

SUPERIOR COURT

C.A. No. PC2025-01610

Defendant.

The sole statutory authority cited by the Commissioner to enact this regulation is R.I. Gen. Laws § 16-38-1.1(a)(5), which provides: “The commissioner of elementary and secondary education shall be responsible for enforcing this section and is empowered to promulgate rules and regulations to enforce the provisions of this section.”

The question presented by this case is: Does the Commissioner have the power under R.I. Gen. Laws § 16-38-1.1(a)(5), to expand the definition of the word “sex” to include in its definition “gender, sexual orientation, gender identity, or gender expression”? The clear answer is no.

The parties have stipulated that Plaintiff has alleged sufficient facts to establish that the Regulation or its threatened application, has interfered with or impaired, or threatens to interfere with or impair, Plaintiff’s legal rights or privileges such as to confer jurisdiction over an action for declaratory judgment in the Superior Court of Providence County pursuant to R.I. Gen. Laws § 42-35-7. (See stipulation entered April 16, 2025.)

The facts which Plaintiff alleges in her complaint are summarized as follows:

Plaintiff’s daughter was the victim of sexual abuse by a family member when she was 5 years old. The perpetrator was related to her father and was convicted of child sexual assault and sentenced to prison. As a result of the sexual assault, Plaintiff’s daughter has suffered mental health issues, including gender dysphoria. Unbeknownst to Plaintiff, her daughter began to socially transition to a boy at school, with the help of school personnel.

Because of the Commissioner Regulation, RIDE’s guidance, and the policy the School District was forced to enact, these school personnel felt emboldened and compelled to encourage the daughter’s social transition, and to hide this fact from Plaintiff. Plaintiff only discovered this secret transitioning when her daughter attempted to commit suicide in the 10th grade.

The school district continued to keep secrets from Plaintiff, including refusing to release school records of her daughter’s social transition. Plaintiff also has two boys who also attend the school district, and fears that they may be subject to the effects of the Commissioner Regulation.

Plaintiff fears that school personnel will allow girls in these boys' bathrooms and private facilities, may compel her boys to use gender pronouns of classmates which do not comport to biological reality under threat of punishment, and may keep thoughts of their social transitioning secret from her.

For reasons too obvious to state, Plaintiff wishes to keep her identity, and the identities of her minor children secret, and filed a motion to proceed as Jane Doe. On May 15, 2025, another Justice of this Court granted Plaintiff's motion to proceed under a pseudonym, although such order has not yet been entered into the Court filing system.

BACKGROUND:

1. The History of the Commissioner Regulation

Under Rhode Island Law, "the entire care, control, and management of all public school interests of the several cities and towns shall be vested in the school committees of the several cities and towns." R.I. Gen. Laws § 16-2-9. Although there are 39 cities and towns in Rhode Island, there are 66 public Local Education Agencies (LEAs) or districts in Rhode Island. These include:

- 32 regular school districts (single municipalities)
- 4 regional school districts (more than one municipality)
- 4 state-operated schools (statewide)
- 1 regional collaborative LEA
- 23 charters¹

In addition to the local LEAs, there is a Commissioner of Elementary and Secondary

¹ <https://ride.ri.gov/students-families/ri-public-schools/school-districts>

Education,² who is hired by the Rhode Island Board of Education.³

In 1985, the General Assembly enacted R.I. Gen. Laws § 16-38-1.1. That statute provides in relevant part:

- (a)(1) Discrimination on the basis of sex is prohibited in all public elementary and secondary schools in the state and in all schools operated by the board of regents for elementary and secondary education. This prohibition shall apply to employment practices, admissions, curricular programs, extracurricular activities including athletics, counseling, and any and all other school functions and activities.
- (2) Notwithstanding this prohibition, schools may do the following:
 - (i) Maintain separate restrooms, dressing, and shower facilities for males and females;
 - (ii) Conduct separate human sexuality classes for male and female students; and
 - (iii) Prohibit female participation in all contact sports provided that equal athletic opportunities which effectively accommodate the interests and abilities of both sexes are made available.
 - (iv) Provide extracurricular activities for students of one sex, including, but not limited to, father-daughter/mother-son activities, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex. School districts are required to allow and notify students that they may bring the adult of their parent's or guardian's choice to the event.
- (3) Each local education agency shall designate an equal opportunity officer who shall be responsible for overseeing compliance with this section within the local education agency district.
- (4) The board of regents shall designate an equal opportunity officer who shall be responsible for overseeing compliance with this section within schools operated by the board.
- (5) The commissioner of elementary and secondary education shall be responsible for enforcing this section and is empowered to promulgate rules and regulations to enforce the provisions of this section.

