

August 28, 2017

(by email and hand delivery)

The Hon. Daniel McConaghy, Chair
RI Council on Elementary and Secondary Education
255 Westminster Street
Providence, RI 02903

Members of the Council on Elementary and Secondary Education
c/o RI Department of Education
255 Westminster Street
Providence, RI 02903

Re: Petition proposing regulations relating to rights and protections for transgender and gender nonconforming students

Dear Chair McConaghy and Members of the Council:

Pursuant to the Administrative Procedures Act, R.I.G.L. §42-35-6, and the Board of Education's Title A Regulations, A-1-23, the undersigned organizations respectfully submit this petition proposing adoption of regulations by the Council on Elementary and Secondary Education, to provide clear standards and protections for transgender and gender nonconforming students in Rhode Island's schools. For a variety of reasons, we believe the adoption of such regulations is critical to ensure a supportive learning environment for transgender and gender nonconforming students, and to prevent discrimination against students on the basis of their sex, gender identity and expression.

This petition offers two alternative versions of a regulation for the Council's consideration and action, one general and one more detailed.

Background

In 2016, the U.S. Departments of Justice and Education sent letters to every public school district in the country, notifying administrators that discrimination against transgender students violates federal civil rights law and clarifying the protections available to them under the law. The letter offered a detailed guidance for educators on addressing the rights of transgender students. Earlier this year, however, in one of his first official acts, President Donald Trump, with support from his Secretary of Education, rescinded that guidance.

In the interim, RIDE proactively prepared and released in June 2016 a detailed model policy on the issue: “Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students.” This thorough and detailed guidance addressed many key issues for providing a supportive environment for these students, with the stated goals of fostering an educational environment free from discrimination; facilitating compliance with federal and state anti-discrimination laws; improving the educational integration of transgender and gender nonconforming students while maintaining their privacy; fostering professional development for school staff; and promoting healthy communications between educators and parents.¹

Among the issues addressed by the Guidance are confidentiality, access to school facilities and participation in school programs, dress codes and transgender students’ choices with regard to names and pronouns. The content of RIDE’s model Guidance is in keeping with the consensus among child health and education experts that transgender students should be treated in accord with their gender identity.²

In February 2017, in the wake of the Trump Administration’s action rescinding federal guidance on the topic, the ACLU of Rhode Island (ACLU) sent Access to Public Records Act (APRA) requests to all school districts in the state, asking them for copies of their policies addressing the rights and protections of transgender students. School districts that did not have a policy were asked to send any documentation they had regarding their discussion of possible implementation of a policy.

RI School District Policies

The ACLU’s open records request revealed that only twenty-one of thirty-three school districts had adopted substantive policies regarding transgender students. Notably, fifteen of the districts with policies adopted the RI Department of Education’s “Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students.” Another six adopted policies and procedures based on the RIDE model Guidance but with various differences. After the APRA request, three more districts advised the ACLU that they had begun working on policies, but even if adopted, *that still*

¹ “Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students,” June 2016, <http://www.thriveri.org/documents/Guidance.for.RhodeIsland.Schools.on.Transgender.and.Gender.Nonconforming.Students-2016.pdf>

² This approach is endorsed by, among others, the National Association of Secondary School Principals, the National Association of Elementary School Principals, the American Academy of Pediatrics, the National Association of School Psychologists, the American School Counselor Association, the National PTA, the National Education Association, the American Federation of Teachers, the American Psychiatric Association, and the American Academy of Family Physicians. See Brief of Amici Curiae American Academy of Pediatrics, American Psychiatric Association, American College of Physicians, and 17 Additional Medical and Mental Health Organizations in support of Respondent, *Gloucester Cty. Sch. Bd. v. G.G. ex rel. Grimm*, Case No. 16-273, U. S. Sup. Ct (filed Mar. 2, 2017); Amici Curiae Brief of National PTA, GLSEN, and Other Education Organizations in Support of Respondent, Case N. 16-273, U.S. Sup. Ct. (filed Feb. 28, 2017).

