STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, SC

JANE DOE,	:	
	:	
Plaintiff;	:	
	:	
vs.	:	C.A. No. PC2025-
	:	
ANGÉLICA INFANTE-GREEN, in her capacity as the Commissioner of Elementary and Secondary Education, Rhode Island Department of Education	:	
	:	
Defendant.	:	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

BACKGROUND:

The facts in this case are set forth in detail in the Complaint, as verified by the sworn statement of Plaintiff. For the reasons set forth herein, Plaintiff will show that she will likely prevail on the merits, that she continues to suffer irreparable harm by having her children subject to an agency regulation which hinders her ability to raise her children, and that the balancing of equities and public interest demand that this Court issue an injunction barring enforcement of the Rhode Island Commissioner of Elementary and Secondary Education Regulation 200-RICR-30-10-1 ("Commissioner Regulation"), and all policy guidance protocol currently in place which rely upon the Commissioner Regulation.

ARGUMENT:

In seeking injunctive relief, the moving party must demonstrate (1) a reasonable likelihood of success on the merits; (2) a threat of irreparable harm that is presently threatened or imminent and for which there is no adequate remedy of law; and (3) a balancing of the equities and public interest favors the moving party. Fund for Cmty. Progress v. United Way of Se. New England, 695 A.2d 517, 521-22 (R.I. 1997); Iggy's Doughboys, Inc. v. Giroux, 729 A.2d 701,

705 (R.I. 1999).

In this case, Plaintiff can clearly satisfy all of the elements required.

1. <u>Plaintiff will likely succeed on the merits.</u>

a. Standard of Review of Agency Regulation

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

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

Id. Under R.I. Gen. Laws § 42-35-7:

> The validity or applicability of any rule may be determined in an action for declaratory judgment in the superior court of Providence County, when it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

Whether an agency has properly enacted a regulation or rule, the proper avenue for review of that regulation or rule is by R.I. Gen. Laws § 42-35-7. *Newbay Corp. v. Annarummo*, 587 A.2d 63, 66 (R.I. 1991)

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

Under Rhode Island Law, "the entire care, control, and management of all public school interests of the several cities and towns shall be vested in the school committees of the several

cities and towns." R.I. Gen. Laws § 16-2-9. Although there are 39 cities and towns in Rhode Island, there are 66 public Local Education Agencies (LEAs) or districts in Rhode Island. These include:

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

In addition to the local LEAs, there is a Commissioner of Elementary and Secondary Education,[2] who is hired by the Rhode Island Board of Education.[3] Her duties include promulgating regulations to enforce Rhode Island's statute barring discrimination based on sex in RI public schools, See RI Gen. Laws § 16-38-1.1(5): "The commissioner of elementary and secondary education shall be responsible for enforcing this section and is empowered to promulgate rules and regulations to enforce the provisions of this section."

In 2018, the Rhode Island Commissioner of Elementary and Secondary Education enacted Regulation 200-RICR-30-10-1, entitled "Regulations Governing Protections for Students Rights to be Free from Discrimination on the Basis of Sex, Gender, Sexual Orientation, Gender Identity, or Gender Expression." ("Commissioner Regulation" Exh. A) This regulation states as follows:

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

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

2 R.I. Gen. Laws § 16-1-5

3 R.I. Gen. Laws § § 16-97-1.2(f)

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 statutory basis of the 2018 Commissioner Regulation is the anti-discrimination provisions 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.

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 is important to note that the original statute was enacted in 1985, and was last amended in 2013 to include paragraph (iv). Yet the Commissioner promulgated no regulation until 2018. It was at that time that the Commissioner read into the statute *gender, sexual orientation, gender identity, or gender expression* in schools. In promulgating this regulation, the there is no citation to any state law for the Commissioner to read "gender" in the statute.

Previous to enacting the Gender Regulation, in June of 2016, the Rhode Island Department of Education ("RIDE"), issued a "Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students." (Exh. B) In that Guidance, RIDE relied on that statute to justify its guidance, and made this specific finding:

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

As will be shown below, since the Commissioner believes the statute is the same as Title IX, an analysis of that federal law is warranted.

c. History of Title IX

Title IX generally provides that "[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Recently, Federal Courts have been asked to review attempts by former President Biden's administration to issue guidance and regulations which redefine what "sex" means under Title IX. As one court framed the history of Title IX:

> Motivated by "corrosive and unjustified discrimination against women ... in all facets of education," Congress enacted Title IX in 1972. 118 Cong. Rec. 5803 (Feb. 28, 1972)

> Statement of Sen. Bayh). Title IX generally provides that "[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). This landmark legislation prohibits "the use of federal resources to support discriminatory practices" among federal fund recipients. *Cannon v. Univ. of Chi*., 441 U.S. 677, 704 (1979). Its original goal was to ensure women experienced "full citizenship stature," including the "equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities." *United States v. Virginia, et al*., 518 U.S. 515, 532 (1996).

