafting your report of what happened, be sure

to include enough details so that the school can understand what has happened. You should also ask specifically for what you want to happen in response. Finally, you should set a deadline and ask them to respond to you before your deadline expires for filing a formal complaint.

Step 4: File a formal complaint.

While it's useful to try and find an informal resolution, sometimes those efforts only go so far. If you have tried to reach out to the principal or other school officials to explain what has happened and ask them to help, but they either have failed to take action or have not responded in a timely manner, you should consider filing a formal complaint.

Under Title IX, every school district is required to adopt and publish grievance procedures for students to file complaints of sex discrimination—which is interpreted to include sexual orientation and gender identity discrimination.³³ School districts must also designate at least one employee as its Title IX Coordinator, and notify all students and employees of the name/tile and contact information of the Title IX Coordinator. Often, the Title IX Coordinator's contact information and the school districts' grievance procedures are available on the district's website, in the district Board of Education policies, or in the district's student handbooks. Be sure to review your school district's procedures carefully, as they often will include a deadline for when you must file your complaint.

While each district's grievance procedures may vary, they all must provide for prompt and equitable resolution of sex discrimination complaints. And whatever your district's procedures may be, they must include (1) the right to adequate, reliable, and impartial investigation of complaints, (2) the right to have an equal opportunity to present witnesses and other evidence, and (3) the right to the same appeal processes, for both parties. You also have a right to be notified of the

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time frame within which the school will conduct its investigation, when you will be notified of the outcome of the complaint, and when you are eligible to file an appeal.

Of note, some district's grievance procedures may include voluntary informal methods for resolving some types of sexual harassment complaints—like a mediation between parties. You may choose to utilize these informal methods for resolution, but know that you have a right to end the informal process at any time and begin the formal state of the complaint process.

When filing a complaint, it is important to include as much detail as possible. Be sure to describe all the facts that you have personal knowledge about, attach any relevant documents, photographs, or other evidence that you want to be considered as part of the complaint, and ask specifically for what you want the school to do to respond to your complaint. This could look like asking your school or district to stop engaging in discrimination, to take a particular action, to change or revise a policy, to accommodate your needs better at school, or to take affirmative steps to create a safer learning environment. There are no limits on the type of relief that you can seek.

Step 5: File a complaint with the federal government.

It is important to know about and utilize Step 3 and Step 4, but there are also federal civil rights agencies whose job it is to ensure equal access and opportunities for students in schools, and you do not have to file a complaint with your school before seeking help from the federal government to enforce your civil rights. Both the U.S. Department of Education and the U.S. Department of Justice have stated that they will vigorously enforce Title IX to protect LGBTQ+ students from discrimination based on their gender identity and/or sexual orientation in accordance with the U.S. Supreme Court's decision in *Bostock v. Clayton County*.³⁴

The U.S. Department of Education has an Office of Civil Rights (OCR) that is specifically tasked with enforcing federal civil rights laws that prohibit discrimination in programs and activities

that receive federal financial assistance. OCR accepts complaints of discrimination across a range of areas—including complaints involving discrimination based on race, color, disability, and national origin, as well as complaints involving discrimination based on sex, gender identity, gender expression, and sexual orientation (including claims involving bullying, harassment, and retaliation).

Before filing a complaint with OCR, you should review OCR's guide on how to file complaints of discrimination.³⁵ Of note, most OCR complaints must be filed within 180 days of the last act of discrimination. For example, if your complaint is based on a single incident of discrimination, it must be filed within six months of when that incident occurred. As mentioned, you are not required to file a complaint with your school district before you file a complaint with OCR—but if you choose to utilize your district's complaint process, you must then file an OCR complaint within 60 days of the conclusion of the district's complaint process.

If you choose to file a complaint with OCR, there are several ways to do so—online, via e-mail, or via

Most complaints with the U.S. Department of Education's Office of Civil Rights must be filed within 180 days of the last act of discrimination.

physical mail. OCR can open an investigation into your complaint, and they can take steps to protect you from retaliation during the complaint process. Depending on the results of an investigation, OCR might be able to negotiate with your school district to require them to abide by federal law and potentially impose certain penalties against school districts—including the loss of federal funding.

While OCR has the power to investigate and engage in attempts at resolution of filed complaints, it does not act very quickly. Some complaints can take months or even years to resolve. If you need more immediate assistance, you may want to reach out to an attorney or seek other resources that are described in the last section.

