STATE OF RHODE ISLAND
SUPREME COURT

CASE NO. SU-2025-0296-A

JANE DOE,
Plaintiff–Appellant,

v.

ANGÉLICA INFANTE-GREEN, in her capacity as the COMMISSIONER OF ELEMENTARY AND SECONDARY EDUCATION, RHODE ISLAND DEPARTMENT OF EDUCATION,

Defendant–Appellee.

ON APPEAL FROM THE PROVIDENCE COUNTY SUPERIOR COURT, NO. PC-2025-01610
(HON. JOSEPH J. MCBURNEY)

BRIEF OF AMICI CURIAE GLBTQ LEGAL ADVOCATES & DEFENDERS AND ACLU - RHODE ISLAND IN SUPPORT OF APPELLEE AND AFFIRMANCE

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INTEREST OF AMICI CURIAE

Founded in 1978, *amicus curiae* GLBTQ Legal Advocates & Defenders (GLAD Law) is New England's leading public interest legal organization dedicated to creating a just society free of discrimination for LGBTQ+ people and people with HIV. For nearly five decades, GLAD Law has successfully litigated many cases to advance the rights of LGBTQ+ students, including *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980). GLAD Law remains dedicated to the vital partnership between schools, parents, and students in fostering positive school environments where all students can thrive. GLAD Law's recent participation in school-related cases as counsel and as amicus curiae includes *Tirrell v. Edelblut*, 748 F. Supp. 3d 19 (D.N.H. 2024); *Foote v. Ludlow Sch. Comm.*, 128 F.4th 336 (1st Cir. 2025), *cert. denied*, 146 S. Ct 2571 (2026); *L.M. v. Town of Middleborough*, 103 F.4th 854 (1st Cir. 2024), *cert. denied*, 145 S. Ct. 1489 (2025); *Doe v. Manchester Sch. Dist.*, 176 N.H. 780 (2024); and *Doe v. Hopkinton Pub. Schs.*, 19 F.4th 493 (1st Cir. 2021).

The American Civil Liberties Union of Rhode Island ("ACLU-RI"), with over 5,000 members, is the Rhode Island affiliate of the American Civil Liberties Union, a nationwide, non-profit, nonpartisan organization. ACLU-RI, like the national organization with which it is affiliated, is dedicated to vindicating the principles of liberty embodied in the Bill of Rights to the U.S. Constitution, including the right to equal protection of the law, encompassing the recognition

and expansion of protections for individuals to be free from discrimination based on their sexual orientation, gender identity or expression. In furtherance of that goal, ACLU-RI cooperating attorneys have, over the past 50 years, consistently challenged adverse government actions on the basis of LGBTQ+ status, either in direct action or as amicus, in such cases as *Toward A Gayer Bicentennial Committee v. R.I. Bicentennial Foundation,* 417 F. Supp. 642 (D.R.I. 1976) (obtained preliminary injunction requiring endorsement of Gay Pride Parade and use of Old State House for the parade); *Chambers v. Ormiston*, 935 A.2d 956 (R.I. 2007) (action to determine whether family court could recognize a same-sex marriage obtained in another state for the purpose of granting a Rhode Island divorce); *Tiverton School Committee v. McCullough,* (NC-04-0478, Superior Court challenge to denial of health insurance benefits for same-sex spouse; 2005); *In re G.R.K.,* (Superior Court appeal of Probate Court decision denying name change request related to gender transition; 1988). In addition to its history of testifying before the General Assembly in support of numerous bills to establish and expand LGBTQ+ rights, in 2017, ACLU-RI, along with nine other organizations, formally petitioned the Rhode Island Department of Education under the Administrative Procedures Act to promulgate regulations to protect the rights of transgender students, resulting in the adoption of the Regulation which is the subject of the above-captioned action.

SUMMARY

The Superior Court correctly upheld Rhode Island's Regulation requiring public school districts to adopt policies that protect students from discrimination on the basis of sex, gender, sexual orientation, gender identity, and gender expression. *See* Regulation 200-RICR-30-10-1, "Regulations Governing Protections for Student Rights to be Free from Discrimination on the Basis of Sex, Gender, Sexual Orientation, Gender Identity, or Gender Expression" ("LGBTQ+ Reg.").

The LGBTQ+ Reg. rests on solid legal ground. (Amicus Brief ("Br."), Part I). The General Assembly expressly empowered the Commissioner to enforce the State's prohibition on sex discrimination in public schools. The Commissioner's authority does not depend on any single statute; rather, it rests on several, and it carries out the General Assembly's long-standing policy of protecting students from discrimination and harassment and ensuring every student a safe place to learn. (Br., Part I.A.). The LGBTQ+ Reg. is consistent with Rhode Island law, which prohibits discrimination based on sexual orientation and gender identity in employment, public accommodations, and the Children's Bill of Rights, which specifically protects students from bullying on those bases. (Br., Part I.B.1). It is equally consistent with federal law and Title IX of the Education Amendments of 1972 ("Title IX"). (Br., Part I. B. 2). Title IX prohibits sex discrimination in education, and federal courts and the U.S. Department of Education have recognized that discrimination based on sexual orientation and gender identity is

sex discrimination. (Br., Part I. B. 2). Far from conflicting with Title IX, the LGBTQ+ Reg. complements it, and neither Title IX nor Executive Order 14168 preempts it. (Br., Part I. B. 3.). No court has concluded that Title IX preempts state nondiscrimination laws, regulations, or policies protecting students from discrimination on the basis of sexual orientation, gender identity, or gender expression. Under well-established preemption principles, states retain broad authority to protect the health, safety, and welfare of their residents. The LGBTQ+ Reg. is therefore a valid exercise of the Commissioner's authority, grounded in state and federal law. (Br., Parts I. A-B). Further, Rhode Island's own public health data show why it is needed. LGBTQ+ students in this State are bullied, miss school because they feel unsafe, and suffer serious mental health harms at higher rates than their peers. (Br., Part I. C).

The LGBTQ+ Reg. also advances the positive school climate that Rhode Island, like states across the nation and the federal government, has long required of its schools. (Br., Part II. A). A positive school climate—defined by safety from bullying, harassment, and violence, trusting relationships, and shared norms and values—is proven to improve educational outcomes for all students, including higher academic achievement, improved attendance, and better graduation rates. The concept is a cornerstone of educational policy rooted in more than a century of educational thought and reinforced by contemporary, data-driven research and national frameworks. (Br., Part II. B). By requiring local school policies that

expressly prohibit discrimination against LGBTQ+ students, the LGBTQ+ Reg. addresses the heightened risks those students face, supports their belonging in the school community, and benefits every student. (Br., Part II. D). This brief explains why policies protecting LGBTQ+ students are a crucial component of this framework, supporting improved academic achievement and attendance and reducing bullying and harassment.

Finally, by keeping every student safe from discrimination, the LGBTQ+ Reg. strengthens the school environment for everyone and upholds the core civic mission of public education to prepare students for life in a diverse democracy. (Br., Part III). The Commissioner chose to protect every student's ability to learn in safety, and the Superior Court correctly upheld that choice.

ARGUMENT

I. THE LGBTQ+ REGULATION IS CONSISTENT WITH THE COMMISSIONER'S AUTHORITY, STATE AND FEDERAL SEX DISCRIMINATION LAW, AND THE DEMONSTRATED NEED TO PROTECT AND INTEGRATE LGBTQ+ STUDENTS IN RHODE ISLAND SCHOOLS.

A. The Commissioner's Authority to Promulgate the Regulation to Protect LGBTQ+ Students.

The Superior Court correctly upheld the "Regulation Governing Protections for Student Rights to be Free from Discrimination on the Basis of Sex, Gender, Sexual Orientation, Gender Identity or Gender Expression." 200-RICR-30-10-1

("LGBTQ+ Reg." or "Challenged Reg.").[1] The LGBTQ+ Reg. does two things. First, it provides that 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." 200-RICR-30-10-1 § 1.3(A). Second, it requires each local education agency (LEA) to adopt a policy addressing "the rights of transgender and gender non-conforming students to a safe, supportive and non-discriminatory school environment," consistent with "state and national best practices, guidance, and model policies," that addresses, at a minimum, "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." *Id.* §§ 1.3(A)–(B).