*leaves more than a quarter of school districts in the state without protective policies for transgender youth.*³

As noted earlier, the RIDE Guidance is thorough and detailed, and though widely used by school districts, it remains just a model. This has led to a situation where too many school districts in the state have no detailed policy at all regarding transgender students. The undersigned organizations believe that this leaves too many students at risk of discrimination – or worse.

Reasons for Adoption of Statewide Regulations

While some of the deficient school districts claim that general anti-discrimination or anti-bullying policies are sufficient, those documents simply do not serve as a substitute for what is needed: a comprehensive policy explaining the rights and accommodations available to transgender and gender nonconforming students. A meaningful policy needs to address, as the RIDE Guidelines do, issues such as confidentiality, privacy and student records, staff training, access to school facilities and participation in school programs, dress codes and transgender students' choices with regard to names and pronouns.

As this list of issues suggests, transgender students often face unique challenges in the school setting. In order to ensure appropriate access to a non-discriminatory environment, these vulnerable young people should not be forced to wait until an incident occurs in order for the appropriate – and necessary – policies to be put in place.

The need for school districts to address the issue proactively is confirmed by studies revealing alarming patterns of mistreatment and discrimination against transgender students as a group. For example, according to a National Transgender Discrimination Survey completed last year by the National Center for Transgender Equality, more than 77% of the respondents reported some form of mistreatment in school, such as being prohibited from dressing consistent with their gender identity, being disciplined more harshly than other students, or being physically or sexually assaulted because of their perceived gender identity or expression. Students in New England were no exception.⁴

³ The ACLU report, which also includes more information about the school districts that did not have comprehensive policies addressing the rights of transgender students, is available here: http://riaclu.org/images/uploads/RIACLU_report_1706TransStudentPolicies.pdf

⁴ James, S. E., et al., Executive Summary of the Report of the 2015 U.S. Transgender Survey, Washington D.C.: National Center for Transgender Equality. New England-specific statistics about the experiences of transgender youth in school are available at https://www.transequality.org/sites/default/files/docs/resources/ntds_regional_new_england.pdf

The RIDE Guidance itself provides compelling statistical information that points towards the need for a regulation to ensure appropriate statewide protections for these students. In its introduction, the Guidance notes:

[O]ver half of gender nonconforming youth reported [in a Human Rights Campaign Foundation survey] that they did not participate in activities offered by the school out of fear of discrimination. Additionally, the Journal of Adolescent Health (2015) reported that transgender youth were more likely to report: being diagnosed with depression compared with students who were not transgender (50.6% vs. 20.6%); suffering from anxiety (26.7% vs. 10%); attempting suicide (17.2% vs. 6.1%); and engaging in self-harm activities with lethal intentions (16.7% vs. 4.4%).⁵

This is nothing new. As far back as 2009 a survey found that over a third of transgender students heard school staff make negative comments about someone's gender expression. In addition, a high incidence of harassment was related to increased absenteeism, decreased educational aspirations, and lower academic performance among transgender students.⁶

The findings from the ACLU report provide other reasons why a statewide regulatory approach is necessary. Some districts, facing community pressure, may not be in a position to adopt the protections required to safeguard the rights of transgender students. Other districts believe that general bans on discrimination are sufficient to address the issue. And others seem to feel it is appropriate to wait until the issue comes to a head to address this topic, a position that puts enormous pressure on the first students who seek protection from discrimination in those districts.

Local control of schools is appropriate for many issues, but this issue calls for state regulation and oversight in order to ensure the educational environment is free from discrimination for all students. Further, we strongly believe a policy addressing this important subject should be generally consistent from district to district to address issues raised by students moving from one municipality to another.

In sum, we believe it is essential that all school districts have in place a comprehensive policy to guarantee the protections and rights of all students. Because more than one third of Rhode Island's school districts have no appropriate policy in place and some of them appear unlikely to adopt one in the near future, we believe the Council must step in and adopt regulations. At this point, especially with the repeal of federal guidance on the subject, it is critical for the Department of Education, through the Council, to take the lead to ensure compliance with the law.⁷

⁵ See fn. 1, supra.

⁶ Greytak, E. A., et al., (2009) Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools. New York: GLSEN.

