

**STATE OF RHODE ISLAND
PROVIDENCE, Sc.**

SUPERIOR COURT

JANE DOE

PLAINTIFF,

v.

ANGÉLICA INFANTE-GREEN, in her
capacity as the Commissioner of Elementary
and Secondary Education, Rhode Island
Department of Education

DEFENDANT

PC-2025-01610

**MEMORANDUM OF LAW OF
AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND,
LAWYERS COMMITTEE OF RHODE ISLAND,
BONNIE TAYLOR, AND ALEXIS TURNER AS
AMICI CURIAE IN SUPPORT OF DEFENDANT**

Fulfilling the duty of the Rhode Island Commissioner of Elementary and Secondary Education (the Commissioner), the Commissioner enacted a regulation that protects a vulnerable group of students who are at well-documented increased risk of bullying, self-harm, and abuse. There is no legal basis to revoke this regulation, and every reason to continue the Commissioner’s commitment to protect *all* students. *Amici* American Civil Liberties Union of Rhode Island, the Lawyers Committee for Rhode Island, Bonnie Taylor, and Alexis Turner submit this brief in support of the validity of Regulation 200-RICR-30-10-1, entitled “Regulations Governing Protections for Student Rights to be Free from Discrimination on the Basis of Sex, Gender, Sexual Orientation, Gender Identity, or Gender Expression” (hereafter “the Regulation”). For the reasons detailed below, as there is no basis for the relief requested, pursuant to R.I.G.L. §42-35-7, the Court should deny Plaintiff’s prayer for a Declaratory Judgment under Count I of the Complaint and dismiss the action with prejudice and issue its Judgment upholding the validity of the Regulation.

**Interest of the American Civil Liberties Union of Rhode Island,
the Lawyers Committee for Rhode Island, Taylor and Turner to Appear as Amici
Curiae**

Interest of the American Civil Liberties Union of Rhode Island

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 addressing denial of health insurance benefits to teacher for same-sex spouse; 2005); and *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.

ACLU-RI has a strong, documented, and consistent record spanning fifty years of battle to obtain and preserve the rights of individuals to be protected from discrimination on the basis of their sexual orientation, gender identity or expression, including through the Regulation at issue in this action. Because Plaintiff's action, if accepted, would negate those protections, ACLU-RI submits this memorandum in support of the validity of the Regulation promulgated by Defendant Commissioner.

Interest of the Lawyers Committee for Rhode Island

The Lawyers' Committee for Rhode Island (LCRI) is a Rhode Island nonprofit corporation consisting of attorneys that has come together to hold the government accountable to the law, and protect people, groups and institutions in Rhode Island, by organizing an effective and rapid legal response by Rhode Island lawyers. LCRI was created because, where there is government overreach in violation of the law, lawyers have the tools and the duty to protect those who are impacted. LCRI is engaged in emerging legal issues that are impacting or will impact people, groups, and institutions in Rhode Island. These include those issues that impact federal funding of nonprofits, the rights of immigrants and international students, reproductive rights, the rights of individuals in education institutions, the people's rights to free speech and assembly, all matters involving diversity, equity and inclusion, and laws that impact the courts and the legal profession. LCRI is directly interested in this matter as it impacts Rhode Island educational institutions and issues related to diversity, equity and inclusion.

Interest of Bonnie Taylor and Alexis Turner

Bonnie Taylor and **Alexis Turner** are parents of children attending Rhode Island public schools. **Bonnie Taylor** is the parent of a child attending school in the Lincoln Public Schools. As a parent, LGBTQIA advocate and member of ACLU-RI, she has advocated for the rights of the LGBTQIA community, including in her local public schools where she has sought to ensure that all students, including transgender children, have the right to attend and participate in school free from discrimination based upon their gender identity. She strongly supports the Commissioner's Regulation that is at issue and seeks to appear as amicus to ensure that the Court is aware that Plaintiff Doe's experiences, however genuine, are not representative of the community of parents of Rhode Island public school students. In September 2024, Bonnie Taylor reached out to the Lincoln Superintendent and School Committee in reaction to efforts to undermine protections for LGBTQIA children and families, stating: "I believe it is important for all our children to feel safe and supported to learn and play and be themselves in our community. I support my LGBTQIA neighbors and *support diversity, equity, and inclusion in our schools*...Diversity and inclusion is not just for people that fall within marginalized identities, it supports all our students and families to become compassionate, critical thinkers with empathy and the ability to innovate new solutions for communities to thrive in an ever-changing world." (Emphasis in original.) Ms. Taylor also attended and spoke at the Lincoln School Committee meeting addressing these issues on September 9, 2024, as reported in <https://steveahlquist.substack.com/p/lincoln-folks-push-back-against-anti>.