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

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

> The initial effort to redefine "sex" through regulatory decree occurred between 2014 and 2016 when the Department issued guidance construing Title IX's implementing regulations to restrict federal funding recipients from treating individuals inconsistently with their gender identity. . . . In May 2016, the Department's Office of Civil Rights ("OCR") issued a "Dear Colleague" letter, noting that schools may continue to provide sex segregated facilities, such as restrooms, locker rooms, and showers, pursuant to existing Title IX regulations, while interpreting the prohibition of sex discrimination to encompass discrimination based on a student's gender identity, including transgender status. The letter warned that schools "generally must treat transgender students consistent with their gender identity" when rendering sex-based distinctions in certain circumstances, such as providing separate facilities for male and female students. Id. OCR rescinded the May 2016 Dear Colleague letter in the early days of the Trump administration. However, it neither promulgated further guidance nor issued a rule regarding whether Title IX covers gender identity.
>
> On June 15, 2020, the United States Supreme Court issued its decision in *Bostock v. Clayton County, Georgia*, 590 U.S. 644 (2020). The Court held that an employer violates Title VII of the Civil Rights Act of 1964 by firing an individual for being homosexual or transgender. On his first day in office, President Joseph Biden issued Executive Order 13988, entitled "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation." Exec. Order No. 13,988, 86 Fed. Reg. 7023 (Jan. 21, 2021). Citing *Bostock*, President Biden stated that "[a]ll persons should receive equal treatment under the law, no matter their gender identity or sexual orientation." According to the President's proclamation, federal laws on the books that prohibit sex discrimination similarly "prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary." *Id*.
>
> President Biden subsequently issued Executive Order 14021, captioned "Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including

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

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

Both of these federal courts, as well as numerous others, were presented with requests for injunctive relief to stop enforcement of the Biden Administration guidance documents and amended Title IX regulations. Universally, these Courts found that the Guidance documents and regulations were unlawful and enjoined their taking effect. *See, e.g., Oklahoma v. Cardona*, Case No. 5:24-cv-461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. U.S. Dep't of Educ.,* Case No. 4:24-cv-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ*., Case No. 4:24-cv-461-O, 2024 WL 3381901 (N.D. Tex. July 11, 2024); *Kansas v. U.S. Dep't of Educ.,* Case No. 5:24-cv-4041-JWB, 2024 WL 3273285, at *12–13 (D. Kan. July 2, 2024); *Louisiana v. U.S. Dep't of Educ*., 737 F. Supp. 3d 377 (W.D. La. 2024).

Ultimately, these injunctions made their way to the United States Supreme Court. In *United States Dep't of Educ. v. Louisiana*, 603 U.S. 866 (2024), the Court upheld the injunctions, and all nine justices of the Supreme Court of the United States, "accept[ed] that the plaintiffs were entitled to preliminary injunctive relief as to three provisions of the rule, including the

central provision that newly defines sex discrimination to include discrimination on the basis of sexual orientation and gender identity." *Id*. at 867.

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

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

d. The Commissioner Regulation violates Title IX

Upon the issuance of this executive order and guidance, the Office of Civil Rights of the United States Department of Education ("OCR") has received numerous complaints that States and local school districts are not complying with federal law. OCR has accepted these complaints and started investigations into these districts.[4]

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

Rhode Island is one of the States against whom an OCR complaint was filed. On March 8, the Rhode Island Center for Freedom & Prosperity ("Center"), a nonprofit and nonpartisan, free-enterprise public policy research and advocacy organization, filed an OCR complaint against the Commissioner, the Rhode Island Interscholastic League, several local school districts, and the RI Attorney General, seeking an investigation into violations of federal law by these entities for refusing to comply with Title IX. (See Exh. E)

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

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

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

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

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

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

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

e. Plaintiff will likely succeed on the merits of her claim

Given that the Commissioner Regulation has no legal basis in Rhode Island law, it must be declared invalid. Even were the Commissioner able to somehow convince this Court that other state statutes which do not relate to RI Gen. Laws § 16-38-1.1 give the Commissioner such expansive powers to enact the Gender Regulation, federal law prohibits its enforcement.

2. <u>Irreparable Harm:</u>

It is axiomatic that "The purpose of an injunction is to prevent imminent, irreparable

injury." Ward v. City of Pawtucket Police Dep't, 639 A.2d 1379, 1382 (R.I. 1994). Here, Plaintiff has suffered and continues to suffer imminent, irreparable injury.

As stated in the complaint, Plaintiff has a has "a fundamental liberty interest in the care, custody, and management of their children." *In re Manuel P.*, 252 A.3d 1211, 1218 (R.I. 2021). This right has been interfered with by the Commissioner Regulation. Because of this Regulation, Plaintiff's daughter was allowed to secretly "transition" to a boy while at school, and this information was kept from her mother. Subsequently, her daughter attempted suicide, and the school still limits the information it shares with Plaintiff. The harm caused to the mother in this case is incalculable and only may be remedied with an injunction against the enforcement of the Commissioner Regulation.

There are other concerns that Plaintiff has. Will her boys be subject to secret transition as well, will they have to share bathrooms with girls who identify as boys; will they have to refer to girls by male pronouns, under threat of school punishment? These are real concerns caused by the Commissioner Regulation.

3. Balance of the Equities and the Public Interest

The third and fourth factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Courts have recognized that "the public interest lies in a correct application" of the law. See *Coalition to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 252 (6th Cir. 2006).

Here, the equities and public interest clearly favor the correct interpretation of state law and ensuring that the State comply with federal law.

CONCLUSION:

For all of the foregoing reasons, Plaintiff requests that this Court issue an injunction prohibiting the Commissioner of Elementary and Secondary Education from enforcing

Regulation 200-RICR-30-10-1, ordering that the Regulation be rescinded as beyond the statutory powers of the Commissioner to issue; and ordering that any and all policy guidance protocol currently in place which reply upon the Regulation be rescinded as well.

Plaintiffs further request that a hearing be commenced which will allow her to prove all of these elements necessary for the granting of both a permanent injunction.

Plaintiff,
By her Attorney,

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