⁷ The need for Council action has, we believe, become only more urgent with President Trump's decision just this past week to bar transgender individuals from serving in the military. It can't help but promote more discrimination against, and increase the pressure faced by, transgender youth in school and elsewhere.

Proposed Regulations

We offer two alternative regulations for the Council's consideration. The first, and more appropriate and preferable one from our perspective, is an adaptation of RIDE's Guidance, comprehensively addressing the many unique issues pertaining to transgender and gender nonconforming primary and secondary school students. See Proposal 1, attached as Exhibit A. The second proposal, offered in case the Council has a reluctance (unnecessarily, in our view) to "impose" a detailed policy on school districts, instead requires all districts to adopt their own policy, but a comprehensive one that is based largely on RIDE's Guidance. See Proposal 2, attached as Exhibit B.

Today, as the federal government seeks to dismantle the protections afforded to transgender and gender nonconforming students, the Council must show leadership by filling the void and taking action – action that requires school districts to provide clear on-the-ground support that mere statewide model guidance cannot do.

We therefore urge the Council on Elementary and Secondary Education to begin the process of adopting one of these regulations at its next meeting to ensure that all of the state's primary and secondary school students are protected from discrimination. Of course, as the rulemaking process moves forward, the Council and others will have the opportunity to consider additional revisions or amendments to these proposals.

Thank you in advance for your consideration of this petition, and we look forward to a favorable response. For ease of communication, any responses can be sent to Steven Brown at the ACLU of Rhode Island, and they will be shared with the rest of the signatories.

Sincerely,

Steven Brown, Executive Director
American Civil Liberties Union of Rhode Island
128 Dorrance Street, Suite 220 – Providence, RI 02903; sbrown@riaclu.org

Michael Evora, Executive Director
Rhode Island Commission for Human Rights

Stephen Hourahan, Executive Director
AIDS Project Rhode Island

Rev. Dr. Donald Anderson, Executive Minister
Rhode Island State Council of Churches

Janson Wu, Executive Director
GLBTQ Legal Advocates & Defenders (GLAD)

Craig O'Connor, Director of Public Policy and Government Relations
Planned Parenthood of Southern New England

Jodi L. Glass, Au.D., Coordinator
Rhode Island Commission on Prejudice and Bias

Georgia Hollister Isman, State Director
Rhode Island Working Families

Sarath Suong, Executive Director
Providence Youth Student Movement (PrYSM)

Kayla Wingert, Executive Director
The Center for Sexual Pleasure and Health

cc: Commissioner Ken Wagner
Barbara Cottam, Chair, RI Board of Education
Angela Teixeira, Special Assistant to the CESE

Enclosures

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EXHIBIT A

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**PROPOSED REGULATIONS OF THE
COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION
ON TRANSGENDER AND GENDER NONCONFORMING STUDENTS**

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I. PURPOSE

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The purpose of these regulations is to ensure that all school departments in the state of Rhode Island are in full compliance with federal and state laws and guidance governing the rights of transgender and gender nonconforming students, and have appropriate policies in place to address the unique challenges faced by such students.

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All students need a safe, supportive and non-discriminatory school environment to progress academically and developmentally. Through these regulations, the Council is committed to ensuring the presence of such an environment and that all educational professionals and other school staff are supportive role models and strong advocates for the safety and well-being of transgender and gender nonconforming students.

II. DEFINITIONS

1. "Assigned Sex at Birth" means the assignment and classification of people as male, female or intersex or another sex assigned at birth based on physical anatomy at birth and/or karyotyping.

2. "Bullying" means the use by one or more students of (i) a written, verbal, or electronic expression or (ii) a physical act or gesture, or any combination thereof, directed at a student that causes physical or emotional harm to the student or damage to the student's property, places the student in reasonable fear of harm or damage to the student's property, creates an intimidating, threatening, hostile, or abusive educational environment for the student, infringes on the student's right to participate in school activities, or materially and substantially disrupts the education process or the orderly operation of a school as defined and set forth in the Rhode Island Statewide Bullying Policy promulgated pursuant to the authority set forth in §16-24-34 of the General Laws of RI.