Plaintiff's challenge rests on the premise that R.I. Gen. Laws § 16-38-1.1 (Prohibiting Discrimination Because of Sex Across All Public Elementary and Secondary Schools) is the sole source of the Commissioner's authority. Hr'g Tr. 4, *Doe v. R.I. Comm'r of Elementary & Secondary Educ.*, No. PC-2025-01610 (R.I. Super. Ct. Aug. 19, 2025) ("Hr'g Tr."). In fact, that statute is one of several bases for the Commissioner's power to promulgate the LGBTQ+ Reg.

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[1] This regulation was first promulgated in 2018 and refiled without change in 2022 and is currently active. *See* R.I. Dep't of State, *Rulemaking History*, 200-RICR-30-10-1 (History), at rules.sos.ri.gov/regulations/part/200-30-10-1 (last visited Nov. 19, 2026).

For one, the General Assembly expressly authorized the LGBTQ+ Reg. in the "Prohibiting Sex Discrimination" statute, R.I. Gen. Laws § 16-38-1.1(a)(1), and designated the Commissioner as "responsible for enforcing this section" and "empowered to promulgate rules and regulations to enforce the provisions of this section," *id.* § 16-38-1.1(a)(5). The LGBTQ+ Reg. is precisely such an enforcement rule: it implements the statute's ban on sex discrimination by specifying the policies LEAs must adopt to prevent sex-based discrimination and harassment, including that based on sex, gender, sexual orientation, gender identity and gender expression in schools, thereby protecting, inter alia, transgender and gender non-conforming students. As the Superior Court held, the term "sex" in § 16-38-1.1, construed in harmony with the General Assembly's other antidiscrimination enactments and the Board of Education's policies, necessarily extends to discrimination on the basis of gender, gender identity, and gender expression—and, even if the term were open to doubt, the Commissioner's reasonable construction of a statute she is charged with enforcing is entitled to deference. Hr'g Tr. 14–16 (citing *Town of Warren v. Bristol Warren Reg'l Sch. Dist.*, 159 A.3d 1029, 1039 (R.I. 2017), and *Murray v. McWalters*, 868 A.2d 659, 662 (R.I. 2005)).

Yet the Commissioner's authority does not rest on § 16-38-1.1 alone. The Rhode Island Constitution vests the General Assembly with plenary power over public education. *Woonsocket Sch. Comm. v. Chafee*, 89 A.3d 778, 789–92 (R.I.

2014) (addressing R.I. Const., Education Clause, art. 12, § 1). Moreover, the General Assembly has delegated responsibility for setting education policy to the Council on Elementary and Secondary Education ("Council") and the Commissioner of Elementary and Secondary Education, *see* R.I. Gen. Laws §§ 16-60-4 (Council's powers and duties), 16-60-6 (Commissioner's powers and duties).

The Council must "adopt standards and require enforcement and . . . exercise general supervision over all elementary and secondary public and nonpublic education in the state," *id.* § 16-60-4(a)(3), and "enforce the provisions of all laws relating to elementary and secondary education," *id.* § 16-60-4(a)(9)(vii).

Likewise, the Commissioner must "implement broad policy as it pertains to the goals and objectives established by the board of education," "enforce[s] standards," *id.* § 16-60-6(4); and "require[s] the observance of all laws relating to elementary and secondary schools and education," *id.* § 16-60-6(9)(vii). The broad swath of the Commissioner's authority extends to administering the "policies, rules, and regulations of the board of education and the council on elementary and secondary education with relation to the entire field of elementary and secondary education within the state not specifically granted to any other department, board, or agency and not incompatible with law," *id.* § 16-60-6(11). An agency so empowered is "called upon both to interpret certain acts of the Legislature and to promulgate applicable regulations not inconsistent with its delegated authority." *Clarke v. Morsilli*, 714 A.2d 597, 600 (R.I. 1998) (citing *Lerner v. Gill*, 463 A.2d

1352, 1358 (R.I. 1983)). Because the LGBTQ+ Reg. includes enforcing the State's prohibitions on sex discrimination and bullying in schools, it falls squarely within the Commissioner's duties. *See* Hr'g Tr. 12–13 (citing R.I. Gen. Laws §§ 16-2-17, 16-21-33, 16-21-34).

The LGBTQ+ Reg. effectuates part of the Council's Basic Education Program ("BEP"), a longstanding set of statewide standards that already requires every school to be free of discrimination and harassment, and to remove barriers to students based on gender and sexual orientation. The Council promulgated the BEP under its statutory authority to "adopt standards" for the public schools, R.I. Gen. Laws § 16-60-4(a)(3), which have the "full force of law" and "must be read in concert with all other applicable legal mandates, under both federal and state law" to ensure each student is accorded "full rights." 200-RICR-20-10-1 §§ 1.1.1(A)–(C). Its touchstone is "whether equality of educational opportunity is being provided at the local level." *Id.* § 1.1.1(B).

As to the BEP's standards on "Supportive and Nurturing School Community," the BEP requires each LEA to "ensure that schools create a climate of safety, security and belonging for all students and adults, thereby establishing an environment that builds respectful relationships, enhances productive learning and teaching, promotes school engagement, and promotes academic success." 200-RICR-20-10-1 § 1.3.2(A). Accomplishing this goal requires each school: "[i]s safe, respectful, and free of discrimination," *id.* § 1.3.2(A)(1), "build[s] a safe and

respectful learning environment," *id.* § 1.3.2(B)(1), and "identif[ies] and remove[s] barriers to students and adults based on their race, ethnicity, national origin, language, gender, religion, economic status, disability or sexual orientation," and complies with relevant state and federal laws regarding discrimination. *Id.* § 1.3.2(C)(1)-(2). The BEP further directs each LEA to "identify and remove barriers to students and adults that are based on their race, ethnicity, national origin, language, gender, religion, economic status, disability, or sexual orientation," to "comply with all relevant state and federal statutes and regulations regarding discrimination," and to "[p]revent and respond appropriately to incidents of bullying." *Id.* §§ 1.3.2(C)(1)–(2), (E)(1)(a).[2]

The LGBTQ+ Reg. thus imposes no new obligation; it tells districts how to effectuate a duty the BEP already imposes. By requiring districts to identify and remove barriers based on sex, gender and sexual orientation, the LGBTQ+ Reg. requires school districts to consider smaller and disproportionately mistreated transgender and gender non-conforming students and to propose specific practices—discipline, facilities, programs, records, names, and pronouns—where such barriers commonly arise for transgender and gender nonconforming students. Both 200-RICR-20-10-1 § 1.3.2(C)(1), and 200-RICR-30-10-1 §§ 1.3(A)–(B) are

[2] The BEP was refiled in 2022 as part of the statutorily required five-year refiling cycle. *See* R.I. Dep't of State, *Rulemaking History*, 200-RICR-20-10-1 (adoption and technical revision effective July 29, 2009; periodic refile effective Jan. 4, 2022).

on the same track of preventing discrimination, identifying and removing barriers to student participation and learning based on sexual orientation, gender identity or gender identity /expression so that students can attend a school that is "safe and secure, that is conducive to learning, and that is free from the threat, actual or implied, of physical harm." 200-RICR-20-10-1 § 1.3.2(D)(2). At schools, this further requires each LEA to "prevent and respond appropriately" to bullying, hazing, sexual and dating violence and related issues, to promote nonviolent conflict resolution and to provide professional development and training to assist school personnel to perform these duties. 200-RICR-20-10-1 § 1.3.2(E)(1)(a)-(d). In short, the LGBTQ+ Reg. is simply another means of ensuring that every student belongs and enjoys equal educational opportunity alongside their peers—precisely what the Board and the Council have long required.

B. The Regulation Is Consistent with Rhode Island Law and Federal Law.

Because the Commissioner's general authority extends to measures "not incompatible with law," R.I. Gen. Laws § 16-60-6(11), the LGBTQ+ Reg.'s consistency with state and federal law confirms its validity. State law already prohibits discrimination on each basis the LGBTQ+ Reg. enumerates, including in schools. Federal law treats such discrimination as discrimination because of sex; and nothing in federal law displaces the Commissioner's judgment.

1. Rhode Island Law Already Prohibits Discrimination Based on Sexual Orientation and Gender Identity, Including in Schools.

The General Assembly has repeatedly extended protection against discrimination on the bases the LGBTQ+ Reg. specifies. It prohibits employment discrimination on the basis of "sex, sexual orientation, gender identity or expression," R.I. Gen. Laws § 28-5-7(1)(i); prohibits discrimination in public accommodations on the basis of, *inter alia*, "sex, or sexual orientation, gender identity or expression," *id.* § 11-24-2.3; and guarantees in the Children's Bill of Rights that "no child shall be discriminated against on the basis of gender, sexual orientation, or gender identity or expression," *id.* § 42-72-15(q). *See* Hr'g Tr. 11–12.

