



Center Requests RIDE to Repeal Its Transgender Regulation:

*Regulation Has No Basis in State Law,
Violates Federal Law*

from the Law Centre at the RI Center for Freedom & Prosperity

February 13, 2025

Via email only <Angelica.InfanteGreen@ride.ri.gov>
Angélica Infante-Green
Commissioner of Elementary and Secondary Education
Rhode Island Department of Education
255 Westminster Street
Providence, RI 02903

RE: Board of Education Regulation 200-RICR-30-10-1.

Dear Commissioner Infante-Green:

Pursuant Board of Education Regulation 200-RICR-20-35-2, I am writing on behalf of the Rhode Island Center for Freedom & Prosperity, requesting that the Rhode Island Commissioner of Education and the Board of Education repeal Regulation 200-RICR-30-10-1 “Regulations Governing Protections for Students Rights to be Free from Discrimination on the Basis of Sex, Gender, Sexual Orientation, Gender Identity, or Gender Expression”, in light of recent developments in federal law.

As will be detailed herein, this regulation has no basis in state law and is contrary to federal law and guidelines. As such, the Rhode Island Department of Education has placed itself and every member school district in this State at risk of civil rights violations, which are likely lead to investigations by the US Department of Education Office of Civil Rights, loss of federal funding, and/or discrimination lawsuits from aggrieved individuals.

On January 20, 2025, newly inaugurated President Trump issued an Executive Order, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”¹ President Trump ordered all agencies and departments within the Executive Branch to “enforce all sex-protective laws to promote [the] reality” that there are “two sexes, male and female,” and that “[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.”

As a result of that Executive Order, on February 4, 2025, the U.S. Department of Education sent a “Dear Colleague” letter to K-12 schools and institutions of higher education advising educators and administrators that the department’s Office for Civil Rights will enforce the Trump Administration’s 2020 Title IX Rule.² Under this interpretation, Title IX prohibits discrimination on the basis of biological sex and cannot be expanded by rule to require recipients of federal funds to issue policies prohibiting discrimination on the basis of “gender identity.”

In 2018, the R.I. Department of Education promulgated Regulation 200-RICR-30-10-1. The regulation comprises three sections. They are set forth as follows:

¹ <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>

² <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf>

1.1 Authority

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

1.2 Definitions

- A. “Gender non-conforming” means a term used to describe people whose gender expression differs from stereotypic expectations. This includes people who identify outside traditional gender categories or identify as both genders. Other terms that can have similar meanings include “gender variant”, “gender expansive”, or “gender atypical”.
- B. “Transgender” means an umbrella term used to describe a person whose gender identity or gender expression is different from that traditionally associated with their assigned sex at birth.

1.3 Protection for Transgender and Gender Nonconforming Students

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

The sole legal basis of the 2018 RIDE Regulation is the anti-discrimination provision of R.I. Gen. Laws § 16-38-1.1. That statute provides:

(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.

Like Title IX, there is no mention in R.I. Gen. Laws § 16-38-1.1 of gender, sexual orientation, gender identity, or gender expression. In fact, the statute goes on to specifically identify a distinction between only males and females:

(a)(2) Notwithstanding this prohibition, schools may do the following:

- (i) Maintain separate restrooms, dressing, and shower facilities for males and females;

- (ii) Conduct separate human sexuality classes for male and female students; and
- (iii) Prohibit female participation in all contact sports provided that equal athletic opportunities which effectively accommodate the interests and abilities of both sexes are made available.
- (iv) Provide extracurricular activities for students of one sex, including, but not limited to, father-daughter/mother-son activities, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex. School districts are required to allow and notify students that they may bring the adult of their parent's or guardian's choice to the event.

It appears that the Regulation 200-RICR-30-10-1 has no basis in Rhode Island law. And to the extent that the Regulation would rely upon an interpretation of Title IX that equates sex with gender identity, numerous federal district courts enjoined the prior Presidential Administration's rule interpreting Title IX on the grounds that Title IX prohibits discrimination on the basis of sex, not gender identity. *See, e.g., Oklahoma v. Cardona*, Case No. 5:24-cv-461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. U.S. Dep't of Educ.*, Case No. 4:24-cv-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ.*, Case No. 4:24-cv-461-O, 2024 WL 3381901 (N.D. Tex. July 11, 2024); *Texas v. United States*, No. 2:24-cv-86-Z, 2024 WL 3405342 (N.D. Tex. July 11, 2024); *Kansas v. U.S. Dep't of Educ.*, Case No. 5:24-cv-4041-JWB, 2024 WL 3273285, at *12–13 (D. Kan. July 2, 2024); *Tennessee v. Cardona*, Case No. 2:24-cv-72-DCR, 2024 WL 3631032 (E.D. Ky. July 10, 2024); *Louisiana v. U.S. Dep't of Educ.*, 737 F. Supp. 3d 377 (W.D. La. 2024).

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

Already, the U.S. Department of Education has begun enforcement actions against the Massachusetts Interscholastic Athletic Association for permitting male students to participate in female sports.³ Before such enforcement actions are taken against school districts in this State, we request that RIDE repeal Regulation 200-RICR-30-10-1 to be in compliance with both state and federal law.

Your prompt acknowledgement of this request for repeal of the Regulation is appreciated. Thank you.

Very truly yours,



Gregory P. Piccirilli, Esq.
Advisor to the Law Centre at the RI Center for
Freedom & Prosperity

³ <https://www.ed.gov/about/news/press-release/us-department-of-education-investigate-title-ix-violations-athletics>