3. "Gender Expression" means the manner in which a person represents or expresses their gender to others through behavior, clothing, hairstyle, activities, voice, mannerisms and/or other external means.

4. "Gender" or "Gender Identity" means the innate, largely inflexible, personality characteristic that comprises a person's deeply held sense or

1 psychological knowledge of his or her identity as male, female, a combination of
2 both, or neither.

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4 5. "Gender Nonconforming" refers to a person whose gender expression
5 differs from stereotypical societal expectations, including those who identify as
6 being in neither or both traditional gender categories.

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8 6. "Sexual Orientation" refers to a person's romantic or sexual attraction to
9 people of the same sex, different sex, or any sex.

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11 7. "Transgender" is an umbrella term for people whose gender expression or
12 gender identity differs from that traditionally associated with their assigned sex at
13 birth.

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15 8. "Transition" means the process by which a person modifies their gender
16 expression through any means to more closely align it with their gender identity.

17 18 19 **III. ASSERTION OF GENDER IDENTITY**

20 1. The school and staff shall accept a student's assertion of their gender
21 identity when there is either a consistent and uniform assertion of the student's
22 gender identity or any other evidence that the student's gender identity is sincerely
23 held.¹

24
25 (a) Elementary School Students. If a student, or parent(s) or guardian(s) of a
26 student, asserts a gender identity different from what is reflected in the student's
27 school records, or indicates an intention for the student to transition, the school
28 shall make every effort to work with the student and parent(s) or guardian(s) to put
29 in place measures for supporting the student and creating a safe and non-
30 discriminatory school environment.

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32 (b) Secondary School Students. If a student, or parent(s) or guardian(s) of a
33 student, asserts a gender identity different from what is reflected in the student's
34 school records, or indicates an intention for the student to transition, the school
35 shall make every effort to work with the student. In a situation where a student does
36 not want their parents to know about their transgender status, school
37 administration shall, after further consultation with the student, abide by that
38 decision.

39
40 2. When a student has transitioned, is in the process of transitioning, or has
41 expressed an intent to transition, the school department, to ensure that the school is
42 a supportive and non-discriminatory environment, shall develop a "Gender

¹ There are times when a student may not consistently and uniformly assert their gender identity because of the threat of discrimination or violence.

1 Transition Plan” for the student, which includes and adheres to the protocol
2 established by Section IV of these regulations.
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5 **IV. CREATING SAFE AND SUPPORTIVE SCHOOL ENVIRONMENTS FOR**
6 **TRANSGENDER AND GENDER NONCONFORMING STUDENTS**

7 1. *Privacy*

8 (a) The privacy of any student who has transitioned, is transitioning, or who
9 has indicated an intent to transition, shall be ensured to the extent the student
10 desires. Transgender and gender nonconforming students shall be allowed to
11 discuss and express their gender identity and gender expression openly and decide
12 when, with whom, and how much of their private information to share with others.
13

14 (b) The School Department shall work closely with the student and/or family
15 in devising an appropriate plan regarding confidentiality of the student’s
16 transgender or gender nonconforming status that works for the student and the
17 school.
18

19 (c) School personnel shall not disclose information that may reveal a
20 student’s transgender status unless legally required to do so or unless the student
21 has authorized the disclosure.²
22

23 (d) A student’s transgender or gender nonconforming status may constitute
24 confidential medical information. Therefore, only certified school nurses and other
25 licensed medical professionals shall be given access to information necessary to
26 confirm a student’s identity in order to ensure that the student receives appropriate
27 medical care and to enable the school nurse to coordinate care with other health
28 care providers or licensed medical professionals, as well as to file health insurance
29 claims on the student’s behalf. In accordance with the Rhode Island Rules and
30 Regulations for School Health Programs, nurses shall maintain a school health
31 record for every student that accurately documents clinical information relating to
32 their students and shall keep their students’ health records confidential.
33

34 2. *Names and Pronouns*

35 (a) If a student has changed their name through legal means, official school
36 records shall reflect that change and the student shall be addressed by their legal
37 name.
38

39 (b) A student who has not legally changed their name shall be privately asked
40 how they would like to be addressed. The name the student provides shall be
41 referred to as their “preferred name.”