In addition to OCR, the Educational Opportunities Section of the Department of Justice's Civil Rights Division (EOS) also accepts and investigates complaints related to discrimination in schools.

But unlike OCR, EOS does not respond to every complaint it receives and is generally more selective in the issues that it investigates. That said, EOS has expressed a willingness to assist LGBTQ+ students who face discrimination in schools, and there is information on how to file a complaint on EOS's website.³⁶

Step 6: Going public over social or traditional media.

When following these steps, some school districts will respond to your needs and concerns without any external pressure—and many LGBTQ+ students, parents, and guardians want to resolve issues they face without having to share private information with other people. That said, if your school district is not engaging with your attempts to resolve a situation, it can be beneficial to create public pressure on the school district to address what has occurred. Sharing your story online, in a petition, or with the media can be a powerful tool to advocate for change. In Kansas and across the country, we have seen students, parents, guardians, and advocates effectively use traditional and social media to advocate for equality and dignity for LGBTQ+ students.

While it is true that engaging media and the internet can be an effective way to share your story, advocate for change, and pressure your school district to meet your demands, there are also certain risks and tradeoffs to consider. Sharing your story publicly could lead to cyberbullying, harassment, and threats online. Your safety and the safety of the LGBTQ+ students you are advocating for should be kept in mind when deciding whether and how to share your story. Whatever you post online will exist forever, often even if you later try to delete or remove it. It is important to make sure that you are comfortable with what you are sharing and stick

closely to the facts of what happened. You have free speech rights to criticize your school and push for change how you see fit—but you should also be careful not to say anything untrue about any

individual person, the school or school officials, and never make any kind of threat. It is often best to focus on what happened to you and what needs to change.

Step 7: When you should contact

an attorney or other resources.

Hopefully, with the information provided in this toolkit, you now feel like you have a lot of tools at your disposal to advocate for the equality and dignity of LGBTQ+ students in Kansas schools. Many students, parents, guardians, and advocates will find that they are well-equipped to pursue the complaint process and resolve situations on their own. But the ACLU of Kansas and other groups are here to help. We want to support you. Please don't hesitate to reach out to us or other resources at the links below as soon as you have questions or need assistance.

If you have already tried to resolve a situation informally but have experienced roadblocks or have been unable to garner support or assistance from school officials in your district, it may be a good time to reach out to us. Even if you end up pursuing the complaint process on your own or decide not to file a complaint at all, it may still be useful to touch base and let us know what you are experiencing. The best way to get in touch with us is by contacting us at the links below in Part 3.

Whatever you post online will exist forever, often even if you later try to delete or remove it.

PART 3: RESOURCE LIST AND CONTACTS

The ACLU of Kansas has an LGBTQ+ Advocacy Resource Hub (aclukansas.org/lgbtq-hub) available on our website where you can find additional resources and information. You can also contact us at info@aclukansas.org, or seek legal assistance here or by emailing legal@aclukansas.org.

You can also visit GLSEN's website (glsen.org) for information and resources related to GSAs, model school policies, and more. Kansas also has its own GLSEN chapter for the state (glsen.org/chapter/kansas), which you can contact at info@ks.glsen.org.

If you are looking for resources to access a gender marker or name change in Kansas, you can check out Kansas Legal Services' Kansas Name Change Project for information about minors' name and gender marker changes and for assistance with the name or gender marker change process (<https://www.kansaslegalservices.org/node/2481/kansas-name-change-project>).

There are also various national organizations that have resources for LGBTQ+ students and accept requests for legal assistance. These include:

- Lambda Legal: You can visit their website (lambdalegal.org) for more information, and

seek legal assistance at lambdalegal.org/helpdesk.

- National Center for Lesbian Rights: You can visit their website (nclrights.org) for more information, and seek legal assistance at nclrights.org/get-help.
- Transgender Law Center: You can visit their website (transgenderlawcenter.org) for more information, and seek legal assistance at transgenderlawcenter.org/resources.

¹ <https://www.glsen.org/sites/default/files/2021-01/Kansas-Snapshot-2019.pdf>

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ <https://www.aclukansas.org/en/lgbtq-community-advocate-survey-overview>

⁶ See, e.g., *Doe v. Hutchinson*, 728 Fed. Appx. 829, 832 (10th Cir. 2018); *Seamons v. Snow*, 84 F.3d 1226, 1232 (10th Cir. 1996).