Alexis Turner is the parent of a gender-nonconforming child who currently attends school in the Richmond/Chariho Public Schools. As the parent of a gender-nonconforming child, Alexis Turner is directly and personally aware of the importance of anti-discrimination regulations that

seek to protect children’s mental health and well-being and provide them with a safe and supportive school environment. She strongly supports the Commissioner’s Regulation here at issue and seeks to appear as amicus to ensure that the Court is aware that Plaintiff Doe’s experiences, however genuine, are not representative of the community of Rhode Island public school parents, and to continue to ensure proper anti-discrimination provisions are in place for her child and other gender-nonconforming students.

Argument

I. LGBTQ Students are at Significant Increased Risk for Bullying which is Demonstrably Mitigated by State Law Enumerating Protection in School

Rhode Island law is clear – the Rhode Island Department of Education has a duty to achieve and maintain school environments that support children. Such an environment is the necessary precondition to learning.¹ School support is ultimately about providing equal educational opportunities for all students. Such support appropriately includes students who are gay, lesbian, bisexual, transgender, gender nonconforming or nonbinary who particularly need support, as they are targets of serious and measurable ill-treatment of the kind that not only interferes with their education, but creates the likelihood their education is derailed entirely.

According to recent research by The Trevor Project:

The majority of LGBTQ youth (52%) who were enrolled in middle or high school reported being bullied either in person or electronically in the past year. One in three (33%) reported being bullied in-person (e.g., at school, on the way to school, at a party, or at work), while 42% were bullied electronically (e.g., online or via text message). Bullying was reported more often by LGBTQ middle school (65%) compared to high school students (49%).²

¹ R.I. Gen. Laws §16-38-1, et seq. Discrimination because of sex.; R.I. Gen. Laws §16-21-33, et seq. – Safe Schools Act; R.I. Gen Laws § 16-21-40, et seq. – Trauma-informed schools act.

² See The Trevor Project, *Bullying and Suicide Risk among LGBTQ Youth*, <https://www.thetrevorproject.org/research-briefs/bullying-and-suicide-risk-among-lgbtq-youth/>.

The Trevor Project’s 2022 survey detailed the very real threat such abuse poses to the life of school children who are targeted, finding that “45% of LGBTQ youth seriously considered attempting suicide in the past year,” and “1 in 5 transgender and nonbinary youth attempted suicide.”³

Rhode Island’s transgender students experience difficulties in their school environments that align with this national data. The Rhode Island Department of Health, using data from the Youth Risk Behavior Surveys for 2021 and 2023, found that transgender students “were three times more likely than cisgender students (29% vs. 9%) to report they missed school at least one day in the past 30 days because they felt unsafe at or on the way to school.”⁴ It also found that “transgender students were more likely than cisgender students to be bullied in person (38% vs. 12%) and bullied online (42% vs. 12%).”⁵ It found that “[t]ransgender students were also four to five times more likely than cisgender students to report seriously considering suicide (56% vs. 14%), making a suicide plan (45% vs. 12%) and attempting suicide in the past year (36% vs. 8%).”⁶

There is an overabundance of evidence that LGBTQ youth experience high rates of bullying. Bullying of LGBTQ youth “is approximately double that of heterosexual and cisgender youth.”⁷

³ *The Trevor Project’s 2022 National Survey on LGBTQ Youth Mental Health*, <https://www.thetrevorproject.org/survey-2022> (“Trevor 2022 National Survey”).