In schools specifically, the General Assembly defined bullying to include conduct reasonably perceived as motivated by "gender, sexual orientation, or gender identity," R.I. Gen. Laws § 16-21-33(a)(1)(v), and mandated a statewide bullying policy, *id.* § 16-21-34. That policy recognizes that bullying "creates a climate of fear and disrespect that can seriously impair the student's health and negatively affect learning," and enumerates "[g]ender," "[s]exual orientation," and "[g]ender identity and expression" among the characteristics that may motivate bullying. 200-RICR-30-10-2 §§ 2.1.1, 2.2(A)(2).

The General Assembly thus itself understands sex discrimination in Rhode Island schools to include discrimination based on sexual orientation and gender

identity—the same construction the Commissioner adopted. For example, the Trauma-Informed Schools Act directs the Commissioner to assist schools in adopting disciplinary procedures that "[d]o not discriminate on the basis of race, color, national origin, sex (including sexual orientation or gender identity), disability, English proficiency status, migrant status, or age." R.I. Gen. Laws § 16-21-40(b)(1)(ii)(E). Similarly, when the General Assembly in 2025 clarified the parallel prohibition on race discrimination in public schools, it defined "race" to include "traits historically associated with the race," reflecting the understanding that a protected characteristic encompasses the traits and expectations bound up with it. *Id.* § 16-38-1(b), (c)(2) (as amended by P.L. 2025, ch. 381, § 1, and ch. 382, § 1).

2. Federal Law Recognizes Discrimination Based on Sexual Orientation and Gender Identity as Sex Discrimination.

The LGBTQ+ Reg. is equally consistent with federal law. Title IX provides that "[n]o 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." 20 U.S.C. § 1681(a). The Supreme Court has long held that treating a person worse for failing to conform to expectations about how members of that person's sex should look or behave constitutes sex discrimination. *See Price Waterhouse v.*

Hopkins, 490 U.S. 228, 250–51 (1989) (plurality opinion); *see also Morales-Cruz v. Univ. of P.R.*, 676 F.3d 220, 224–25 (1st Cir. 2012).

The First Circuit has applied that principle in a case involving Title IX claims and in other contexts. *See Lipsett v. Univ. of P.R.*, 864 F.2d 881, 909 (1st Cir. 1988) (holding, in a case asserting Title IX and § 1983 claims, that evidence that male residents resented a female surgical resident "because she did not conform to their stereotype of the 'good' (that is, the submissive) woman" was direct evidence of sex discrimination sufficient to defeat summary judgment); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213, 214–16 (1st Cir. 2000) (reinstating Equal Credit Opportunity Act claim of a transgender woman refused a loan application until she "went home and changed" out of traditionally feminine attire).

The U.S. Supreme Court's decision in *Bostock* confirmed that "[i]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." *Bostock v. Clayton County*, 590 U.S. 644, 660 (2020). The Court reasoned that an adverse action against an employee for being LGBTQ+ is necessarily based on "traits or actions it would not have questioned" in a person of a different sex identified at birth. *Id.* at 651–52. Federal courts have applied that reasoning to Title IX's materially identical prohibition on sex discrimination, including in K-12 schools. *See Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 617 (4th Cir. 2020) (access to facilities); *A.C. ex rel. M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 770–

71 (7th Cir. 2023) (access to facilities); *Grabowski v. Ariz. Bd. of Regents*, 69 F.4th 1110, 1116–18 (9th Cir. 2023) (harassment based on perceived sexual orientation). *West Virginia v. B.P.J.* does not hold otherwise: the Court limited its holding to "eligibility for women's and girls' sports based on biological sex," 609 U.S. 958, 968 & n.1 (2026); *see id.* at 973–76 (relying on a provision of Title IX known as the Javits Amendment authorizing sex separation in sports).

The U.S. Department of Education has likewise recognized that Title IX protects LGBTQ+ students from sexual harassment, including harassment rooted in sex stereotypes. In the preamble to the 2020 Title IX regulations, the Department stated that it "will not tolerate sexual harassment . . . against any student, including LGBTQ students." 85 Fed. Reg. 30,026, 30,031, 30,179 (May 19, 2020). The Department explained that prohibited harassment "may consist of unwelcome conduct based on sex or sex stereotyping," *id.* at 30,179, and that "any individual—irrespective of sexual orientation or gender identity" may experience it, *id.* at 30,177–78. It also made clear that the regulations' silence on the word "transgender" does "not, in any way, indicate that a student's gender identity would cause them not to be protected from sex discrimination under Title IX." *Id.* at 30,551. The Department recently re-codified the 2020 regulations without disavowing that interpretation of the regulations in the preamble. 91 Fed. Reg. 61,308 (Sept. 29, 2026).

When the LGBTQ+ Reg. prohibits discrimination and harassment based on sexual orientation, gender identity, gender expression, or other forms of sex stereotyping in schools, it prohibits conduct federal courts and the U.S. Department of Education have recognized as sex discrimination.

3. Neither Title IX nor the Executive Order Preempts the Regulation.

The Supreme Court declined to hold that Title IX *prohibits* states from protecting transgender students, even when ruling that states do not violate Title IX when they limit opportunities for transgender students in school sports. *B.P.J.*, 609 U.S. at 968 & n.1. And as the Superior Court held, the January 2025 Executive Order 14168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8615 (Jan. 20, 2025), "does not create new laws that bind the states or their agencies," and "[a]n executive order cannot 'preempt' a validly enacted state law." Hr'g Tr. 18–19 (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) ("The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.")); *see Female Athletes United v. Ellison*, 172 F.4th 1019, 1029 (8th Cir. 2026) ("[E]xecutive guidance and agency findings, in and of themselves, do not reflect settled law."). States remain free to protect transgender students, as the Commissioner has done here.

Nor does Title IX's liability standard stand in the way. Title IX makes a school district liable for student-on-student harassment only after the fact, where the district knew of harassment "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit" and responded with deliberate indifference. *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 633, 650 (1999). Requiring schools to adopt policies that prevent such harassment from occurring in the first place does not conflict with that standard.

C. LGBTQ+ Students' Experiences Demonstrate the Need for the LGBTQ+ Reg.

Rhode Island's own public health data confirm the need the LGBTQ+ Reg. addresses: LGBTQ+ students face rejection, bullying, and discrimination at rates that endanger their health and impede their education. In the Rhode Island Department of Health's 2023 Youth Risk Behavior Survey, more than one in five high school students (22.2%) reported having been treated badly or unfairly because they are, or are perceived to be, lesbian, gay, bisexual, transgender, or questioning—including because they express their gender differently from what others expect. R.I. Dep't of Health ("RIDOH"), *2023 Youth Risk Behavior Survey Results: Rhode Island High School Survey, Summary Tables—Weighted Data* 81

(2023) (QN96).[3] In the same survey, 3.8% of Rhode Island high school students identified as transgender. RIDOH, *2023 Youth Risk Behavior Survey Results: Rhode Island High School Survey, Detail Tables—Weighted Data* 130 (2023) (Q65).

RIDOH's analysis of the pooled 2021 and 2023 surveys estimates that roughly 1,500 Rhode Island high school students identify as transgender, and it documents the conditions those students face in sobering terms. RIDOH, *Health and Safety of Transgender High School Students in Rhode Island* 2 (Data Brief, Apr. 2024), https://health.ri.gov/sites/g/files/xkgbur1006/files/2025-02/GenderIdentityYRBS-DataBrief-4.9.24.pdf (last visited Nov. 19, 2026) [hereinafter RIDOH Transgender Data Brief]. Transgender students were more than twice as likely as their non-transgender classmates to report persistent sadness or hopelessness that stopped them from doing their usual activities (71% versus 35%), and four to five times as likely to report seriously considering suicide (56% versus 14%) or attempting suicide (36% versus 8%) in the prior year. *Id.* at 3. The Department of Health did not attribute these outcomes to gender identity itself; it found that transgender youths' "heightened risks are the result of experiencing rejection, bullying, discrimination, lack of family support, and violence at higher rates than their cisgender peers." *Id.* at 1.

[3] Hard copies of any of the articles and studies cited in this brief that are not publicly available have been provided in the Appendix to this Amicus Brief.