² Under FERPA only those school employees with a legitimate educational need should have access to a student’s records or other information contained in those records. Disclosing confidential student information to other employees, students, parents, or other third parties may violate privacy laws, including but not limited to FERPA.

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3 (c) The school, student and family (if they are involved) shall develop a plan
4 for using the student's preferred name and appropriate, student-preferred
5 pronouns within the school.
6

7 (d) The plan shall include when and how the student's preferred name and
8 pronouns shall be communicated to staff, to other students, and to parents of other
9 students, if desired. The goal of this plan shall be to address how the sharing of
10 information will benefit the student.
11

12 (e) School staff shall address the student using their preferred name and
13 preferred pronouns.
14

15 (f) A student is not required to obtain a court-ordered name and/or gender
16 change, or change their student personnel records, as a prerequisite to being
17 addressed by their preferred name and preferred pronouns.
18

19 *3. Official School Records*

20 (a) To the extent that the school is not legally required to use a student's
21 legal name or gender on school records and other documents, the school shall use
22 the student's preferred name and gender.
23

24 (b) Upon receipt of legal documentation indicating that a student's name
25 and/or gender has been changed, school records shall be changed to reflect the
26 change in legal name or gender. The legal documentation required is a court order
27 or a document issued by a state or by the United States government, such as a birth
28 certificate or passport, substantiating the student's new name and/or gender.
29

30 (c) Where school staff or administrators are required by law to use or report
31 a transgender student's legal name or gender when the student has a preferred
32 name or gender, school staff and administrators shall adopt practices to avoid the
33 inadvertent disclosure of the student's legal name or gender. These practices shall
34 be shared with students and parent(s) and/or guardian(s).
35

36 (d) With respect to directory information, the school department shall not
37 designate a student's sex.
38

39 *4. Dress Codes*

40 (a) A school may enforce a dress code, pursuant to school committee policy,
41 which shall allow a student the right to dress in accordance with their gender
42 identity and to express themselves in gender nonconforming ways.
43

44 (b) School staff shall not enforce a dress code more strictly against
45 transgender or gender nonconforming students than other students.
46

1 5. *Restroom, Locker Room, and Changing Facilities*

2 (a) Transgender or gender nonconforming students shall have the right to
3 use any locker room or restroom that aligns with their gender identity. These
4 students shall not be required to use a locker room or restroom that conflicts with
5 their gender identity, nor shall they be mandated to use a particular restroom or
6 locker room.

7
8 (b) Any student who expresses a need or desire for increased privacy shall be
9 provided with reasonable alternative arrangements.

10
11 (i) Such reasonable alternative arrangements may include use of a
12 private area, a separate changing schedule, or use of a single stall restroom.

13
14 (ii) Any alternative arrangement offered to a transgender, gender
15 nonconforming or transitioning student shall be provided in a way that protects the
16 student's ability to keep their transgender status confidential if they so choose.

17
18 6. *Physical Education Classes and Athletic Activities*

19 (a) To the extent authorized by law, students shall be allowed to participate
20 in sex-segregated classes or athletic activities, including intramural and
21 interscholastic athletics, in a manner consistent with their gender identity.

22
23 (b) If the student desires to participate in an interscholastic sport, the
24 student shall be provided with a copy of the policy of the Rhode Island
25 Interscholastic League (RIIL) on Gender Identity Participation.

26
27 (c) If the student desires, a school administrator or athletic director shall
28 contact the RIIL to start the gender identity eligibility appeal process pursuant to
29 the RIIL Gender Identity Participation Policy.

30
31 7. *Other Gender-Based Activities, Rules, Policies and Practices*

32 (a) The school committee shall evaluate all gender-based policies, rules and
33 practices and maintain only those that have a clear and sound pedagogical purpose.

34
35 (b) As a general rule, in any other circumstances in which students are
36 separated by gender for school activities (e.g., overnight field trips), students should
37 be permitted to participate in accordance with the gender identity they express at
38 school.

39
40 (c) A student's request for a single-occupancy accommodation shall be
41 granted by the school.