⁴ R.I. Dep’t of Health, Rhode Island Data Brief, <https://health.rh.gov/sites/g/files/xkgbur1006/files/2025-02/GenderIdentityYRBS-DataBrief-4.9.24.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ See Nat’l Acad. of Scis., Eng’g, & Med., *Preventing Bullying Through Science, Policy, and Practice*, 59 (2016), available at <https://doi.org/10.17226/23482>; see also Valerie A. Earnshaw et al., *Bullying Among Lesbian, Gay, Bisexual, and Transgender Youth*, 63 *Pediatric Clinics of N. Am.*, 999 (2016).

A 2015 national youth behavior survey found that 34% of lesbian, gay, and bisexual youth experience bullying as opposed to 18.8% of heterosexual youth.⁸ A similar 2017 survey demonstrated that 35% of transgender youth reported being bullied at school.⁹ Bias-based bullying, in contrast with non-bias-based bullying, has also been associated with more frequent and significant negative outcomes, including depression, suicidal ideation, poor self-esteem, self-harm, substance abuse, and academic difficulties.¹⁰

Due to the challenges faced by LGBTQ youth in living in a culture in which they are often verbally derided, denigrated, scapegoated, and physically threatened and struck, the risk to LGBTQ young people's mental and physical health is significantly higher compared to their peers. Studies consistently show that LGBTQ youth experience depression, disordered eating, and self-harm at far higher rates than their non-LGBTQ peers.¹¹ Consistent with these findings, nearly 75%

⁸ Valerie E. Earnshaw et al., *LGBTQ Bullying: Translating Research to Action in Pediatrics*, 140 Am. Acad. of Pediatrics e20170432, 2 (2017).

⁹ Nat'l Acads. of Scis., Eng'g, & Med., *Understanding the Well-Being of LGBTQI+ Populations*, 233 (2020), available at <https://doi.org/10.17226/25877>.

¹⁰ See Mariah Xu et al., *Racial and ethnic differences in bullying: Review and implications for intervention*, 50 Aggression & Violent Behavior 33-34 (2020); Kelly Lynn Mulvey et al., *Understanding Experiences with Bullying and Biased-Based Bullying: What Matters and for Whom?* 8 Psych. of Violence 702, 703 (2018).

¹¹ See Kari McDonald, *Social Support and Mental Health in LGBTQ Adolescents: A Review of the Literature*, 39 Issues Mental Health Nursing 16, 16 (2018), <https://doi.org/10.1080/01612840.2017.1398283>; see also Michael J. Pellicane & Jeffrey A. Ciesla, *Associations between minority stress, depression, and suicidal ideation and attempts in transgender and gender diverse (TGD) individuals: Systematic review and meta-analysis*, 91 Clinical Psych. Rev., 1, 1 (Feb. 2022), <https://doi.org/10.1016/j.cpr.2021.102113>.

of LGBTQ youth surveyed in a major 2022 study reported experiencing anxiety symptoms, with nearly half saying that they had considered suicide.¹²

State statutes that enumerate protections for LGBTQ+ youth reduce harm to those students. By 2015, all 50 states had anti-bullying statutes, but not all specifically protected LGBTQ students.¹³ In assessing the difference between twelve states that enacted anti-bullying statutes that enumerated protections based on sexual orientation and fifteen that did not, a 2019 study showed:

enumeration of sexual orientation in antibullying laws at the state level was associated with fewer suicide attempts, including serious attempts requiring medical attention, compared with state statutes that do not enumerate sexual orientation. Youth in states with enumerated statutes also reported feeling safer at school or on the way to or from school, and were less likely to have been physically forced to have sexual intercourse. In considering the significant effects we found, it is important to recall that all states have antibullying laws, which provide some baseline protection. It is, thus, all the more noteworthy that even with the general antibullying laws, evidence shows an impact that is specific for enumerated statutes.¹⁴

Rhode Island is among the states with a statute that enumerates sexual orientation. *Id.* at Supplementary Table S1. This study provides empirical evidence that Rhode Island’s statute, and this related Regulation, help protect students who are LGBTQ from bullying and its consequences.