According to the same survey data, transgender students in the State were three times as likely as non-transgender students to have missed school in the prior month because they felt unsafe at school or on the way there (29% versus 9%), and roughly three times as likely to have been bullied in person (38% versus 12%) or online (42% versus 12%). RIDOH Transgender Data Brief, *supra*, at 3. They were also less likely to report earning mostly As and Bs (67% versus 76%). *Id.*

Lesbian, gay, and bisexual students report similar patterns: in 2019, 18% of LGB students, compared with 7% of heterosexual students, stayed home from school because they felt unsafe, R.I. State Epidemiological Outcomes Workgroup, *Adversity and Mental Health of Sexual & Gender Minorities in Rhode Island* 2 (May 2022), and in 2023 LGB high school students remained more than twice as likely as their heterosexual peers to be bullied on school property (30.1% versus 12.5%), RIDOH, *Maternal and Child Health Annual Report to the Legislature* 19 (2026), https://health.ri.gov/sites/g/files/xkgbur1006/files/2026-05/RIDOH-MCH-Report-2025.pdf (last visited Nov. 19, 2026). These disparities predate the LGBTQ+ Reg.: in 2017, the year before it took effect, 54.5% of LGB high school students reported feeling so sad or hopeless that they stopped doing some usual activities, compared with 25.5% of their heterosexual peers. RIDOH, *2017 Youth Risk Behavior Survey Results* 8 (2017).

The remedies RIDOH identified track the subjects the LGBTQ+ Reg. requires districts to address. The Department recommended programs "that prevent

bullying, specifically bullying on the basis of gender identity and sexual orientation," and reported that "[g]ender affirmation (e.g., name changing) and having a supportive environment at home and school" have been found "significantly protective against discrimination, suicidal ideation, and suicide attempts." RIDOH Transgender Data Brief, *supra*, at 5.

National survey data point the same way. Among LGBTQ+ young people enrolled in school, 32% reported being verbally harassed at school because people thought they were LGBTQ+. The Trevor Project, *2024 U.S. National Survey on the Mental Health of LGBTQ+ Young People* 12 (2024). Conversely, transgender and nonbinary young people who found their school to be gender-affirming reported lower rates of attempted suicide than those who did not (14% versus 18%). *Id.* at 24.

The Commissioner who presented the LGBTQ+ Reg. understood it in exactly those terms. Responding to public comment on the draft, then-Commissioner Wagner explained, as recorded in the Council's minutes, that the Council "was not part of a process to introduce a new set of issues around supporting the needs of transgender, gender-nonconforming students; rather, that decision was made many years ago by the General Assembly," and that RIDE and the Council had acted only to give school districts direction on "how to implement their statutory requirement to treat transgender and gender-nonconforming

students, consistent with their state-protected civil rights." R.I. Council on Elementary & Secondary Educ., Minutes of the Meeting 3 (Nov. 21, 2017).

Rhode Island's policymakers have recognized that such conditions impair learning and require schools to act. *See* R.I. Gen. Laws § 16-21-40(a) (schools "play a critical role in addressing and mitigating the effects of child trauma" by "embedding policies and practices that foster well-being and resilience"); 200-RICR-20-10-1 § 1.3.3(C)(1) ("Mental and emotional health issues directly impede students' abilities to learn. Such issues include bullying . . . ."); 200-RICR-30-10-2 § 2.1.1 (bullying "undermines the safe learning environment that students need to achieve their full potential"). The LGBTQ+ Reg. is a measured response to that recognized need, and, as Part II explains, it advances the positive school climate that benefits every Rhode Island student.

II. THE LGBTQ+ REG. SUPPORTS STUDENTS AND CONTRIBUTES TO A POSITIVE SCHOOL CLIMATE, WITH EDUCATIONAL AND HEALTH BENEFITS FOR LGBTQ+ AND ALL STUDENTS.

Rhode Island has long required its schools to provide safe, supportive climates for all students, and decades of research confirm why: safety and belonging are preconditions for learning and drive measurable gains in achievement, attendance, and well-being. The LGBTQ+ Reg. ensures that transgender and gender-nonconforming students, who are often denied that safe and supportive environment, have the same access to it as their peers. The evidence

shows that this benefits the entire school community. Each of these considerations confirms that the Superior Court correctly upheld the LGBTQ+ Reg.

A. The LGBTQ+ Reg. Builds on Rhode Island's Longstanding Commitment to Positive School Climate.

1. State Law and Standards Together Build Toward a Positive School Climate Framework.

The LGBTQ+ Reg. is one of many measures adopted over more than a decade by the General Assembly, the Council, and RIDE that, taken together, build toward a positive school climate framework and make a safe and welcoming school climate a legal obligation of every Rhode Island school. The General Assembly has guaranteed every student the right to attend a school "which is safe and secure, and which is conducive to learning." R.I. Gen. Laws § 16-2-17(a). In 2011, it enacted the Safe Schools Act, which defines "bullying" and "cyberbullying" and directs the Department to issue a statewide anti-bullying policy. *Id.* §§ 16-21-33, -34. And in the Trauma-Informed Schools Act, the General Assembly directed the development of resources promoting the understanding that "[s]choolwide learning environments, where all students and adults feel safe, welcomed, and supported, can enable students to succeed despite traumatic experiences." *Id.* § 16-21-40(b)(1)(i)(D). Rhode Island has also long been recognized for its attention to school climate; a 2009 national policy scan found that Rhode Island was the only state department of education that had formally endorsed or mandated use of a research-proven school climate

assessment. Jonathan Cohen et al., *School Climate: Research, Policy, Practice, and Teacher Education*, 111 Teachers College Record 180, 192 (2009) [hereinafter Cohen et al., *School Climate*]. Each of these measures rests on the same premise as the LGBTQ+ Reg.—students cannot learn in schools where they are bullied, excluded, or made to feel unsafe because of who they are.

The Council has built the same premise into the standards every district must meet. In addition to requiring that schools create "a climate of safety, security and belonging for all students and adults," *see* Part I.A, *supra*, the BEP requires each district to "promote a positive climate with emphasis on mutual respect" and to engage students and staff "to assess periodically the school climate and to adopt or develop strategies to improve conditions." 200-RICR-20-10-1 §§ 1.3.2(A), (F)(1)(addressing "positive climate" and "discipline strategies"), (F)(2)(a) (requiring periodic assessment of school climate and strategies to improve conditions). The Council has endorsed statewide Social and Emotional Learning Standards, R.I. Dep't of Educ., *Social & Emotional Learning (SEL)*, https://ride.ri.gov/students-families/health-safety/social-emotional-learning (last visited Nov. 19, 2026), and the Department publishes, alongside each school's accountability data, results from SurveyWorks, "Rhode Island's school culture and climate survey," so that families can see "the types of school cultures [schools] are fostering." R.I. Dep't of Educ., *Rhode Island School Accountability & Report Cards: Frequently Asked Questions* 2 (Dec. 2018) [hereinafter RIDE

Accountability FAQ]. By requiring every district to adopt a policy addressing the safety and inclusion of transgender and gender-nonconforming students, the LGBTQ+ Reg. ensures that these students, too, are fully included in this framework.

Rhode Island actions are in step with a broad national consensus. States nationwide have overwhelmingly passed laws, regulations, or policies to promote positive school climates. Many treat climate as an enforceable, measurable obligation, building it into accreditation standards, accountability ratings, school improvement plans, and statewide climate surveys, akin in part to Rhode Island's efforts through the BEP and SurveyWorks. *See, e.g.*, Ala. Code § 16-28B-6 (enacted 2009); Ark. Code Ann. § 6-15-1005(b) (enacted 1991); Cal. Educ. Code § 233(a) (as amended 2000); *id.* § 52060(d)(6) (as amended 2019); D.C. Code § 38-236.06 (enacted 2018); Ga. Code Ann. § 20-14-33(c) (as amended 2024); *id.* § 20-2-155; 105 Ill. Comp. Stat. 5/2-3.153 (enacted 2011); *id.* 5/2-3.181 (enacted 2019); Me. Rev. Stat. Ann. tit. 20-A, § 4511(3)(F) (enacted 1987); N.J. Stat. Ann. § 18A:37-21 (enacted 2010); Nev. Rev. Stat. § 385A.650(2), (5) (as amended 2025); Tex. Educ. Code Ann. § 37.0832(c-1)(1) (subsection added 2017); Va. Code Ann. § 22.1-279.8(B) (enacted 1997).