⁷ Kan. Stat. Ann. § 72-6147(a)(1)

⁸ *Id.*

⁹ *Id.*

¹⁰ See e.g., *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020) (holding that Title VII's prohibition on discrimination on the basis of sex also prohibits discrimination on the basis of sexual orientation and gender identity.) Because the language in Title VII's sex discrimination protections is the same as the language in Title IX's protections, it is likely that the holding of *Bostock* extends to the interpretation of Title IX in school contexts. In fact, the U.S. Department of Education proposed new Title IX regulations in June 2022 which would clarify that discrimination on the basis of sex includes discrimination on the basis of "sex stereotypes, sex characteristics, . . . sexual orientation, and gender identity." This proposed regulation will likely not be formally adopted until Spring 2023, but this toolkit will be updated to reflect the change when the regulation is finalized.

¹¹ Kan. Stat. Ann. § 72-9934(b)

¹² Kan. Stat. Ann. § 72-9934(a)(3)

¹³ See, e.g., *Doe v. City of New York*, 976 N.Y.S.2d 360 (N.Y. Sup. Ct. 2013) (holding transgender woman had sufficiently alleged discrimination under state sex discrimination law when the state HIV/AIDS Service Administration continued to address her by her former male name and male pronouns); *Burns v. Johnson*, 829 F.3d 1 (1st Cir. 2016) (plaintiff's allegations, including employer's purposeful and condescending use

of the pronoun "she" to a male transgender employee, supported a reasonable inference of discrimination on the basis of sex).

¹⁴ *Confronting Anti-LGBTQI+ Harassment in Schools: A Resource for Students and Families*, U.S. Department of Education and U.S. Department of Justice (June 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>.

¹⁵ Examples of these types of policies are readily available. See, e.g., <https://themercury.com/news/local/full-text-of-usd-383guidelines-for-tr...> (U.S.D. 383 Manhattan-Ogden policy); <https://www.glsen.org/activity/model-local-education-agency-policy-on-tr...> (GLSEN model policy).

¹⁶ Some Kansas school boards and district administrators have referenced *Ricard v. USD 475 Geary Cty., KS School Board*, No. 5:22-cv-04015-HLT-GEB, 2022 WL 1471372 (D. Kan., May 9, 2022) as support for their decision to not affirm a trans students' name or pronouns, to not protect trans students' privacy rights, or to adopt policies that bar the ability of staff to affirm trans students or that force trans students to be outed. But *Ricard* does not require any of those things. The case dealt with a Christian public school teacher who felt that her school's policy of (1) referring to students by their preferred name and pronouns and (2) not disclosing to parents when a student requests a new name or pronoun, unless the student approves of the disclosure were violations of her free speech, free exercise of religion, and due process rights. She requested the court grant preliminary injunctive relief so that she would not have to comply with these policies. But the court denied her injunctive relief related to the preferred name and pronoun policy—meaning it did not find that a policy affirming trans students' preferred names and pronouns violated any law. The court granted her injunctive relief related to the school's parental disclosure policy, but only on free exercise grounds—which means the court found the parental disclosure policy, as applied to this specific teacher's

