Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students

Creating Safe and Supportive School Environments

June 2016

Rhode Island Department of Education
255 Westminster Street
Providence, Rhode Island 02903
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INTRODUCTION

The Rhode Island Department of Elementary and Secondary Education is committed to ensuring safe and supportive learning environments for all Rhode Island youth. It is imperative that the school system, along with family and education professionals, be supportive role models and strong advocates for the safety and well-being of children. All students need a safe and supportive school environment to progress academically and developmentally. Therefore, the purpose of this guidance is to:

- Foster an educational environment that is safe and free from discrimination for all students, regardless of sex, sexual orientation, gender identity, or gender expression,
- Facilitate compliance with state and federal law concerning bullying, harassment, and discrimination,
- Reduce the stigmatization of and improve the educational integration of transgender and gender non-conforming students, maintaining the privacy of all students, and fostering cultural competence and professional development for school staff, and
- Support healthy communication between educators and parent(s)/guardian(s) to further the successful educational development and well-being of every student.

The need for this guidance is clear. The Human Rights Campaign Foundation’s survey including more than 10,000 youth entitled, Growing UP LGBT in America, found that 42% of gender non-conforming youth report frequently or often being called names and 40% reported being frequently or often excluded. Further, over half of gender nonconforming youth reported 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%).

Federal and State laws provide a legal framework to guide school policies and practices related to discrimination based on sex, gender identity and gender expression. Enumeration of subgroups within Civil Rights Laws is necessary because those subgroups tend to experience discrimination more than other groups. Enumeration specifically identifies categories of people who must be included within the protection of the law. However, the overall purpose of this guidance is to ensure safe and supportive environments for all students.
The Rhode Island Department of Education Office of Student, Community and Academic Supports, Safe & Supportive Environments subcommittee, reviewed policies and guidance from several states, organizations, and consulted with experts in the field to develop this document. The input we received from school and district administrators, advocacy groups, parents, students, and other interested constituents, is reflected herein.

FEDERAL LAWS & GUIDANCE

The First Amendment of the U.S. Constitution protects the right to privacy, free speech and freedom of expression.

The Federal Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, or national origin.

Title IX of the Education Amendments of 1972 specifically prohibits discrimination on the basis of sex in any education program that receives federal funding within the Civil Rights Act. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal financial assistance must comply with Title IX. On April 4, 2011 the Office for Civil Rights (OCR) in the U.S. Department of Education (USDOE) issued a Dear Colleague Letter concerning student on student violence to clarify a school’s legal responsibility to respond promptly and effectively to sexual violence against students in accordance with the requirements of Title IX.

Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school’s obligation. Indeed, lesbian, gay, bisexual and transgender youth report high rates of sexual harassment and sexual violence. A school should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it uses in all complaints involving sexual violence. The fact that incidents of sexual violence may be accompanied by anti-gay comments or be partly based on a student’s actual or perceived sexual orientation does not relieve a school of its obligations under Title IX to investigate and remedy those instances of sexual violence.

Additionally, the USDOE Office of Civil Rights (April, 2014) developed an accompanying guidance on Questions and Answers on Title IX and Sexual Violence.

On May 13, 2016 the U.S. Departments of Justice and Education released joint guidance to help provide educators the information they need to ensure that all students, including transgender students, can attend school in an environment free from discrimination based on sex. The guidance also explains schools’ obligations to:

- Respond promptly and effectively to sex-based harassment of all students, including harassment based on a student’s actual or perceived gender identity, transgender status or gender transition;
- Treat students consistent with their gender identity even if their school records or identification documents indicate a different sex;
- Allow students to participate in sex-segregated activities and access sex-segregated facilities consistent with their gender identity; and
• Protect students’ privacy related to their transgender status under Title IX and the Family Educational Rights and Privacy Act.

Further information on the most recent federal guidance may be accessed through the official announcement on the US Department of Justice web site.

Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the USDOE. FERPA gives parents certain rights with respect to their children’s education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Access to and review of official school records by parents is included.

The Federal Equal Access Act ensures that noncurricular student groups are afforded the same access to public secondary school facilities as other, similarly situated student groups. Based on decisions of the U.S. Supreme Court and other federal courts interpreting the Act, the USDOE’s Office of the General Counsel provides the following guidance:

The Act applies to: (1) any public secondary school (2) that receives federal funds (3) and creates a limited open forum by allowing one or more noncurricular student groups to meet on its premises (4) during non-instructional time. Schools meeting these criteria are forbidden to prevent access or deny fair opportunity to students who wish to hold meetings on school grounds.

The Act does not mention specific types of student groups to which equal-access rights apply. It instead broadly provides that schools allowing at least one “non-curriculum related student group” may not deny comparable access to any other student group because of the “religious, political, philosophical, or other content of the speech at [the group’s] meetings.” The Act therefore prohibits schools from banning student-led noncurricular groups because of the content of the speech at the groups’ meetings.