There is no mention in R.I. Gen. Laws § 16-38-1.1 of gender, sexual orientation, gender identity, or gender expression. In fact, the statute goes on to specifically identify a distinction between only males and females. It is important to note that the original statute was enacted in

² R.I. Gen. Laws § 16-1-5

³ R.I. Gen. Laws § § 16-97-1.2(f)

1985 and was last amended in 2013 to include paragraph (iv). See P.L. 2013, ch. 522, § 1.

In June of 2016, the Rhode Island Department of Education (“RIDE”), issued a “Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students.” (Exh. B) In issuing this Guidance, RIDE cited extensively to federal law. With regard to gender identity, it relied heavily on Title IX, and a May 2016 “joint guidance” from the U.S. Departments of Justice and Education (which has been revoked and no longer exists). RIDE also cited to state law and made this finding:

RIGL §16-38-1.1 states in part that “Discrimination on the basis of sex is hereby prohibited in all public elementary and secondary schools in the state . . .” *The state statute is essentially a restatement of the federal Title IX. (emphasis added)*

(Guidance Exh. B at p. 4). As will be shown below, since the Commissioner believes the statute is the same as Title IX, an analysis of that federal law is warranted.

No regulation was issued pursuant to this statute for over thirty years. Then, in 2018, the Rhode Island Commissioner of Elementary and Secondary Education enacted Regulation 200-RICR-30-10-1, which states as follows:

1.1 Authority

The Commissioner, pursuant to R.I. Gen. Laws § 16-38-1.1(a)(5) has the authority to promulgate regulations to enforce the statutory requirements prohibiting discrimination on the basis of sex, *gender, sexual orientation, gender identity, or gender expression* in schools. *(emphasis added)*

1.2 Definitions

A. “Gender non-conforming” means a term used to describe people whose gender expression differs from stereotypic expectations. This includes people who identify outside traditional gender categories or identify as both genders. Other terms that can have similar meanings include “gender variant”, “gender expansive”, or “gender atypical”.

- B. “Transgender” means an umbrella term used to describe a person whose gender identity or gender expression is different from that traditionally associated with their assigned sex at birth.

1.3 Protection for Transgender and Gender Nonconforming Students

- A. Programs and activities operated by Rhode Island public educational agencies shall be free from discrimination based on sex, gender, sexual orientation, gender identity or gender expression. By July 1, 2018, each Local Education Agency (“LEA”) shall adopt a policy addressing the rights of transgender and gender non-conforming students to a safe, supportive and non-discriminatory school environment.
- B. The LEA policy shall be consistent with state and national best practices, guidance, and model policies and shall address, at a minimum, such issues as confidentiality and privacy, discipline and exclusion, staff training, access to school facilities and participation in school programs, dress codes, official school records and use of preferred names and pronouns.

No statutory basis other than R.I. Gen. Laws § 16-38-1.1(a)(5) was cited to support the regulation. Instead, under the “Overview” of the originally filed April 17, 2018, regulation provides:

Purpose and Reason:

The rule requires school districts to adopt a policy by July 1, 2018 to ensure that transgender and gender non-conforming students are free from discrimination.