II. The Commissioner’s Regulation Protecting Students From Discrimination Based on “Sex, Gender, Sexual Orientation, Gender Identity, or Gender Expression” is Authorized by and Consistent with Rhode Island Law.

¹² Trevor Project 2022 National Survey, *supra*; see also April J. Ancheta et al., *The Impact of Positive School Climate on Suicidality and Mental Health Among LGBTQ Adolescents: A Systematic Review*, 37 J. Sch. Nursing 75, 77 (2021), <https://doi.org/10.1177/1059840520970847> (reporting similar figures).

¹³ <https://www.stopbullying.gov/resources/laws>

¹⁴ I.H. Meyer, et al. *Sexual Orientation Enumeration in State Antibullying Statutes in the United States: Associations with Bullying, Suicidal Ideation, and Suicide Attempts among Youth*, 6 LGBT Health 9 (2019).

The particular and compelling needs of LGBTQ youth, and the broad authority and responsibility that Rhode Island education officials have to provide a safe and supportive environment for those youths, is the context in which the state Regulation was promulgated. In 2018, the Rhode Island Commissioner of Elementary and Secondary Education promulgated Regulation 200-RICR-30-10-1, which directed every local educational agency in Rhode Island to promulgate policies that prohibit discrimination on the basis of sex, gender, sexual orientation, gender identity, or gender expression in schools.¹⁵ 200-RICR-30-10-1.1. The Commissioner specifically cited R.I. Gen. Laws § 16-38-1.1(a)(5) as authority for the Regulation. *Id.* In doing so, the Commissioner made explicit what was already well understood under state law: discrimination on the basis of sex includes discrimination on the basis of gender identity and sexual orientation.

Rhode Island has long protected the right of Rhode Islanders to be free from discrimination on the basis of sex and gender. That right is grounded in the Rhode Island Constitution, which states:

[N]or shall any person be denied equal protection of the laws. No otherwise qualified person shall, solely by reason of race, gender, or handicap be subject to discrimination by the state.

R.I. Const. Art. 1, § 2. In Rhode Island’s public schools, R.I. Gen. Laws § 16-38-1.1 prohibits discrimination on the basis of “sex.” It provides in relevant part:

(a)(1) Discrimination on the basis of sex is prohibited in all public elementary and secondary schools in the state and in all schools operated by the board of regents for elementary and secondary education. This prohibition shall apply to employment practices, admissions, curricular programs, extracurricular activities including athletics, counseling, and any and all other school functions and activities.

¹⁵ To *Amici*’s knowledge, there have been no challenges to the Commissioner’s authority to promulgate the Regulation or to the Regulation itself prior to this lawsuit, and LEAs in Rhode Island have adopted policies as required by 200-RICR-30-10-1.

Interpreting this law, 200-RICR-30-10-1 defines sex to include “sex, gender, sexual orientation, gender identity, or gender expression.”

A. Rhode Island Statutory and Constitutional Law Demonstrate the Soundness of the Commissioner’s Regulation.

The Commissioner had the authority to promulgate the Regulation, as is demonstrated by a review of the relevant history of the legislation regarding the Commissioner’s authority to promulgate a Regulation protective of all students.

Section 16-38-1.1 was first enacted in 1985. In 1986, the Rhode Island Constitution was reenacted and amended, and added at least two provisions significant to this discussion: Article I § 2, quoted above, which, among other things, prohibits sex discrimination, but there uses the equivalent term “gender,” and Article I § 24, which provides that “The rights guaranteed by this Constitution are not dependent on those guaranteed by the Constitution of the United States.”

There is nothing in § 16-38-1.1 which precludes the Commissioner’s fair understanding that the term “on the basis of sex” as used therein encompasses discrimination on the basis of sexual orientation, gender identity and expression and there is much to conclude that it does. Further, it was well within the Commissioner’s authority to craft a regulation in 2018 which ensures that students do not experience sex discrimination based on their gender identity or sexual orientation.

Indeed, in *Bostock v. Clayton County*, 590 U.S. 644 (2020), the United States Supreme Court in the employment setting rejected the argument made by Plaintiff here. There the Supreme Court addressed the claim that the protection against discrimination in employment “on the basis of sex” and “because of sex” contained in Title VII, 42 U.S.C. §2000e(k), did not encompass discrimination against individuals on the basis of sexual orientation or being transgender.