2. The Federal Government Supports Positive School Climate Practices.

This consensus on the importance of positive school climates is reflected in decades of bipartisan federal policy. Federal support dates back to the Safe and Drug-Free Schools and Communities Act, first enacted in 1986 and reauthorized under Presidents George H.W. Bush and George W. Bush, which provided dedicated funding for school safety and violence prevention programs. *See* Pub. L. No. 99-570, Title IV, § 4101 *et seq.* (1986); Pub. L. No. 107-110, Title IV, Part A (2002). The No Child Left Behind Act of 2001, signed by President George W. Bush, continued this commitment by requiring states to report on school safety and authorizing funding for safe schools initiatives. *See* Pub. L. No. 107-110, § 4112 (2002). Today, the Every Student Succeeds Act (ESSA) directs schools to monitor and improve "school conditions for student learning." 20 U.S.C. § 6312(b)(1)(D). ESSA requires each state's accountability system to include at least one nonacademic indicator of school quality or student success, which many states have implemented as school climate and safety measures to protect students from incidents of violence, including bullying and harassment. *Id.* § 6311(c)(4)(B)(v). Rhode Island's accountability system, for example, measures student absenteeism and suspension rates alongside achievement and growth. RIDE Accountability FAQ, *supra*, at 1–2. By incorporating school climate measurement into accountability frameworks, Congress recognized that schools cannot be evaluated

on test scores alone; the conditions under which students learn matter independently and predictively.

This nearly four-decade commitment continues today through multiple Congressionally appropriated federal funding streams. The Student Support and Academic Enrichment (SSAE) grant program, authorized under ESSA, provides dedicated federal funding to improve school conditions for learning. *See* ESSA, Pub. L. No. 114-95, Title IV, Part A. The program authorizes grants for activities including evidence-based programs to prevent bullying and harassment and school climate improvement initiatives. Additional federal programs reinforce this commitment. For example: Title II, Part A (Supporting Effective Instruction) funds professional development for educators, including on creating safe and supportive learning environments; 21st Century Community Learning Centers (Title IV, Part B) support before- and after-school programs that provide safe, supervised environments; and Project SERV (School Emergency Response to Violence) helps schools recover from traumatic events and restore safe learning environments. That sustained state and federal commitment reflects what the research, discussed next, consistently shows.

B. Research Confirms that Safety and Belonging Are Preconditions for Learning and Drive Student Outcomes.

A positive school climate in which all people are welcomed, supported, and feel safe—socially, emotionally, intellectually, and physically—is critical for

student learning. *See* Jonathan Cohen, *School Climate and Culture Improvement: A Prosocial Strategy that Recognizes, Educates, and Supports the Whole Child and the Whole School Community*, in 1 Handbook of Prosocial Education ch. 9 (Philip M. Brown, Michael W. Corrigan & Ann Higgins-D'Alessandro eds., 2012). School policies that support students and create a positive school climate span four dimensions: (1) safety; (2) teaching and learning; (3) interpersonal relationships, including respect for students regardless of identity; and (4) the institutional environment, including student engagement with schooling. *See* Cohen et al., *School Climate*, *supra*, at 182–84; Amrit Thapa et al., *A Review of School Climate Research*, 83 Rev. Educ. Rsch. 357, 358, 367 (2013) (also identifying the school improvement process as a fifth dimension); Ming-Te Wang & Jessica L. Degol, *School Climate: A Review of the Construct, Measurement, and Impact on Student Outcomes*, 28 Educ. Psych. Rev. 315, 322–25 (2016) (describing academic, community, safety, and institutional-environment domains).

Safety is the foundational first dimension. Without safety, students are anxious and fearful, which inhibits cognitive capacity and learning. *See* Linda Darling-Hammond & Channa M. Cook-Harvey, *Educating the Whole Child: Improving School Climate to Support Student Success* 15 (Learning Pol'y Inst. Sept. 2018), https://learningpolicyinstitute.org/product/educating-whole-child (last visited Nov. 19, 2026) [hereinafter Darling-Hammond & Cook-Harvey, *Educating the Whole Child*]. In a school context, safety is not only physical but also includes

emotional support, and it involves an absence of verbal abuse, teasing, harassment, and exclusion, which then allows a student to engage in learning, take intellectual risks, and navigate challenges. *See* Wang & Degol, *supra*, at 324 (safety encompasses "physical and emotional security"); Darling-Hammond & Cook-Harvey, *Educating the Whole Child*, *supra*, at 12 (social-emotional security means students "feel safe from verbal abuse, teasing, and exclusion"); Emily Germain & Sarah Klevan, *Developing a Healthy School Climate in Community Schools* 7 (Learning Pol'y Inst. Aug. 2025) ("Promoting social, emotional, physical, and intellectual safety can have a protective effect against the impacts of stress and adversity and allow students to take risks, explore their sense of self, and navigate challenging experiences."). Common sense predicts, and research shows, that when students experience a sense of safety and belonging at school, they can learn. *See* Darling-Hammond & Cook-Harvey, *Educating the Whole Child*, *supra*, at 11. In short, "[f]eeling safe in school powerfully promotes student learning and healthy development." Thapa et al., *supra*, at 360.

Discrimination, harassment, and other victimization of students because of the student's personal characteristics—including sexual orientation, race, gender, ethnicity, religion, and disability—negatively affect students. These harms include poorer mental health, increased substance use, and higher absenteeism compared to other forms of mistreatment. *See* Michelle Birkett, Dorothy L. Espelage & Brian Koenig, *LGB and Questioning Students in Schools: The Moderating Effects of*

Homophobic Bullying and School Climate on Negative Outcomes, 38 J. Youth & Adolescence 989 (2009); Daniel E. Bontempo & Anthony R. D'Augelli, *Effects of At-School Victimization and Sexual Orientation on Lesbian, Gay, or Bisexual Youths' Health Risk Behavior*, 30 J. Adolescent Health 364, 364 (2002). The broader research literature on school bullying, across methodologies, likewise documents these harms. *E.g.*, Riley J. Steiner & Catherine N. Rasberry, *Brief Report: Associations Between In-Person and Electronic Bullying Victimization and Missing School Because of Safety Concerns Among U.S. High School Students*, 43 J. Adolescence 1, 1–2 (2015) (in nationally representative sample, 15.5% of bullied students missed school because of safety concerns, compared with 4.1% of students who were not bullied); Rebecca A. Vidourek, Keith A. King & Ashley L. Merianos, *School Bullying and Student Trauma: Fear and Avoidance Associated with Victimization*, 44 J. Prevention & Intervention Cmty. 121, 125–26 (2016) (bullied students were approximately six times more likely to report fear at school and school avoidance).

These harms extend to academic achievement: a 2024 meta-analysis of 793 independent findings, drawn from international assessment data covering more than 3.5 million students in 77 countries, found that peer bullying has a significant negative effect on students' academic achievement. Gulnar Ozyildirim & Engin Karadağ, *The Effect of Peer Bullying on Academic Achievement: A Meta-Analysis Study Related to Results of TIMSS and PIRLS*, Psych. in the Schs. 1, 12 (2024). On

the other hand, students who perceive their schools as safe are less likely to be victimized. *See* Wang & Degol, *supra*, at 330 (students who perceived greater safety issues at school were more likely to be victimized, while those in schools with consistent discipline and social support experienced less bullying and victimization); *see also* Matthew A. Kraft & Grace T. Falken, *Why School Climate Matters for Teachers and Students*, 20 State Educ. Standard 33, 34 (May 2020) ("A safe environment enables students and teachers to focus on learning . . . ."). As Part II.D shows, policies that expressly protect LGBTQ+ students produce the same effect, and their protective benefits extend to all students.

The importance of a safe and supportive school climate is long established. "Educators have recognized the importance of school climate for 100 years," Cohen et al., *School Climate*, *supra*, at 181–83, and research has shown that education leaders increasingly focus on positive school climate as a "scientifically sound, data driven" school improvement strategy. Jonathan Cohen & Amrit Thapa, *School Climate Improvement: What Do U.S. Educators Believe, Need and Want?*, 2 Int'l J. on Sch. Climate & Violence Prevention 90, 92 (2017). The National School Climate Center ("NSCC") similarly identifies safety from physical violence, verbal abuse, harassment, and teasing, including clear rules that are broadly communicated and equitably enforced as a core domain of school climate. It also identifies teaching that supports academic achievement, critical thinking, and responsible citizenship; along with mutual respect and supportive, trusting

teacher and peer relationships as core domains of school climate. NSCC, *What Is School Climate and Why Does It Matter?*, https://schoolclimate.org/school-climate/ (last visited Nov. 15, 2026).