See https://rules.sos.ri.gov/Regulations/part/200-30-10-1?reg_id=9190

2. History of Title IX

Title IX generally provides that “[n]o person . . . 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.” 20 U.S.C. § 1681(a). Recently, Federal Courts have been asked to review attempts by former President Biden’s

administration to issue guidance and regulations which redefine what “sex” means under Title

IX. As one court framed the history of Title IX:

Motivated by “corrosive and unjustified discrimination against women ... in all facets of education,” Congress enacted Title IX in 1972. 118 Cong. Rec. 5803 (Feb. 28, 1972) Statement of Sen. Bayh). Title IX generally provides that “[n]o person . . . 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.” 20 U.S.C. § 1681(a). This landmark legislation prohibits “the use of federal resources to support discriminatory practices” among federal fund recipients. *Cannon v. Univ. of Chi.*, 441 U.S. 677, 704 (1979). Its original goal was to ensure women experienced “full citizenship stature,” including the “equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities.” *United States v. Virginia, et al.*, 518 U.S. 515, 532 (1996).

Texas v. Cardona, Civil Action 4:23-cv-00604-O (N.D. Tex. Aug 05, 2024)

But there has been a push among some advocates to redefine “sex” to include “gender” and “gender identity”, and to enshrine this in Title IX. Another Federal Court recounts this effort:

The initial effort to redefine “sex” through regulatory decree occurred between 2014 and 2016 when the Department issued guidance construing Title IX’s implementing regulations to restrict federal funding recipients from treating individuals inconsistently with their gender identity. . . . In May 2016, the Department’s Office of Civil Rights (“OCR”) issued a “Dear Colleague” letter, noting that schools may continue to provide sex segregated facilities, such as restrooms, locker rooms, and showers, pursuant to existing Title IX regulations, while interpreting the prohibition of sex discrimination to encompass discrimination based on a student’s gender identity, including transgender status. The letter warned that schools “generally must treat transgender students consistent with their gender identity” when rendering sex-based distinctions in certain circumstances, such as providing separate facilities for male and female students. *Id.* OCR rescinded the May 2016 Dear Colleague letter in the early days of the Trump administration. However, it neither promulgated further guidance nor issued a rule regarding whether Title IX covers gender identity.

On June 15, 2020, the United States Supreme Court issued its decision in *Bostock v. Clayton County, Georgia*, 590 U.S. 644 (2020). The Court held that an employer violates Title VII of the Civil Rights Act of 1964 by firing an individual for being homosexual or transgender. On his first day in office, President Joseph Biden issued Executive Order 13988, entitled “Preventing and Combating Discrimination on the Basis of Gender

Identity or Sexual Orientation.” Exec. Order No. 13,988, 86 Fed. Reg. 7023 (Jan. 21, 2021). Citing *Bostock*, President Biden stated that “[a]ll persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.”

According to the President's proclamation, federal laws on the books that prohibit sex discrimination similarly “prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary.” *Id.*

President Biden subsequently issued Executive Order 14021, captioned “Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity.” Exec. Order No. 14,021, 86 Fed.Reg. 13803 (Mar. 8, 2021). Therein, President Biden directed the Secretary of Education, in consultation with the Attorney General, to review agency actions and issue new guidance as needed to comply with the policy set forth in the Executive Order. The Department subsequently amended the regulations implementing Title IX on April 29, 2024, by issuing a Final Rule: “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance” (the “Final Rule” or “Programs and Facilities Rule”). 89 Fed.Reg. 33474 (Apr. 29, 2024). The Final Rule “clarif[ies]” that, for purposes of Title IX, “[d]iscrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.” . . . The Department declined to provide a specific definition of “gender identity,” but understands the term to “describe an individual's sense of their gender, which may or may not be different from their sex assigned at birth.” *Id.* at 33809.

Tennessee v. Cardona, Case No. 2:24-cv-72-DCR, 2024 WL 3631032 (E.D. Ky. June 10, 2024).