The Act identifies narrow exceptions; however, schools may not ban or suppress the speech of student groups based on a “desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”

RHODE ISLAND STATE LAWS & POLICY

In December 2010, The Rhode Island Board of Regents revised its Policy Statement on Discrimination Based on Sexual Orientation and Gender Identity/Expression which includes the following language:

The Rhode Island Board of Regents for Elementary and Secondary Education recognizes that all educational agencies must provide all people and groups with full access to educational opportunities and barriers to student participation based on sexual orientation or gender identity/expression must be identified and removed. The Board also recognizes that all students, without exception, have the right to attend a school in which they feel safe and able to express their identity without fear.

Article I, Section 2 of the Rhode Island Constitution states in part that “No otherwise qualified person shall, solely by reason of race, gender or handicap be
subject to discrimination by the state, its agents or any person or entity doing business with
the state.”

**RIGL §11-24-2 Discriminatory practices prohibited.**
In May, 2001, Rhode Island became the second state in the country to explicitly
prohibit discrimination on the basis of gender identity or expression, thereby
protecting transgender people from discrimination in employment, housing, credit,
identity or expression as including a person’s “actual or perceived gender, as well as a
person’s gender identity, gender-related self-image, gender-related appearance, or
gender-related expression, whether or not that gender identity is different from that
traditionally associated with the person’s sex at birth.” R.I. Gen. Laws, §§ 28-5-6
(employment); 34-37-3 (housing); 11-24-2.1 (public accommodations).

**RIGL §16-38-1.1 Discrimination because of sex** 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.

**RIGL§16-71-3 Educational records access and review rights-Confidentiality of records**, similar to
FERPA, safeguards the right of privacy of student education records. It applies only to public
schools.

**RIGL §16-2-17 Right to a safe school** asserts that each student, staff member, teacher, and
administrator has a right to attend and/or work at a school which is safe and secure, and which is
conducive to learning, and which is free from the threat, actual or implied, of physical harm by a
disruptive student.

**RIGL §16-21-34 Safe Schools Act and the RI Statewide Bullying Policy**, recognize that the bullying of
a student creates a climate of fear and disrespect that can seriously impair the student’s health and
negatively affect learning. Bullying undermines the safe learning environment that students need to
achieve their full potential. The expression, physical act or gesture may include, but is not limited
to, an incident or incidents 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. The purpose of the policy is to ensure a consistent and unified
statewide approach to the prohibition of bullying at school.

**DEFINITIONS**

The following terms appear in this document and are defined to assist in understanding the
guidance presented.

- **Assigned Sex at Birth:** 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 (Trans Student Educational Resources, 2016).

- **Biological Sex:** the biological state of having: 1) female or male genitalia; 2) female or male
  chromosomes and 3) female or male hormones. It is estimated that one in 2,000 babies is
born with the biological characteristics of both sexes or of neither sex entirely (Advocates For Youth, 2016).

- **Bullying:** means the use by one or more students of a written, verbal or electronic expression, or 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 to himself/herself or of damage to his/her property; creates an intimidating, threatening, hostile, or abusive educational environment for the student; infringes on the rights of the student to participate in school activities; or materially and substantially disrupts the education process or the orderly operation of a school (RI Safe Schools Act, 2012).

- **Gender:** social and cultural expression of sex, not biological sex (Advocates For Youth, 2016).

- **Gender Expression:** the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms (GLSEN, 2015).

- **Gender Identity:** a person’s deeply held sense or psychological knowledge of his or her own gender. One’s gender identity can be the same or different than the gender assigned at birth. Most people have a gender identity that matches their assigned gender at birth. For some, however, their gender identity is different from their assigned gender. All people have a gender identity, not just transgender people. Gender identity is an innate, largely inflexible characteristic of each individual’s personality that is generally established at a very early age, although the age at which individuals come to understand and express their gender identity may vary (GLSEN, 2015).

- **Gender Non-conforming:** a term used to describe people whose gender expression differs from stereotyped 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 (GLSEN, 2015).

- **Sexual Orientation:** A person’s romantic or sexual attraction to people of the same or opposite sex or multiple sexes. Some common sexual orientations are straight, gay, lesbian, bisexual, pansexual, queer, etc. A transgender or gender non-conforming person can have any sexual orientation (GLSEN, 2015).

- **Transgender:** 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 (GLSEN, 2015).