Rejecting the contention, the Supreme Court concluded that the words “on the basis of . . . sex” do as a matter of law encompass sexual orientation and transgender status. *Bostock, supra*, 590 U.S. at 650, 660. The Court stated, “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” *Id.* The Supreme Court ruled that Title VII’s protection against “sex” discrimination necessarily includes a protection against discrimination on the basis of sexual orientation or transgender status. *Id.*¹⁶

The Commissioner’s authority to promulgate the challenged Regulation is expressly empowered by R.I. Gen. Laws § 16-38-1.1(a)(5), which provides: “The commissioner of elementary and secondary education shall be responsible for enforcing this section and is empowered to promulgate rules and regulations to enforce the provisions of this section.” State law also gives the Commissioner the duty to interpret school law. R.I. Gen. Law §§ 16-1-5(10), 16-60-6 (9)(viii). The Commissioner is also charged “to require the observance of all laws relating to elementary and secondary schools and education,” R.I. Gen. Laws § 16-60-6(9)(vii), and ensuring the safety and freedom from bullying of all students in the public schools, R.I. Gen. Laws §§ 16-21-33, 16-21-34, discussed more fully below. Although not specifically cited in the Regulation, these related statutory provisions also empowered the Commissioner to adopt the Regulation.

¹⁶ In reaching its conclusion, the Court acknowledged that the legislators who adopted Title VII in 1964 “might not have anticipated their work would lead to this particular result. Likely, they weren’t thinking about many of the Act’s consequences that have become apparent over the years, including its prohibition against discrimination on the basis of motherhood or its ban on the sexual harassment of male employees. But the limits of the drafters’ imagination supply no reason to ignore the law’s demands.” *Id.* at 653. The Court recently reaffirmed its central holding in *Bostock* (although distinguishing it on the facts of the case) in *United States v. Skrametti*, 145 S. Ct. 1816, 1834 (2025).

Thus, as discussed within, the Commissioner has a mandate, as well as sound reasons, for promulgating the Regulation that protects students, including those who are LGBTQ, from discrimination and for ensuring their safety and well-being in the public schools.

B. Rhode Island School Law Requires the Commissioner to Protect LGBTQ Students from Bullying and Discrimination and Maintain Safe and Supportive Schools for All Students.

Concerned about student safety, Rhode Island adopted the Safe Schools Act, R.I. Gen. Law §16-21-33, and the companion Statewide Bullying Policy, § 16-21-34, in 2011—that is, long before the promulgation of the challenged Regulation—to ensure the safety of all students. The anti-bullying statute specifically directs the Commissioner to promulgate a statewide bullying policy by regulation. The Safe Schools Act of 2011 makes clear, in its definitions, that students are protected from bullying “that may be reasonably perceived as being motivated by characteristics such as race, color, religion, ancestry, national origin, *gender, sexual orientation, gender identity and expression* or mental, physical, or sensory disability, intellectual ability or by any other distinguishing characteristic.” § 16-21-33(a)(1)(v) (emphasis added).

The General Assembly yet again addressed protection of LGBTQ youth in 2022, in adopting the “Trauma-informed Schools Act.” There, the General Assembly recognized the critical role that schools play “in addressing and mitigating the effects of child trauma by recognizing the impact of adversity and trauma on students, parents, and staff, and embedding policies and practices that foster well-being and resilience.” R.I. Gen Laws § 16-21-40(a). The Trauma-informed Schools Act makes clear the Commissioner’s role in supporting “the academic, behavioral, social, and emotional needs of *all* students.” R.I. Gen. Laws § 16-21-40(b)(emphasis added). The statute requires that disciplinary procedures and practices be adopted 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) (emphasis added). The statute also requires that activities be implemented to “[p]romote a schoolwide culture of acceptance;” “[h]elp *all students* feel safe and connected to the school community;” and “[s]upport *all students* to form positive relationships with adults and peers, understand and manage emotions, achieve success academically and in extracurricular areas, and experience physical and psychological health and well-being.” R.I. Gen. Laws § 16-21-40(b)(1)(iii)(A), (B) and (C) (emphasis added).