These conclusions align with the science of learning and development, which confirms that relationships and context are primary determinants of how students learn. *See* Darling-Hammond & Cook-Harvey, *Educating the Whole Child*, *supra*, at 5. A school climate that cultivates strong, trusting relationships among students, teachers, and families and that reflects coherence between classroom practices and schoolwide norms improves attention, motivation, and cognitive capacity, particularly for students facing stressors outside school. *Id.* at 9–10, 19. In short, all students learn more, attend more, and engage more deeply when they feel respected and safe from bullying and harassment. *See* Stephen T. Russell et al., *Promoting School Safety for LGBTQ and All Students*, 8 Pol'y Insights from Behav. & Brain Sci. 160, 161-62 (2021); Darling-Hammond & Cook-Harvey, *Educating the Whole Child*, *supra*, at 11, 15.

The inverse is also true: when schools fail to protect certain students from harassment and discrimination, the harm can reach students who witness such incidents. One study of more than 2,000 students ages 12 to 16 found that those who witnessed bullying reported more feelings of depression, anxiety, and hostility, over and above the risks associated with being a perpetrator or victim, and regardless of whether the witnesses had themselves been victimized. *See* Ian

Rivers et al., *Observing Bullying at School: The Mental Health Implications of Witness Status*, 24 Sch. Psych. Q. 211, 211, 218 (2009); *see also* Thapa et al., *supra*, at 361. A review of six decades of school climate research reports that positive school climate plays a critical role in combating bullying and cyberbullying, enhancing students' psychosocial well-being, and strengthening students' sense of school attachment, and that school climate intervention programs to improve school climate are particularly important in disadvantaged schools. Muammer Maral, *Sixty Years of School Climate Research: A Bibliometric and Content Analysis*, 63 Psych. in the Schs. 824, 842 (2026).

C. Decades of Research Confirm that Positive School Climate Improves Student Outcomes.

Nearly 60 years of school climate research—spanning over 2,900 publications—have linked a positive school climate to improved academic achievement, fewer behavioral problems, higher attendance, better graduation rates, and stronger student well-being. *E.g.*, Maral, *supra*, at 824, 840 (synthesizing six decades of school climate research and concluding that positive school climate significantly contributes to students' academic, social, and emotional development); Darling-Hammond & Cook-Harvey, *Educating the Whole Child*, *supra*, at vii, 13–14 (noting that two recent reviews of over 400 research studies concluded that a positive school climate improves academic achievement overall); Linda Darling-Hammond & Jennifer DePaoli, *Why School Climate Matters and*

What Can Be Done to Improve It, 20 State Educ. Standard 6, 7 (May 2020) (a positive school climate "improves academic achievement, test scores, grades, and engagement and helps reduce the negative effects of poverty on academic achievement").

In short, positive school climates are associated with concrete and measurable gains in academic performance for students across achievement levels. *See, e.g.,* Cahit Erdem & Metin Kaya, *The Relationship Between School and Classroom Climate, and Academic Achievement: A Meta-Analysis*, 45 Sch. Psych. Int'l 380, 391, 397 (2024) (meta-analysis of 37 studies covering 208,043 students and 1,403 schools finding a statistically significant, positive relationship between school climate and academic achievement). For example, a multi-year longitudinal study of more than 2,600 West Virginia students followed from middle school into high school found that more positive perceptions of school climate were associated with sustained performance among students earning As and Bs and with improved grades among students earning Cs, Ds, and Fs. Shay M. Daily et al., *School Climate as an Intervention to Reduce Academic Failure and Educate the Whole Child: A Longitudinal Study*, 90 J. Sch. Health 182, 182, 187–88 (2020); *see also* Angus J. MacNeil, Doris L. Prater & Steve Busch, *The Effects of School Culture and Climate on Student Achievement*, 12 Int'l J. Leadership Educ. 73, 80–81 (2009) (concluding that Texas schools with an Exemplary rating possessed significantly healthier climates than those rated merely Acceptable). Additionally,

a comprehensive review of 78 studies found that positive school climate not only contributes to higher academic achievement, but that it also can mitigate the negative impact of low socioeconomic background on academic achievement. Ruth Berkowitz et al., *A Research Synthesis of the Associations Between Socioeconomic Background, Inequality, School Climate, and Academic Achievement*, 87 Rev. Educ. Rsch. 425, 452–53, 457 (2017).

These findings are consistent with a large body of evidence showing that climate is a modifiable, schoolwide condition that supports both high achievers and students who are at risk of falling behind. *E.g.*, Wang & Degol, *supra*, at 343 (school climate is "malleable" and "a potentially promising target for intervention"); Germain & Klevan, *supra*, at 5 (healthy school climates "can mitigate the negative effects of adverse childhood experiences"). Importantly, these associations persist even after accounting for students' backgrounds, suggesting that schools can improve outcomes by fostering a positive climate. *See* Tim Konold et al., *School Climate, Student Engagement, and Academic Achievement: A Latent Variable, Multilevel Multi-Informant Examination*, 4 AERA Open 1, 1, 12 (2018) (statewide study of 60,441 students and 11,442 teachers in 298 Virginia high schools finding that, even after controlling for demographic variables such as income, race, and school location, schools with higher levels of structure and support had higher student engagement, and that structure and engagement were associated with higher academic achievement).

The benefits extend beyond grades. Positive school climates are associated with lower absenteeism, fewer suspensions, higher graduation rates, and stronger performance on standardized tests. *See, e.g.*, Thapa et al., *supra*, at 359–60 (collecting studies linking positive school climate to decreased absenteeism, lower suspension rates, and higher graduation rates); Konold et al., *supra*, at 10 (authoritative school climate associated, through student engagement, with school-level academic achievement measured by graduation rates and state standardized test performance); *see also* NSCC, *What Is School Climate and Why Does It Matter?*, *supra* (research "demonstrates that positive school climate is associated with stronger academic outcomes, increased student engagement, improved well-being, reduced bullying and disciplinary issues, and stronger relationships between students and educators").

A longitudinal study of middle school students reinforces the connection between positive school climate and overall student success. The study found that students' perceptions of their school environment in seventh grade predicted their behavioral, emotional, and cognitive engagement in school in eighth grade. Ming-Te Wang & Rebecca Holcombe, *Adolescents' Perceptions of School Environment, Engagement, and Academic Achievement in Middle School*, 47 Am. Educ. Rsch. J. 633, 633 (2010). Those perceptions, in turn, positively influenced students' eighth-grade academic achievement, both directly and through their engagement. *Id.*

Those outcomes depend on the conditions described in Part II.B: safety, belonging, and fair, consistently enforced rules. Rhode Island's school climate policy is designed to secure those conditions for every student. As the next Part shows, the LGBTQ+ Reg.'s protections are how those conditions reach transgender, gender-nonconforming and lesbian, gay and bisexual students, and how schools realize the benefits for the entire student body.

D. The LGBTQ+ Reg.'s Requirement for Local Schools to Promulgate Policies Expressly Prohibiting Discrimination Against LGBTQ+ Students Addresses the Challenges Faced by LGBTQ+ Students, Supports Their Belonging in the School Community, and Benefits All Students.

1. LGBTQ+ Students Benefit From Policies Geared to Student Safety and Belonging.

As Part I.C shows, Rhode Island's LGBTQ+ students face challenges in their school environments that are correlated with mental and behavioral health risks. The LGBTQ+ Reg. responds to those challenges by requiring local policies that expressly prohibit discrimination and harassment against these students, and the research supports that approach. Anti-LGBTQ+ harassment harms both the students it targets and their peers. When implemented well, policies enumerating the characteristics that call forth discrimination and harassment reduce that harassment, change how adults and students behave, and benefit the entire school community.

The harassment experienced by Rhode Island's LGBTQ+ students carries consequences that extend well beyond the moment it occurs, and well beyond the

students it targets. Students who experience more frequent harassment based on their personal characteristics have significantly lower grade point averages, are nearly twice as likely to have been disciplined at school, and are more likely to miss school because they feel unsafe or uncomfortable. *See* Joseph G. Kosciw et al., *The 2019 National School Climate Survey* xx–xxi, 48–51 (GLSEN 2020) [hereinafter Kosciw et al., *2019 National School Climate Survey*].