Both of these federal courts, as well as numerous others, were presented with requests for injunctive relief to stop enforcement of the Biden Administration guidance documents and amended Title IX regulations. Universally, these Courts found that the Guidance documents and regulations were unlawful and enjoined their taking effect. *See, e.g., Oklahoma v. Cardona*, Case No. 5:24-cv-461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. U.S. Dep’t of Educ.*, Case No. 4:24-cv-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Carroll Indep. Sch. Dist. v. U.S. Dep’t of Educ.*, Case No. 4:24-cv-461-O, 2024 WL 3381901 (N.D. Tex. July 11, 2024); *Kansas v. U.S. Dep’t of Educ.*, Case No. 5:24-cv-4041-JWB, 2024

WL 3273285, at *12–13 (D. Kan. July 2, 2024); *Louisiana v. U.S. Dep’t of Educ.*, 737 F. Supp. 3d 377 (W.D. La. 2024).

Ultimately, these injunctions made their way to the United States Supreme Court. In *United States Dep’t of Educ. v. Louisiana*, 603 U.S. 866 (2024), the Court upheld the injunctions, and all nine justices of the Supreme Court of the United States, “accept[ed] that the plaintiffs were entitled to preliminary injunctive relief as to three provisions of the rule, including the central provision that newly defines sex discrimination to include discrimination on the basis of sexual orientation and gender identity.” *Id.* at 867. (Exh. E)

On January 20, 2025, newly inaugurated President Trump issued an Executive Order, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.” President Trump ordered all agencies and departments within the Executive Branch to “enforce all sex-protective laws to promote [the] reality” that there are “two sexes, male and female,” and that “[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.” (Exh. C)

As a result of that Executive Order, on February 4, 2025, the U.S. Department of Education sent a “Dear Colleague” letter to K-12 schools advising educators and administrators that the department’s Office for Civil Rights will enforce the Trump Administration’s 2020 Title IX Rule. Under this interpretation, Title IX, 20 U.S.C. §1681 et seq. (“Title IX”): prohibits discrimination on the basis of biological sex and cannot be expanded by rule to require recipients of federal funds to issue policies prohibiting discrimination on the basis of “gender identity.” (Exh. D)

STANDARD OF REVIEW:

The Rhode Island Supreme Court has stated that, “it is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *City of Pawtucket v. R.I. Dep’t of Revenue*, 313 A.3d 493, 499 (R.I. 2024), citing *State v. Santos*, 870 A.2d 1029, 1032 (R.I. 2005) (internal quotation marks and brackets omitted).

It is also “well established that when we examine an unambiguous statute, there is no room for statutory construction and we must apply the statute as written.” *Id.* (internal quotation marks omitted). The Court has noted that the “plain statutory language is the best indicator of legislative intent.” *Id.*; see *Martone v. Johnston School Committee*, 824 A.2d 426, 431 (R.I. 2003) (“When interpreting a statute, our ultimate goal is to give effect to the General Assembly’s intent. . . . The best evidence of such intent can be found in the plain language used in the statute. Thus, a clear and unambiguous statute will be literally construed.”).

Id.

Undoubtedly, the Commissioner will claim that this Court must give “considerable weight . . . to an executive department’s construction of a statutory scheme it is entrusted to administer,” and “deference is due to that agency’s interpretation of an ambiguous statute unless such interpretation is clearly erroneous or unauthorized.” *Town of Warren v Bristol Warren Regional School Dist.*, 159 A.3d 1029, 1038 (R.I. 2017). However, it is important to note that *Town of Warren* and similar cases trace their roots to federal cases which afford deference to administrative agencies. See *Pawtucket Power Assocs. Ltd. P’ship v. City of Pawtucket*, 622 A.2d 452, 456 (R.I. 1993), which cites to the following federal cases:

Young v. Community Nutrition Institute, 476 U.S. 974 (1986); *Chemical Manufacturers Association v. Natural Resources Defense Council, Inc.*, 470 U.S. 116 (1985); *Lawrence County v. Lead-Deadwood School District No. 40-1*, 469 U.S. 256 (1985); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984); *United States v. Turkette*, 452 U.S. 576 (1981).

Id. at 456.

These cases are no longer good law. This past term of the United States Supreme Court overturned this historical standard of deference to administrative agencies. As the Court has stated, “*Chevron* is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires.” *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2273 (2024).