Thus, three separate statutes confer responsibility upon the Commissioner to protect students against discrimination: R.I. Gen. Laws 16-39-1.1, using the word “sex” with no qualifiers or exclusions; the Safe Schools Act, listing sex, sexual orientation and gender identity separately; and The Trauma-informed Schools Act, listing sex and parenthetically indicating that sex “includes” sexual orientation and gender identity. All of these statutory provisions require the Commissioner to ensure that students are not subjected to discrimination and give the Commissioner the authority, and indeed the obligation, to promulgate regulations which fulfill and enforce those mandates. The challenged Regulation meets those standards. It fulfills the Commissioner’s statutory obligations under the three school safety and freedom from discrimination laws.

As the First Circuit recently acknowledged, schools have “a compelling interest in protecting the physical and psychological well-being of minors.” *Foote v. Ludlow Sch. Comm.*, 128 F. 4th 336, 356-57 (1st Cir. 2025) (quoting *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126, (1989)). “That interest is at its apex when a school board seeks to protect children who are particularly vulnerable, such as transgender minors.” *Id.* at 358. In support, the Court cited to *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 528-29 (3d Cir. 2018), explaining that

the case held “that a school district had a compelling interest in protecting the physical and mental well-being of transgender children”. *Foote*, 128 F. 4th at 357.

C. A Contrary Interpretation Would Fail to Conform to the Mandates of Rhode Island Law.

The soundness of the Commissioner’s understanding of the operation of the school laws is underscored by many other Rhode Island laws that evince Rhode Island’s policy to prohibit discrimination on the basis of sex, sexual orientation, gender identity and expression which also apply in the school context. A crabbed reading of R.I. Gen. Laws § 16-38-1.1 to *prohibit* the Commissioner from protecting LGBTQ youth is antithetical to the legislature’s intent and state policy and would create conflicts in her obligations with respect to school operations under other laws.

First, recall that R.I. Gen. Laws § 16-38-1.1, in prohibiting discrimination on the basis of sex, specifies that “[t]his prohibition shall apply to employment practices, admissions, curricular programs, extracurricular activities including athletics, counseling, and any and all other school functions and activities.”

Rhode Island’s Public Accommodations Law explicitly prohibits discrimination against anyone based on gender identity, gender expression, or sexual orientation.

Discriminatory practices prohibited. No person, being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation, resort, or amusement shall directly or indirectly refuse, withhold from, or deny to any person on account of race or color, religion, country of ancestral origin, disability, age, sex, sexual orientation, gender identity or expression, any of the accommodations, advantages, facilities, or privileges of that public place.

R.I. Gen. Laws § 11-24-2. Places of public accommodation include rest rooms, gymnasiums, swimming pools, and public libraries—all of which exist on school premises. *Id.* at § 11-24-3.

The R.I. Fair Employment Practices Act makes it unlawful “[f]or any employer: (i) To refuse to hire any applicant for employment because of his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin.” R.I. Gen. Laws § 28-5-7(1). The law does not include an exemption for schools or educational institutions which would allow the Commissioner to avoid its mandates in hiring.

Other legislative expressions binding on the Commissioner include R.I. Gen. Laws § 34-37-2.3, which governs student housing. It provides: “Right to equal housing opportunities — Gender identity or expression. Whenever in this chapter there shall appear the words ‘sexual orientation’ there shall be inserted immediately thereafter the words ‘gender identity or expression.’” *Id.*

Thus, the Commissioner has properly interpreted § 16-38-1.1 to prohibit all forms of discrimination on the basis of sex, including sexual orientation and gender identity, because her interpretation of the law is consistent with other state laws which the Commissioner must ensure are followed. The regulation promulgated by the Commissioner provides seamless and consistent protections for LGBTQ minors in their schools in the same manner that they are entitled to in housing, employment, and public accommodations. Plaintiff’s circumscribed and legally unsupported view of § 16-38-1.1 would lead to the opposite result, introducing a glaring inconsistency into the law which could not be intended by the Legislature.¹⁷ Indeed, such an interpretation may make the Commissioner’s ability to comply with these other laws impossible.