42
43 8. *Discipline and Exclusion*

44 (a) Students and their parent(s)/guardian(s) shall be advised by school
45 administrators that students will not be disciplined or excluded from participating
46 in activities for appearing or behaving in a manner that is consistent with their

1 gender identity or that does not conform to stereotypical notions of masculinity and
2 femininity.

3
4 (b) This requirement shall be applicable to yearbook photographs, school
5 dances, graduation ceremonies and all other school-sponsored events or activities.
6

7 *9. Safety, Bullying, Harassment*

8 (a) If a transgender or gender nonconforming student alleges they have been
9 the victim of bullying or harassment, the allegation shall be documented and
10 formally addressed by investigation in accordance with the school district's anti-
11 harassment policy.
12

13 (b) If harassment or bullying of a student based on gender identity,
14 transgender status, gender nonconforming status, or transitioning status creates a
15 hostile environment, the school shall put a plan in place to take prompt and effective
16 steps to end the harassment or bullying, prevent its recurrence, and, as appropriate,
17 remedy its effects.
18

19 *10. School Records of Former Students*

20 Requests from former students to have their name and/or gender changed
21 on school records shall be handled in the same manner as requests from current
22 students, as provided in subsection 3 of this section.
23

24 *11. Education and Training*

25 (a) To foster a safe, supportive and non-discriminatory school environment
26 for all students, each school department shall incorporate education and training
27 about transgender and gender nonconforming students into its anti-bullying
28 curriculum, health curriculum, student leadership training, and staff professional
29 development.
30

31 (b) Staff professional development shall include, but not be limited to:

32 (1) Terms, concepts, and current developmental understandings of
33 gender identity, gender expression, and gender diversity in children and
34 adolescents;

35 (2) Developmentally appropriate strategies for communicating with
36 students and parents about issues related to gender identity and gender expression
37 that protect student privacy;

38 (3) Reinforcements of developmentally appropriate strategies for
39 preventing and intervening in bullying incidents, including cyber-bullying;

40 (4) Access to resources on working with transgender and gender
41 nonconforming students.
42

43 *12. Communication with the School Community*

44 (a) Superintendents and principals shall review existing policy documents,
45 handbooks, and other written materials to ensure they reflect the inclusion of

1 gender identity and gender expression in their anti-discrimination policy
2 statements prior to the start of the school year.

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4 (b) Schools shall inform all members of the school community, including all
5 school personnel, students, and families, about this regulation and its protections
6 for transgender and gender nonconforming youth.

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4 **EXHIBIT B**

5 **PROPOSED ALTERNATIVE AMENDMENT RE: PROTECTION FOR**
6 **TRANSGENDER AND GENDER NONCONFORMING STUDENTS**
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8 AMEND SECTION G-14-2.1.1. OF THE "RHODE ISLAND BOARD OF REGENTS FOR
9 ELEMENTARY AND SECONDARY EDUCATION BASIC EDUCATION PROGRAM
10 REGULATIONS" AS FOLLOWS:
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12
13 G-14-2.1.1. Freedom from Discrimination. – (a) Each LEA shall identify and remove
14 barriers to students and adults that are based on their race, ethnicity, national
15 origin, language, gender, religion, economic status, disability, gender identity or
16 expression, or sexual orientation.
17

18 (b) Each LEA shall comply with all relevant state and federal statutes and
19 regulations regarding discrimination.
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21 (c) Each LEA shall adopt a policy addressing the rights of transgender and gender
22 nonconforming students to a safe, supportive and non-discriminatory school
23 environment. The policy shall address, at a minimum, such issues as confidentiality
24 and privacy, discipline and exclusion, staff training, access to school facilities and
25 participation in school programs, dress codes, official school records, and use of
26 preferred names and pronouns. The policy shall be consistent with the Rhode Island
27 Department of Education's "Guidance for Rhode Island Schools on Transgender and
28 Gender Nonconforming Students" or any successor document, and an LEA's
29 adoption of that Guidance shall constitute compliance with this section. The LEA
30 shall inform all members of the school community, including all school personnel,
31 students, and families, about this policy.
32
33