- **Transition:** The process in which a person goes from living and identifying as one gender to living and identifying as another. Transition is a process that is different for everyone, and it may or may not involve social, legal or physical changes. There is no one step or set of steps that an individual must undergo in order to have their gender identity affirmed and respected (GLSEN, 2015).
UNDERSTANDING GENDER IDENTITY

Transgender youth are those whose assigned sex at birth does not match their internalized sense of their gender (their “gender-related identity”), and gender non-conforming youth are those whose gender-related identity does not meet the stereotypically expected norms associated with their assigned sex at birth. A transgender boy, for example, is a youth who was assigned the sex of female at birth but has a clear and persistent identity as male. A transgender girl is a youth who was assigned the sex of male at birth but has a clear and persistent identity as female. Gender non-conforming youth range in the ways in which they identify as male, female, some combination of both, or neither gender (GLSEN, 2015).

Youth may initially begin to express their preferred gender with people with that they feel are safe. The process by which youth begin to express their preferred gender can vary and many factors can influence how individuals express their gender identity. Initial changes may involve adopting the appearance of the desired sex through clothing choices, grooming and name change (American Psychological Association, 2016).

GENDER TRANSITION

Many, though not all, transgender youth undergo the experience of gender transition. The term “gender transition” describes the experience by which a person goes from living and identifying as one gender to living and identifying as another.

For most young children, the experience of gender transition involves no medical treatment. Rather, most transgender youth will undergo gender transition through a process commonly referred to as “social transition,” whereby they begin to live and identify as the gender consistent with their gender-related identity. Some transgender youth who are close to reaching puberty, or after commencing puberty, may complement social transition with medical treatment that may include puberty blockers, cross-gender hormone therapy, and, for a small number of young people, a range of gender-confirming surgeries. The decision to undergo gender transition is personal and depends on the unique circumstances of each individual. There is no threshold medical or mental health diagnosis or treatment requirement that any student must meet in order to have his or her gender identity recognized and respected by a school (GLSEN, 2016). Thus, medical treatment should never be considered a requirement before a student can socially transition at school.

Some transgender and gender non-conforming students may hide or keep secret their gender identity at home because they may not feel safe or fear that they will not be accepted (Family Acceptance Project, 2009). School personnel should speak with the student first before discussing a student’s gender nonconformity or transgender status with the student’s parent(s) or guardian(s). For the same reasons, school personnel should discuss with the student how the school shall refer to the student, e.g., appropriate pronoun use, in written communication to the student’s parent(s) or guardian(s). Schools should not discuss a student’s gender identity with the parent(s) or guardians(s) if school personnel believe it may jeopardize the student’s physical or mental safety. GLSEN has found the following:

Elementary School: Generally, it will be the parent(s) or guardian(s) that inform the school of the student’s impending transition. However, it is not unusual for a student’s desire to transition to
first surface at school. If school staff believes that a gender identity or gender expression issue is presenting itself and creating difficulty for the child in school, approaching parent(s)/guardian(s) about the issue is appropriate at the elementary level. Together, the family and school can identify appropriate steps to support the student.

Secondary Schools: Generally, notification of a student’s parent(s)/guardian(s) about their gender identity, expression, or transition is unnecessary, as they are already aware and may be supportive. In some cases, however, notifying the family carries risks for the student, such as being kicked out of the home. School staff should work closely with the student to assess the degree to which, if any, the family will be involved in the process and must consider the health, well-being, and safety of the transitioning student.

When a student transitions during the school year, the school should ascertain the student’s (and their family) desires and concerns relating to transition. The school should discuss a timeline for the transition in order to create the conditions to provide a safe and supportive environment at the school. Finally, the school should train school administrators and any educators that interact directly with the student on the transition plan, timeline for transition, and any relevant legal requirements (GLSEN, 2015). School staff members should abide by the student’s/parent’s wishes concerning how a student would like to be addressed. This would include complying with school policies, as well as state and federal anti-discrimination, harassment and bullying laws and regulations designed to ensure that all students are treated with dignity and respect regardless of any individual’s strongly held belief to the contrary (National School Board Association, 2016).

NAMES AND PRONOUNS

Transgender students often choose to change the name assigned to them at birth to a name that is associated with their gender identity. If the student has changed their name through legal means, then official school records can reflect the change. However, if the student requests to be addressed by another name without evidence of a legal name change, this is referred to as their preferred name. The school, student and family (if they are involved) should be engaged and develop a plan for using the preferred name and pronoun within the school. The plan could include when and how this is communicated to staff, to students and the parents of other students. In the case of a transgender student who is enrolling at a new school, it is important that the school respect the student’s privacy and preferred name. In the case of a preferred name change, the official record in the school is not changed but the preferred name will be noted therein.