¹⁷ There is nothing in § 16-38-1.1 which precludes a fair interpretation that “on the basis of sex” incorporates protection against discrimination on the basis of sex-based considerations including sexual orientation, gender identity or expression—because there is no language in § 16-38-1.1 that excludes those sex-based considerations. Thus, § 16-38-1.1 can be harmonized with the great weight of Rhode Island law, including later-enacted statutes specifically recognizing these protections in the school and student environment. Indeed, when one or more statutes relate to the same subject matter and are not inconsistent with one another, they are “in pari materia” and should

The Regulation is also consistent with other civil rights laws in Rhode Island. Plaintiff's view would perversely single out the public schools for different treatment in this one narrow context. This incorrect position would lead to absurd results. The public schools would have to somehow magically permit discrimination against students on the basis of sexual orientation, gender identity or gender expression while at the same time protecting them against discrimination in the school as a place of public accommodation on the basis of sexual orientation, gender identity or gender expression and simultaneously ensuring that their teachers and administrators are protected from discrimination on the basis of sexual orientation, gender identity or gender expression during their employment while at work in the same school buildings and programs. This makes no sense. It would be impossible to explain to any student seeking protection and support from school authorities and impossible to implement.

III. Federal Law Does Not and Cannot Dictate a Contrary Result.

A. Title IX Does Not Authorize or Mandate Discrimination on the Basis of Sexual Orientation, Gender Identity or Expression.

Plaintiff rests much of her argument on her claim that Title IX, a federal prohibition against discrimination on the basis of sex in schools, 20 U.S.C. § 1681, does not encompass sexual orientation or gender identity. *See* P. Mem at 14-17 (citing to recent decisions rejecting since-withdrawn Biden-era regulations.) In fact, many federal courts have concluded that Title IX *does* prohibit discrimination on the basis of sexual orientation and gender identity. *See, e.g., Grabowski v. Ariz. Bd. of Regents*, 69 F.4th 1110, 1116 (9th Cir. 2023) (discrimination based on perceived sexual orientation is prohibited by Title IX); *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586,

be read to harmonize with one another. *See, e.g., Purcell v. Johnson*, 297 A.3d 464, 470 (R.I. 2023) (“Even if the laws appear at first to be inconsistent, the Court will make every effort to construe the provisions in such a manner so as to avoid the inconsistency.” Internal quotation, citation omitted.)

616 (4th Cir. 2020), (same as to transgender student); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1049 (7th Cir. 2017) (same as to transgender student).

Whatever the outcome of the debate on whether Title IX's prohibition against discrimination extends to sexual orientation and gender identity, it is not determinative here because the proper focus is the validity of the challenged Regulation, which does not conflict with federal law and is fully supported by state law.

B. Title IX Does Not Preempt State Law or Regulation.

Even assuming, *arguendo*, that Title IX does not encompass protections based on sexual orientation or gender identity, Plaintiff incorrectly asserts that the Regulation at issue conflicts with Title IX and is therefore invalid and/or preempted. There are several reasons why this argument has no merit.

First, Plaintiff loosely and incorrectly invokes “preemption” without analysis. Preemption of state law “is not to be lightly presumed”:

In determining whether a state statute is pre-empted by federal law and therefore invalid under the Supremacy Clause of the Constitution, our sole task is to ascertain the intent of Congress. [citations omitted] Federal law may supersede state law in several different ways. First, when acting within constitutional limits, Congress is empowered to pre-empt state law by so stating in express terms. [Citation omitted] Second, congressional intent to pre-empt state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress “left no room” for supplementary state regulation.

* * *

As a third alternative, in those areas where Congress has not completely displaced state regulation, federal law may nonetheless pre-empt state law to the extent it actually conflicts with federal law. Such a conflict occurs either because “compliance with both federal and state regulations is a physical impossibility,” [citation omitted] or because the state law stands “as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” [citations omitted] Nevertheless, pre-emption is not to be lightly presumed.

California Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272, 280–81 (1987) (citations omitted).