Anti-LGBTQ+ harassment does not harm only LGBTQ+ students. In population-based survey data on heterosexual high school students, those who had been teased or called names because someone thought they were gay, lesbian, or bisexual had roughly three times the odds of reporting persistent sadness or hopelessness, considering suicide, planning suicide, and attempting suicide, even after accounting for the effects of general bullying. Mike C. Parent et al., *Homophobic Bullying and Suicidal Behavior Among US Heterosexual Youth*, 59 J. Am. Acad. Child & Adolescent Psychiatry 205, 205–06 (2020). Anti-LGBTQ+ epithets are a common way of policing students who do not match expectations about how boys and girls should look or act, and they inflict real harm on whoever receives them. *See* Caroline B. R. Evans & Mimi V. Chapman, *Bullied Youth: The Impact of Bullying Through Lesbian, Gay, and Bisexual Name Calling*, 84 Am. J. Orthopsychiatry 644, 645, 648 (2014) (finding that students bullied by being called gay, lesbian, or queer were at high risk of experiencing all forms of bullying, and describing prior research finding that high school boys bullied by use of "gay" as a

verbal epithet reported worse psychological outcomes, including increased rates of depression and anxiety, than boys bullied in other ways).

The Commissioner, viewing the big picture of student experience and the mandate of equal educational opportunity, *see* 200-RICR-20-10-1 § 1.1.1(B)–(C), rightly specified that non-discrimination on the basis of sex, gender, sexual orientation, gender identity, and gender expression is a required element of local school policies. Enumeration is an essential device to communicate the position of the State and of local schools that discrimination on these bases is prohibited. That specificity provides students, their peers, and the adults at school with a clear understanding both that students have the right to be free from discrimination and that LGBTQ+ students, often forgotten, must be integrated into school life as others are. *See* Russell et al., *Promoting School Safety*, *supra*, at 161 (enumerated policies "signal to school communities that LGBTQ-based discrimination will not be tolerated, and provide students with a clear understanding of their rights to safety at school"); Kosciw et al., *2019 National School Climate Survey*, *supra*, at 79–81.

As the National Academies concluded, "[t]here is now clear evidence that state and local K-12 education policies that are inclusive of [LGBTQ+] students—that enumerate status characteristics—provide a context for positive school climate and student well-being and success." Nat'l Acads. of Scis., Eng'g & Med., *Understanding the Well-Being of LGBTQI+ Populations* 236 (2020) [hereinafter

National Academies]. Where such policies are in place, LGBTQ+ students describe their schools as safer, hear less anti-LGBTQ+ language, and are less often the targets of bias-based bullying. *Id.* at 237–38; Ryan M. Kull et al., *Effectiveness of School District Antibullying Policies in Improving LGBT Youths' School Climate*, 3 Psych. Sexual Orientation & Gender Diversity 407, 407, 411 (2016). The gains reach attendance and health as well, as these students miss less school and show lower rates of mental health problems, suicide risk, and substance use. *See* National Academies, *supra*, at 237; Landon B. Krantz et al., *The Impact of Statewide Enumerated Antibullying Laws and Local School Interventions on School Spaces, Physical Harm, and Suicide Attempts for LGBTQ Youth*, 11 LGBT Health 531, 531 (2024); Mark L. Hatzenbuehler & Katherine M. Keyes, *Inclusive Anti-Bullying Policies and Reduced Risk of Suicide Attempts in Lesbian and Gay Youth*, 53 J. Adolescent Health S21, S21 (2013); Chiaki Konishi et al., *Population-Level Evaluation of School-Based Interventions to Prevent Problem Substance Use Among Gay, Lesbian and Bisexual Adolescents in Canada*, 57 Preventive Med. 929, 929 (2013).

Transgender students, who are victimized at higher rates than other LGBQ+ students, stand to benefit in particular. *See* Kosciw et al., *2019 National School Climate Survey*, *supra*, at 94–95. Research that examined transgender students separately has found that LGBT-related school resources are associated with fewer missed school days for these students, and that the association between enumerated

policies and lower absenteeism was even stronger for transgender students than for their cisgender LGB peers. *See* Emily A. Greytak, Joseph G. Kosciw & Madelyn J. Boesen, *Putting the "T" in "Resource": The Benefits of LGBT-Related School Resources for Transgender Youth*, 10 J. LGBT Youth 45, 45, 55–58 (2013).

Enumerated policies also change how adults in the building behave. They give educators and administrators concrete direction, providing them "with implementation guidance for anti-bullying policies and practices." Russell et al., *Promoting School Safety*, *supra*, at 161. Teachers working in schools with enumerated policies describe themselves as more supportive of LGBTQ+ students, and LGBTQ+ students in schools with comprehensive policies report that staff step in more often when anti-LGBTQ+ remarks are made. *See* Katie Swanson & Maribeth Gettinger, *Teachers' Knowledge, Attitudes, and Supportive Behaviors Toward LGBT Students: Relationship to Gay-Straight Alliances, Antibullying Policy, and Teacher Training*, 13 J. LGBT Youth 326, 326, 338, 341–42 (2016); Kosciw et al., *2019 National School Climate Survey*, *supra*, at 79–81. Peer conduct shifts too: students in these schools hear fewer anti-LGBTQ+ remarks, and heterosexual students in a school with a full set of LGBTQ+-supportive practices, including an enumerated policy, expressed more tolerant attitudes toward gay and lesbian peers than students in a school without them. *See* Kosciw et al., *2019 National School Climate Survey*, *supra*, at 79–81; Stacey S. Horn & Laura A. Szalacha, *School Differences in Heterosexual Students' Attitudes About*

Homosexuality and Prejudice Based on Sexual Orientation, 3 Eur. J. Dev. Sci. 64, 64, 74–75 (2009). Enumeration thus does not merely respond to bias after it occurs; it is associated with school environments in which that bias is less prevalent in the first place.

2. Benefits for All Students.

The policies and practices addressed above benefit students generally, not only LGBTQ+ students. A statewide study of more than 31,000 Minnesota students combined student survey data with school administrator reports on six LGBTQ+-supportive practices: having a designated point person for LGBTQ+ student issues, displaying sexual orientation-related content, having a gay-straight alliance, discussing sexual orientation-based bullying with students, and providing two types of professional development for staff (one on LGBTQ+ student issues and one on LGBTQ+ inclusion in curriculum and school climate). *See* Amy L. Gower et al., *School Practices to Foster LGBT-Supportive Climate: Associations with Adolescent Bullying Involvement*, 19 Prevention Sci. 813, 813, 815–16 (2018). Students attending schools with more of these practices reported significantly lower odds of relational bullying victimization, physical bullying perpetration, and sexual orientation-based harassment than students in schools with fewer practices; in schools using four to six practices, the odds were roughly 22% to 28% lower than in schools using zero or one. *Id.* at 817–19. And sexual orientation did not moderate these associations, meaning that non-LGBT students experienced similar

protective benefits. *Id*. A separate study of New Mexico high schools found that one such practice in particular—an active gay-straight alliance—was associated with reduced odds of forced sex among all students, including heterosexual cisgender students, and with reduced dating violence among LGB students. *See* Theresa H. Cruz et al., *Effects of School Policies and Programs on Violence Among All High School Students and Sexual and Gender Minority Students*, 93 J. Sch. Health 679, 685–86 (2023).

Just as supportive practices protect all students, adult inaction harms them. When adults' responsibilities are unclear, or when adults ignore reports of harassment or stand by while discriminatory bullying occurs, students—whether LGBTQ+ or not—tend to read that inaction as a sign that the adults either do not care or cannot keep them safe. *See* Silvia Edling et al., *"Keeping an Eye Out": Students' Experiences of School Personnel's Noticing in Shaping or Hindering a Positive School Climate*, 14 Soc. Scis. art. 254, at 4, 9–10, 12–13 (2025); *see also* Thapa et al., *supra*, at 362. That inaction undermines student safety and tells every student that they, too, are vulnerable should they be "different" in a way that others find unacceptable.

3. Administration and Rescission of Positive School Climate Policies.

The benefits of enumerated policies, however, depend on implementation. A national study of more than 8,300 LGBTQ+ adolescents surveyed in 2022 found

that protective state policies were associated with better mental health through school-level experiences—more inclusive school practices, greater safety, less bias-based bullying, and less peer victimization—and its authors stressed that a policy "must be accompanied by strategic implementation and enforcement so that these policies create change in school strategies and climate." Samantha A. Moran et al., *LGBTQ+ Youth Policy and Mental Health: Indirect Effects Through School Experiences*, 35 J. Rsch. on Adolescence e13052, at 1, 7–8 (2025). That is precisely what the LGBTQ+ Reg. supplies: it requires every district to adopt a policy, to address specific practices, and to inform "all members of the school community" about it. 200-RICR-30-10-1 §§ 1.3(A)–(B).