The Rhode Island Supreme Court has yet to opine on the effect this change in federal law has on its own judicial review of administrative regulations. However, the R.I. Supreme Court has always tempered its deference to administrative agency interpretations of state law. In *Grasso v. Raimondo*, 177 A.3d 482, (R.I. 2018), the Rhode Island Supreme Court has clarified the standard of review courts will give to agency decisions: “While the Court affords an agency's factual findings great deference, questions of law - including statutory interpretation - are reviewed *de novo*.” *Id.* at 487 (internal quotations omitted). In this case, the sole issue is an interpretation of state law, and therefore no deference is permitted.

The Rhode Island Supreme Court has long adopted the *expressio unius est exclusion alterius* rule of statutory construction. *See, e.g., Finnimore & Fisher Inc. v. Town of New Shoreham*, 291 A.3d 977, 984 (R.I. 2023):

This Court has previously “availed [itself] of the rule of construction that states that an express enumeration of items in a statute indicates a legislative intent to exclude all items not listed.” *Murphy*, 471 A.2d at 622 ; see 2A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 47:23 (7th ed. Nov. 2022 Update) (“In practice * * * all versions of the *expressio unius* rule reflect the same common sense premise that when people say one thing, they do not mean something else.”).

See also, *Ricci v. R.I. Commerce Corp.*, 276 A.3d 903, 908 (R.I. 2022) (General Assembly enumerated specific exceptions to LEOBOR, therefore other exclusions will not be read into the law). Cf. *Gorman v. Gorman*, 883 A.2d 732, 738 n.9 (R.I. 2005):

The venerable maxim of contract interpretation *expressio unius est exclusio alterius* is frequently a helpful interpretive guide in situations like the present one. See 5 Corbin on Contracts (Interpretation of Contracts) § 24.28 at 315-16 (Margaret N. Kniffin, rev. ed. 1998) ("The maxim *expressio unius est exclusio alterius* means literally 'the expression of the one is the exclusion of the other.' If the parties in their contract have specifically named one item or if they have specifically enumerated several items of a larger class, a reasonable inference is that they did not intend to include other, similar items not listed.").

Whether an agency has properly enacted a regulation or rule, the proper avenue for review of that regulation or rule is by R.I. Gen. Laws § 42-35-7. *Newbay Corp. v. Annarummo*, 587 A.2d 63, 66 (R.I. 1991) If the Court finds that a regulation is invalid and unenforceable under § 42-35-7, it may issue an injunction against its enforcement. *Houghton v. Alexander*, P.C. 10-5625 (R.I. Super. Nov 30, 2010).

ARGUMENT:

a. The Commissioner's Gender Regulation violates RIGL § 16-38-1.1

There are two unassailable facts about R.I. Gen. Laws § 16-38-1.1: (1) it does not prohibit discrimination on the basis of gender; and (2) the statute does not give the Commissioner the power to reinterpret the term "sex", she only has the power to issue regulations to "promulgate rules and regulations to enforce the provisions" of the statute.

If the General Assembly wanted to include in § 16-38-1.1(a)(5) a prohibition on discrimination on the basis of gender, it knew how to do it. For example, as part of the R.I. Fair Employment Practices Act, it is an unlawful employment practices, "For any employer: (i) To refuse to hire any applicant for employment because of his or her race or color, religion, sex,

sexual orientation, **gender identity** or expression, disability, age, or country of ancestral origin.” R.I. Gen. Laws § 28-5-7(1). In fact, in its 2016 guidance (Exh. B p. 4), RIDE references R.I. Gen. Laws § 34-37-3 (housing) and R.I. Gen. Laws § 11-24-2.1 (public accommodations). But both those statutes specifically reference gender or gender identity. R.I. Gen. Laws § 34-37-2.3 provides: “Right to equal housing opportunities — **Gender identity** or expression. Whenever in this chapter there shall appear the words “sexual orientation” there shall be inserted immediately thereafter the words “**gender identity** or expression.”” Similarly, R.I. Gen. Laws § 11-24-2 provides: “Discriminatory practices prohibited. No person, being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation, resort, or amusement shall directly or indirectly refuse, withhold from, or deny to any person on account of race or color, religion, country of ancestral origin, disability, age, sex, sexual orientation, **gender identity** or expression, any of the accommodations, advantages, facilities, or privileges of that public place.” (*emphasis added*)