Plaintiff offers no support for her argument that Title IX preempts state law under the above standards. To the contrary, in *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246 (2009), the United States Supreme Court rejected the argument that Title IX provided an exclusive remedy or a comprehensive statutory scheme. “[W]e cannot agree with the Court of Appeals that ‘Congress saw Title IX as the sole means of vindicating the constitutional right to be free from gender discrimination perpetrated by educational institutions.’” *Id.* at 256 (citations omitted). *See also Coalition to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 252 (6th Cir. 2006) (Title IX does not preempt state law which is not contrary to its purpose). The Regulation is not preempted.

Title IX is also not in conflict with the challenged Regulation, however broadly or narrowly Title IX is interpreted. At most, the challenged Regulation provides more expansive protection against discrimination than Title IX. That does not create a conflict. The states are entitled to create additional, greater protection for marginalized individuals and communities than those provided by federal law without creating a conflict. For example, in *Guerra, supra*, the State of California enacted additional protections for women returning from pregnancy leave than the standards mandated by federal law (Title VII). The Court rejected the claim that the expanded protections conflicted with Title VII and were invalid, considering the federal standard as a “floor,” not a “ceiling,” on the scope of protections. 479 U.S. at 285.

C. President Trump’s Executive Order Does Not Change Rhode Island State Law Protections for LGBTQ Students.

As discussed above, where a legal basis exists under state law, states can act to protect its students interests regardless of whether Title IX does the same, and Rhode Island’s Constitution and statutes provide this basis. Federal antidiscrimination laws are a floor, not a ceiling, on what Rhode Island can do.

President Trump’s Executive Order 14168 “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” does not alter this analysis and has no bearing on Rhode Island law and regulations. This Executive Order does not change governing federal law. As a federal district court recently noted, “the Court is mindful that, regardless of Executive Order 14168, it is unlawful to discriminate against an individual in employment because of their sex or transgender status.” *EEOC v. Sis-Bro Inc.*, No. 24-cv-968-JPG, 2025 WL 1591267, at *2, 2025 U.S. Dist. LEXIS 107356, at *3-4 (S.D. Ill. June 5, 2025), citing *Bostock*, 590 U.S. at 683.

Similarly, an Executive Order does not have the force of law. An Executive Order can direct the policies and regulations of the federal government. Yet even there, policies and regulations adopted in order to implement EO 14168 have been consistently and decisively found illegal by federal courts. *See, e.g., Doe v. McHenry*, 763 F. Supp.3d 81, 90 (D.D.C., 2025), *appeal docketed*, No. 25-5213 (D.C. Cir. June 5, 2025) (enjoining the Trump administration’s efforts, under the authority of Executive Order 14168, to house transgender prisoners in facilities according to their biological sex and prevent them from receiving gender affirming care as a likely violation of Eighth Amendment.); *Orr v. Trump*, 25-cv-10313, 2025 U.S. Dist. LEXIS 74577, at *88-89, 2025 WL 114271 (D. Mass, April 18, 2025), *appeal docketed*, No. 25-1579 (1st Cir. June 13, 2025) (enjoining State Department’s policy, on the basis of Executive Order 14168, that passports only reflect the holder’s sex assigned at birth, finding the Executive Order and policy were likely motivated by animus against transgender individuals and on that basis, the Order on its face “demeans transgender people’s identity”); *PFLAG, Inc. v. Trump*, 870 F. Supp. 3d 405 (D. Md. 2025), Doc. 115 at 48 (staying the termination of gender-affirming care under government-provided medical insurance on the basis of Executive Orders 14168 and 14187, stating “the Court

cannot fathom discrimination more direct than the plain pronouncement of a policy resting on the premise that the group to which the policy is directed does not exist.”)

This Court should give no weight to Executive Order 14168 in its analysis. It is not applicable law.

CONCLUSION

For the reasons stated above, the Court should issue its Declaratory Judgment on Count I in favor of Defendant, declaring the validity of the challenged Regulation and otherwise deny and dismiss the Complaint with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 30, 2025:

☒ I electronically filed and served this document through the electronic filing system.

☒ The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Sonja L. Deyoe
Sonja L. Deyoe