- religious beliefs, was likely to violate her free exercise rights so the district could not require her to abide by it. But the court did not say the policy itself was illegal. Nothing in the Geary opinion says the schools cannot adopt policies that affirm trans students or protect their privacy.
- ¹⁷ See *Foster v. Anderson*, No. 18-2552, 2019 WL 329548, at *2 (D. Kan., Jan. 25, 2019), and cases cited therein.
- ¹⁸ Stephen T. Russell, et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, J. ADOLESCENT HEALTH (October 2018), <https://pubmed.ncbi.nlm.nih.gov/29609917>.
- ¹⁹ See 20 U.S.C. § 4071(a); *Key Policy Letters from the Education Secretary and Deputy Secretary*, U.S. Dept. of Ed. (June 14, 2011) <https://www2.ed.gov/policy/elsec/guid/secletter/110607.html>.
- ²⁰ National Climate Survey, GLSEN (2019) at 99,) <https://www2.ed.gov/policy/elsec/guid/secletter/110607.html>.
- ²¹ See, e.g., *Sturgis v. Copenhag County School District*, No. 3:10-CV-455-DPJ-FKB, 2011 WL 4351355, at *1 (S.D. Miss. Sept. 15, 2011) (finding it unconstitutional for a school district to force a student to follow the school dress code based on gender assigned at birth).
- ²² See, e.g., *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 135 (1994); *United States v. Virginia*, 518 U.S. 515, 533 (1996); *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1686 (2017).
- ²³ See, e.g., *McMillen v. Itawamba County School Dist.*, 702 F. Supp. 2d 699, 704-705 (N.D. Miss. 2010).
- ²⁴ See, e.g., *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 613 (4th Cir. 2020), as amended (Aug. 28, 2020), cert. denied, No. 20-1163, 2021 WL 2637992 (U.S. June 28, 2021), *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017); *Dodds v. United States Dep't of Educ.*, 845 F.3d 217 (6th Cir. 2016); *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 704, 708 (D. Md. 2018); *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 323 F. Supp. 3d 1030 (S.D. Ind. 2018); *A.H. by Handling v. Minersville Area Sch. Dist.*, 290 F. Supp. 3d 321 (M.D. Pa. 2017). *But see Adams v. School Bd. of St. Johns County*, No. 18-13952, 2022 WL 18003879 (11th Cir. Dec. 30, 2022) (holding that a school board's policy requiring students to use facilities corresponding with their gender assigned at birth did not constitute unlawful sex discrimination under the Equal Protection Clause or Title IX).
- ²⁵ See, e.g., *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018) (holding board policy honoring rights of transgender students to use restrooms corresponding with their gender identity did not violate Title IX); *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075 (D. Or. 2018) (holding board policy honoring rights of transgender students to use restrooms corresponding with their gender identity did not violate Title IX, Due Process Clause of 14th Amendment to U.S. Constitution, or Oregon law).
- ²⁶ Brief of Amici Curiae School Administrators from Thirty-One States and the District of Columbia at 7, *Gloucester Cnty. Sch. Bd. v. G.G.*, 136 S. Ct. 2442 (2017) (No. 16-273), http://www.scotusblog.com/wp-content/uploads/2017/03/16-273_bsac_school_of_administrators_from_thirty-one_states_and_the_dis.pdf (describing numerous examples in which transgender students have been able to use multi-user bathrooms without problems).
- ²⁷ Myeshia Price Feeney, Amy E. Green, & Samuel H. Dorison, *Impact of Bathroom Discrimination on Mental Health Among Transgender and Nonbinary Youth*, J. ADOLESCENT HEALTH (June 2021), <https://doi.org/10.1016/j.jadohealth.2020.11.001>.
- ²⁸ "KHSAA Policy for Transgender Student Participation." Kansas Student High School Athletics Association, <https://www.kshsaa.org/public/pdf/transgenderpolicyrecommendations.pdf>.
- ²⁹ *Id.*
- ³⁰ *Hecox v. Little*, No. 1:20-cv-00184 (D. Idaho, Aug. 17, 2020) (law that categorically excludes transgender women and girls from participating in sports competitions against cisgender women and girls likely violates the Equal Protection clause of the Fourteenth Amendment).
- ³¹ *Id.*
- ³² See Senate Bill 208 (2021), http://www.kslegislature.org/li/b2021_22/measures/documents/sb208_00_0000.pdf.
- ³³ For more detailed information about your rights when filing a sex discrimination complaint with your school or district under Title IX, you can review the U.S. Department of Education's Office of Civil Rights' Know Your Rights guide, available at <https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.html#:~:text=Title%20IX%20requires%20schools%20to,address%20complaints%20of%20sex%20discrimination>.
- ³⁴ *Federal Register Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, U.S. Dept. of Education (June 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf>; *A Back-to-School Message for America's Transgender Students*, U.S. Dept. of Education (Aug. 2021), <https://www2.ed.gov/about/offices/list/ocr/blog/20210827.html>.
- ³⁵ *How to File a Discrimination Complaint with the Office for Civil Rights*, U.S. Dept. of Education, <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>.
- ³⁶ *Civil Rights Division Educational Opportunities Section*, U.S. Dept. of Justice, <https://www.justice.gov/crt/educational-opportunities-section>.