For the same reason, rescinding or declining to enforce these protections would put these gains at risk. Adolescence is a period in which students are actively forming their sense of self, their independence, and their place within a community, and school is one of the primary settings where that development happens. Policies that strip away supportive structures do not simply remove a benefit; they can disrupt identity, autonomy, and social development for LGBTQ+ adolescents. *See* Laura Baams, *Sexual and Gender Diversity in Schools: The Impact of Restrictive Education Policies on LGBTQ+ Adolescent Development*, 20 Child Dev. Persp. 75, 75–77 (2026). Without enumerated anti-bullying policies, LGBTQ+ students are more likely to experience victimization and rejection, which can undermine their sense of safety and belonging. *Id.* at 77. And as the studies

discussed above show, victimization and a weak sense of belonging are in turn associated with missed school, lower engagement, poorer mental health, and lower academic achievement.

III. POSITIVE SCHOOL CLIMATE FOSTERS DEMOCRATIC EDUCATION AND RESPECTS EACH STUDENT'S INDIVIDUALITY.

Rhode Island's commitment to safe and inclusive schools serves more than the well-being of individual students. It serves the reason the State maintains public schools at all.

A. The State's Positive Schools Framework Equips Students with Tools to Engage in Democracy.

The Rhode Island Constitution directs the General Assembly to promote public schools because "[t]he diffusion of knowledge, as well as of virtue among the people, [is] essential to the preservation of their rights and liberties." R.I. Const. art. XII, § 1. At the outset of the BEP, the Council explains that it was "intentional in its integration of 21st century student skills and outcomes," such as "the economic, civic, language, cultural, and global competencies" that students in Rhode Island need "to become lifelong learners and global citizens." 200-RICR-20-10-1 § 1.1.2(A)(2). The social studies program in particular is designed to "foster[] life long participation in civic life and social action that leads to effective and productive citizenship in a world that is culturally diverse and interdependent." *Id.* § 1.2.1(F)(1).

Schools cultivate that civic virtue as much through daily life—how students are treated and how they learn to treat one another—as through the curriculum. *See* NSCC, *Definition of School Climate,* https://www.schoolclimate.org/about/our-approach/what-is-school-climate (last visited Nov. 19, 2026) ("A sustainable, positive school climate fosters youth development and learning necessary for a productive, contributive, and satisfying life in a democratic society."). A positive school climate, where students feel safe and that they belong, is the foundation for learning to think critically, solve problems, and collaborate. And students who learn alongside peers from different backgrounds develop stronger critical problem-solving, collaboration, and intergroup relationships. *See* Kia Darling-Hammond & Linda Darling-Hammond with Eliza Byard, *The Civil Rights Road to Deeper Learning* 1, 8–9, 15 (Learning Pol'y Inst., Policy Brief, July 2022), https://doi.org/10.54300/462.143 (last visited Nov. 19, 2026).

The Supreme Court has long recognized the same mission. Education is "the very foundation of good citizenship," *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), and plays a central role "in maintaining our basic institutions," *Plyler v. Doe*, 457 U.S. 202, 221 (1982). Public schools are "at once the symbol of our democracy and the most pervasive means for promoting our common destiny," *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987) (quoting *Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 231 (1948) (opinion of Frankfurter, J.)), and they prepare students "for citizenship in our pluralistic society" by teaching them "to

live in harmony and mutual respect" with classmates of diverse backgrounds, *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 473 (1982) (internal quotation marks omitted). More recently, the Court described America's public schools as "the nurseries of democracy." *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 190 (2021).

The LGBTQ+ Reg. gives that mission practical effect. Schools transmit civic knowledge and inculcate civic virtues: respect for difference, commitment to evidence and reason, willingness to compromise, and fidelity to the common good. Rhode Island's own standards say as much, directing that the State's education system focus on the skills students need "to succeed as lifelong learners, workers, and citizens." 200-RICR-20-10-1 § 1.1.2(B)(1). Those skills are taught as much by the daily norms, relationships, and routines of school as by any textbook. By requiring districts to adopt policies that keep every student safe from discrimination and harassment, the LGBTQ+ Reg. helps ensure that schools model the equal membership and mutual respect that citizenship in a pluralistic society demands, and it translates the civic mission of public education into concrete expectations for how schools operate every day.

That civic mission does not require uniformity; it depends on respect for each student's individuality. The U.S. Supreme Court's foundational education decisions teach that a free society does not standardize its children. In *Meyer v. Nebraska*, the Court struck down a law that interfered "with the opportunities of

pupils to acquire knowledge." 262 U.S. 390, 401 (1923). In *Pierce v. Society of Sisters*, it rejected "any general power of the State to standardize its children," observing that "[t]he child is not the mere creature of the State." 268 U.S. 510, 535 (1925). And in striking down a compulsory flag salute in public schools, the Court declared that "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion," warning that "[c]ompulsory unification of opinion achieves only the unanimity of the graveyard." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641–42 (1943). At the same time, the Court has recognized that schools may "require teaching . . . and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty," *id.* at 631, and must "teach by example the shared values of a civilized social order," *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986). The LGBTQ+ Reg. honors both principles. It compels no student to adopt any belief. Rather, it ensures that every student—including students whose identities or expression do not conform to expectations about sex—can attend school as who they are, free from discrimination and harassment, and it teaches all students, by example, the mutual respect that participation in a "pluralistic, often contentious society" requires. *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 868 (1982) (plurality opinion).

B. The LGBTQ+ Reg. Does Not Infringe on Parental Rights.

Nothing in the LGBTQ+ Reg. infringes the parental rights recognized in *Meyer* and *Pierce*. Those cases protect parents' liberty to "direct the upbringing and education of children under their control," including by choosing a private school rather than a public one. *Pierce*, 268 U.S. at 534–35; *see Meyer*, 262 U.S. at 400–01. At the same time, both decisions expressly preserved the State's authority over the schools themselves. *Pierce* raised no question about "the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils," 268 U.S. at 534, and *Meyer* left unquestioned "[t]he power of the state to compel attendance at some school and to make reasonable regulations for all schools," as well as "the state's power to prescribe a curriculum for institutions which it supports," 262 U.S. at 402.

Operating public schools and shaping the learning environment within them is the work of school officials, not a matter *Meyer* or *Pierce* commits to individual parents. As the First Circuit has explained, "[t]he Supreme Court has never suggested that parents have the right to control a school's curricular or administrative decisions," and "our pluralistic society assigns those curricular and administrative decisions to the expertise of school officials, charged with the responsibility of educating children." *Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 351, 357 (1st Cir. 2025), *cert. denied*, 146 S. Ct 2571 (2026). Applying those principles just weeks after the January 2025 Executive Order 14168 recognizing

only two sexes, the First Circuit held that a school protocol implementing Massachusetts's gender-identity nondiscrimination guidance was rationally related to the legitimate objective of "promoting a safe and inclusive environment for students." *Id.* at 357. The court reasoned that "[b]y cultivating an environment where students may feel safe in expressing their gender identity, the Protocol endeavors to remove psychological barriers for transgender students and equalizes educational opportunities." *Id.* As the court emphasized, parents remain free to guide their children's upbringing "through direct conversations, private educational institutions, religious programming, homeschooling, or other influential tools," but "[p]arents may not invoke the Due Process Clause to create a preferred educational experience for their child in public school." *Id.* at 355, 357. *Mahmoud v. Taylor*, 606 U.S. 522 (2025), which addressed a free exercise challenge to the use of particular storybooks without an opt-out, does not alter this analysis; Plaintiff has asserted no burden on religious exercise.

The LGBTQ+ Reg. thus fits comfortably within both lines of the Court's education precedent: it advances the civic mission the Court has long ascribed to public schools while compelling no student or family to adopt any belief.

CONCLUSION

For the reasons set forth above, the Superior Court's ruling upholding the LGBTQ+ Reg. should be affirmed.

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CERTIFICATE OF SERVICE

I hereby certify that, on November 20, 2026, I caused this document to be electronically filed and served through the electronic filing system.

/s/ Linn F. Freedman
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