As the 2016 RIDE Guidance proudly points out (Exh. B at p. 4):

In May, 2001, Rhode Island became the second state in the country to explicitly prohibit discrimination on the basis of gender identity or expression, thereby protecting transgender people from discrimination in employment, housing, credit, and public accommodations (R.I. Pub. L. 2001, ch. 340). The law defines gender identity or expression as including a person’s “actual or perceived gender, as well as a person’s gender identity, gender-related self-image, gender-related appearance, or gender-related expression, whether or not that gender identity is different from that traditionally associated with the person’s sex at birth.”

Under the doctrine of *expressio unius est exclusio alterius*, this Court must recognize that the omission of the terms “gender, sexual orientation, gender identity, or gender expression” from R.I. Gen. Laws § 16-38-1.1 was intentional. The Commissioner had no power to re-write the statute to include those terms. Again, the General Assembly as recently as 2013 amended

R.I. Gen. Laws 16-38-1.1(a)(1) to include a section which not only does not mention “gender”, but specifically references only two sexes:

(iv) Provide extracurricular activities for students of one sex, including, but not limited to, father-daughter/mother-son activities, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex. School districts are required to allow and notify students that they may bring the adult of their parent’s or guardian’s choice to the event.

Nor can the Commissioner rely on any other statute to justify the Regulation. First, and most importantly, in the regulation itself the Commissioner cites to no other statutory authority. More importantly, the Commissioner cannot interpret statutes which do not involve “school law” as a justification for exercising her jurisdiction. See *Asadoorian v. Warwick School Committee*, 691 A.2d 573, 581 (R.I. 1997) (Commissioner has no jurisdiction to determine whether a state statute violates the anti-discrimination in employment statute, Title VII, 42 U.S.C. § 2000e-2).

b. The Commissioner Regulation violates Title IX

Upon the issuance of President Trump’s Executive Order and the U.S. Department of Education Dear Colleague letter, the Office of Civil Rights of the United States Department of Education (“OCR”) has received numerous complaints that States and local school districts are not complying with federal law. OCR has accepted these complaints and started investigations into these districts.⁴

Rhode Island is one of the States against whom an OCR complaint was filed. On March 8, the Rhode Island Center for Freedom & Prosperity (“Center”), a nonprofit and nonpartisan,

⁴ See, e.g., “Office for Civil Rights Launches Title IX Violation Investigations into Maine Department of Education and Maine School District” <https://www.ed.gov/about/news/press-release/office-civil-rights-launches-title-ix-violation-investigations-maine-department-of-education-and-maine-school-district>

free-enterprise public policy research and advocacy organization, filed an OCR complaint against the Commissioner, the Rhode Island Interscholastic League, several local school districts, and the RI Attorney General, seeking an investigation into violations of federal law by these entities for refusing to comply with Title IX. (See Exh. E)

The complaint originates from a request by the Center to the Commissioner to repeal her Regulation. The Commissioner refused to do so (See Exh. F), and she subsequently signed a joint letter with the Rhode Island Attorney General, Peter Neronha, that was sent to all school districts in the State, advising them not to follow the federal law. (See Exh. G) In fact, the Attorney General letter threatened legal action against any school district that rescinded their Transgender policy enacted pursuant to the Commissioner Regulation.

The reasoning of the Commissioner and Attorney General can be summed up as follows: In a letter dated February 25, 2025, Anthony F. Cottone, Chief Legal Counsel for the RIDE, ignored R.I. Gen. Laws § 16-38-1.1 as the justification for the Regulation, even though that is the sole legal authority actually cited in the Regulation. Mr. Cottone also ignored the February 4, 2025, “Dear Colleague” letter from the US Department of Education, notwithstanding that in RIDE’s 2016 Guidance it relied upon a prior 2016 Dear Colleague letter. This smacks of cherry-picking interpretations of federal law which favors Mr. Cottone and the Commissioner’s preferred policy views.

