



November 4, 2016

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Dear Mr. Glenn and Mr. Hart:

I write to express GLBTQ Legal Advocates & Defenders' deep concern about NECC's policy on "Bathroom and Locker Room Use" ("facilities policy") which states, in relevant part, that "[s]tudents are permitted to use bathrooms or locker rooms on campus that are gender specific based on the gender designation contained in the student's College records." This policy precludes transgender students from using bathrooms and locker rooms consistent with their gender identity. By doing so, this policy contravenes state and federal law.

GLAD requests that NECC, and the entire Community College system, will adopt and implement a facilities policy in compliance with the law, and fully inclusive and supportive of transgender students, no later than **Wednesday, November 30, 2016**. If implementation does not occur by that date, GLAD will pursue legal remedies to ensure compliance with all applicable laws.

NECC's current policy is out of step with virtually every other entity in the Commonwealth of Massachusetts. Putting aside the legality of your policy, it is untenable for a public institution to insist upon a policy that the Legislature has prohibited for elementary schools, middle schools, high schools, employers, landlords, and virtually every organizational entity of the Commonwealth, including hospitals, gyms, homeless shelters and swimming pools. The Legislature has rejected the rationales put forth by those who might prefer your current policy. More importantly, however, your policy is unlawful under federal and state law.

### Federal Law

As you know, NECC receives federal funding and, as a condition of that funding, must comply with Title IX. Title IX provides that “no 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. s. 1681(a). “This prohibition encompasses discrimination based on a student’s gender identity, including discrimination based on a student’s transgender status.” U.S. Department of Justice and U.S. Department of Education, Dear Colleague Letter on Transgender Students (May 13, 2016) (“Federal Guidance”). A school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Federal Guidance instructs that a school must treat a student consistently with their gender identity even if their education records indicate a different sex. Although Title IX’s regulations permit sex-segregated spaces in schools, transgender students must be allowed to access such facilities consistent with their gender identity. For your ease of reference, the Federal Guidance is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

### State Law

As you know, the state public accommodations law, General Laws chapter 272, now includes express protection on the basis of gender identity. Chapter 272 prohibits discrimination on the basis of gender identity in “any place . . . which is open to and accepts or solicits the patronage of the general public.” G. L. c. 272, §92A. Massachusetts broadly interprets its public accommodations statute to cover numerous entities. See, e.g., Currier v. Nat’l Bd. Of Med. Examiners, 462 Mass. 1, 18 (2012). By including the words “any place” in its definition, the Legislature intended these nondiscrimination protections to have a broad scope, and our courts have noted that the statutory list is not exclusive and have included nontraditional places of accommodation within its reach. See id. at 18; see also e.g. Concord Rod & Gun Club, Inc. v. Massachusetts Comm’n Against Discrimination, 402 Mass. 716, 720-21 (1988)(private club); Local Fin. Co. v. Massachusetts Comm’n Against Discrimination, 355 Mass. 10, 14 (1968)(loan services company).

NECC is a public accommodation. NECC collaborates, partners with and invites in large swaths of the public to use its facilities and programs, including older learners, elementary and middle school students, as well as degree-seeking students of all ages. As a place of public accommodation, NECC must not discriminate on the basis of gender identity. The current facilities policy does just that.

### Harm

Not only is the facilities policy out of step and unlawful, it is also harmful to NECC’s transgender students. Requiring a transgender student to use a restroom that does not correspond with their gender identity has a devastating and traumatic impact that interferes with their educational experience. For example, for a transman, being told that he cannot use the men’s restroom is traumatic as it negates an essential and immutable aspect of his identity. By excluding him from communal use restrooms congruent with his gender identity, he is

delegitimized, stigmatized and isolated. This facilities policy sends a clear message that transgender students are different and not worthy of respect and inclusion by the college community. That message is harmful not only to transgender students but to the entire learning community, and it must be stopped immediately. NECC's mission statement, diversity and pluralism policy, and affirmative action policy highlight the importance and value of inclusion and accessibility for all students. The facilities policy flouts, contradicts and undermines those goals.

### An Inclusive and Compliant Facilities Policy

Our hope is that NECC and the entire Community College system will move rapidly to adopt and implement a compliant facilities policy. For your ease of reference, GLAD suggests the following language:

Students shall have access to the bathroom or locker room facilities consistent with their gender identity as expressed by the student and irrespective of the gender listed in student records. All students may utilize bathroom or locker room facilities that are designated as gender neutral. No student is required to use a separate, gender-inclusive bathroom or locker room.

### Changing Biographical Data Policy

Another policy of the College requires that a student's name and gender in College records cannot be changed absent a certified court order reflecting a legal change of name or a legal change of gender. This policy is also unlawful and misguided.

### Federal Law

Requiring court orders to change names and gender in College records contravenes Title IX as interpreted by the U.S. Department of Education. As outlined in the Federal Guidance, schools must use names consistent with the student's transgender identity, and they should update a transgender student's education records "to reflect the student's gender identity and new name." Doing so ensures the student's privacy and ensures that personnel consistently use appropriate names and pronouns. Federal Guidance at 5.

### State Law and Guidance

In the Commonwealth of Massachusetts, a person has a common law right to use the name of their choice, and no legal name change is required. See Merolevitz, Petitioner, 320 Mass. 448 (1946) ("It is well settled that at common law a person may change his name at will, without resort to legal proceedings, by merely adopting another name, provided that this is done for an honest purpose."). In light of this, NECC's requirement of a court order is contrary to state law and creates unnecessary barriers for transgender students.

Massachusetts public elementary, middle and high schools are national leaders on student record policies. The Department of Elementary and Secondary Education has a guidance for public schools which thoughtfully and comprehensively outlines how to create a supportive school environment for transgender students. With regard to student's names, the guidance

provides that “when requested, schools should accurately record the student’s chosen name on all records, whether or not the student, parent, or guardian provides the school with a court order formalizing a name change.” A transgender student has a right to use their chosen name in elementary, middle and high school, and then, under your policy, must revert to their birth name in college. This simply cannot persist. For gender changes, the DESE guidance provides that “a documented gender marker should reflect the student’s gender identity, not the student’s assigned sex.... [U]pon request by the student or, in the case of young students not yet able to advocate for themselves, by the parent or guardian, the school should change the gender marker.” A transgender student has a right to designate their chosen gender marker in elementary, middle and high school, and then, under your policy, must revert to their birth gender in college. This is unacceptable.

NECC and the Community College system has fallen far behind with its student records policies, and it is imperative that your policies be updated and brought into compliance. GLAD requests that you amend your policy to allow students to change their College records to correspond with their gender identity and no longer require judicial action for such changes.

We look forward to hearing from you by **Wednesday, November 30, 2016**. Thank you.

Sincerely yours,



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cc: Jennifer Levi, Transgender Rights Project Director, GLAD  
Carlos E. Santiago, Commissioner of Higher Education  
Ken Tashjy, General Counsel, Board of Higher Education  
Jonathan Miller, Joanna Lydgate, Genevieve Nadeau, and Gabrielle Viator, Office of the Attorney General