Mr. Cottone also dismissed the case law cited by the Center, noting that these cases were enjoined in the “preliminary injunction stage,” and that the Supreme Court decision “merely denied a motion for a stay pending appeal.” Mr. Cottone then references Rhode Island’s non-discrimination in public accommodation statute, R.I. Gen. Laws § 11-24-2; a statute involving

the State Department of Child Youth and Families, R.I. Gen. Laws § 42-72-15; and a statute that references a State agency primarily tasked with enforcing affirmative action plans in state agencies and state government contracts, R.I. Gen. Laws § 28-5.1-7. None of these statutes applies to the issue here; none were cited by RIDE as the legal basis for the Commissioner Regulation, and none supersedes federal law.

Finally, after noting that other of President Trump's executive orders that are not at issue here have been enjoined, Mr. Cottone fails to address the fact that OCR will enforce the 2020 Title IX regulations, which no court has enjoined.

In his letter, the Attorney General engages in a lengthy dissertation on state and federal law entitled: "**The Executive Orders and the Rights of LGBTQ+ Students**". AG Neronha asserts that "the Order did not and could not require state or local officials to take any action, and the implications for Rhode Islanders are far from apparent." He ignores all of the cases cited above that hold that Title IX does not and cannot define "sex" to mean "gender". Instead, after citing the Commissioner Regulation, he makes the bold assertion that, "[u]ntil a court holds otherwise, these state laws and regulation continue to govern."

As evidenced by these letters, the Commissioner has no intent on repealing her Gender Regulation, even though she cites no legal basis for it.

Rhode Island Courts look to federal courts' interpretation of federal statutes for help interpreting complimentary state statutes, particularly where the issue involves discrimination on the basis of sex. *See Center For Behavioral Health, Rhode Island, Inc. v. Barros*, 710 A.2d 680, 685 (R.I. 1998): ("Section 28-5-6(2) [of the R.I. Fair Employment Practices Act] states that "[b]ecause of sex" or "on the basis of sex" includes, but are not limited to pregnancy, childbirth,

and other related medical conditions. In construing these provisions, we have previously stated that this Court will look for guidance to decisions of the federal courts construing Title VII of the Civil Rights Act of 1964.”) As stated previously, every federal court, including all nine justices of the U.S. Supreme Court, which has reviewed the issue has determined that the word “sex” in Title IX does not include the concept of “gender”.

Finally, Title IX preempts the Commissioner Regulation. In reviewing a state law mandating overtime on Sundays for certain airline workers, the R.I. Supreme Court found that state law was preempted by a federal law known as the Airline Deregulation Act:

The Supremacy Clause, in Article VI of the United States Constitution, directs that federal law "shall be the supreme law of the land; and the judges in every state shall be bound thereby * * *." U.S. Const. Art. VI, cl. 2. Under the Supremacy Clause, if Congress so intends, state laws may be preempted by federal law and will be considered to be "without effect." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992) (quoting *Maryland v. Louisiana*, 451 U.S. 725, 746, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981)). The intention to preempt state law may arise explicitly from the language employed in the statute or implicitly from the statute's structure and purpose.

Brindle v. R.I. Dep't of Labor & Training, 211 A.3d 930, 935 (R.I. 2019)

Here, the Commissioner’s Regulation is in clear violation of Federal law. Title IX, as found bound the U.S. Department of Education, and every federal court which has reviewed it, including the U.S. Supreme Court, has held that “sex” as referenced in Title IX does not include “gender”. To the extent that the Commissioner Regulation therefore includes “gender” or any variation therefore in its prohibition on discrimination, it violates federal law and is preempted.

CONCLUSION:

For all of the foregoing reasons, Plaintiff requests that this Court issue a declaratory judgment that the Commissioner of Elementary and Secondary Education Regulation 200-RICR-30-10-1, is in violation of state law and unenforceable. In addition, Plaintiff asks that an injunction issue which prevents the Commissioner from enforcing the Regulation.

Plaintiff,
By her Attorney,

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CERTIFICATION

I hereby certify that on May 2, 2025, I electronically filed and served this document through the electronic filing system upon the following parties:

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