PRIVACY, CONFIDENTIALITY, AND STUDENT RECORDS

All people, including students, have a right to privacy, and this includes the right to keep one’s transgender status private at school. Information about a student’s transgender status, legal name, or gender assigned at birth also may constitute confidential medical information. Disclosing this information to other students, their parents, or other third parties may violate privacy laws, such as FERPA. Therefore, school staff must not disclose information that may reveal a student’s transgender status to others, including parents and other school staff, unless legally required to do so or unless the student has authorized such disclosure (GLSEN, 2015).

Transgender and gender non-conforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information. The fact that a student chooses to disclose his or her transgender status to
staff or other students does not authorize school staff to disclose medical and/or other information about the student. When contacting the parent(s) or guardian(s) of a transgender student, school staff should use the student’s legal name and the pronoun corresponding to the student’s gender assigned at birth unless the student or parent(s)/guardian(s) have specified otherwise.

The school is required to change a student’s official record to reflect a change in legal name or gender when there is documentation that such a change has been made pursuant to a court order or through amendment of state or federally issued identification documents. However, to the extent that the school is not legally required to use a student’s legal name and gender on other school records or documents, the school should use the name and gender requested by the student. In situations where school staff or administrators are required by law to use or to report a transgender student’s legal name or gender (for example, standardized testing), school staff and administrators must adopt practices to avoid the inadvertent disclosure of such confidential information.

When determining which, if any, staff or students shall be informed that a student’s gender identity is different from the assigned sex at birth; decisions should be made in consultation with the student, or in the case of a young student, the student’s parent(s) or guardian(s). The main focus should be on how the sharing of information will benefit the student.

Certified school nurse teachers and other licensed professionals need accurate and reliable information to confirm a student’s identity in order to ensure that the student receives appropriate care and to enable them to coordinate care with other health care providers or licensed professionals, as well as to file health insurance claims. Nurses are legally required, per the RI Rules and Regulations for School Health Programs, to maintain an individual school health record for every student that accurately documents clinical information relating to their patients and must keep their patients’ health records confidential. In the case of a transgender student, a school nurse should use the student’s preferred name, and should use the student’s birth name only when necessary to ensure that the student receives appropriate care and to enable the school nurse to coordinate care for the student with other health care providers or licensed professionals, as well as to file health insurance claims.

**DRESS CODES**

Schools may enforce dress codes pursuant to school/district policy. Students should have the right to dress in accordance with their gender identity, within the parameters of the dress code adopted by the school/district. School staff cannot enforce a dress code more strictly against transgender or gender non-conforming students than other students. Dress codes should be general statements that ensure the proper dress for all students.

**RESTROOMS, LOCKER ROOMS, AND CHANGING FACILITIES**

All students are entitled to have access to restrooms, locker rooms and changing facilities that are sanitary, safe, and adequate, so they can comfortably and fully engage in their school program and activities. The May 13, 2016 guidance issued by the U.S. Departments of Education and Justice states that:

> As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations. (Footnote
The Departments treat a student’s gender identity as the student’s sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity.

Accordingly, the student may access the restroom, locker room, and changing facility that correspond to the student’s gender identity. A student, upon request, should be provided with a safe and non-stigmatizing alternative to a gender-segregated facility. This may include the addition of a privacy partition or curtain, permission to use a nearby private restroom or office, or a separate changing schedule. However, requiring a transgender or gender non-conforming student to use a separate, nonintegrated space should not be done unless requested by the student and or family. Under no circumstances may students be required to use sex-segregated facilities that are inconsistent with their gender identity.

Some students may feel uncomfortable with a transgender student using the same sex-segregated restroom, locker room or changing facility. This discomfort is not a reason to deny access to the transgender student. School administrators and counseling staff should work with students to foster understanding of gender identity and to create a school culture that respects and values all students. Schools could consider gender-neutral restrooms and/or gender-neutral changing facility in the design of new schools and school renovations.

**PHYSICAL EDUCATION CLASSES AND INTRAMURAL AND INTERSCHOLASTIC ATHLETIC ACTIVITIES**

Physical education is a required course in all grades in Rhode Island public schools, and school-based athletics are an important part of many students’ lives. Most physical education classes in Rhode Island schools are co-ed, so the gender identity of students shall not be an issue with respect to these classes. Where there are sex-segregated classes or athletic activities, including intramural and interscholastic athletics, all students must be allowed to participate in a manner consistent with their gender identity.

With respect to interscholastic athletics, the Rhode Island Interscholastic League (RIIL) has its own policy related to participation and gender identity. The school administrator or athletic director must contact the RIIL to start the gender identity eligibility appeal process.

According to the RIIL policy:

> All students should have the opportunity to participate in the RIIL activities in a manner that is consistent with their gender identity, irrespective of the gender listed on the student’s records. Once the student has been granted eligibility to participate in the sports consistent with his/her gender identity, the eligibility is granted for the duration of the student’s participation and does not need to be renewed every sports season or school year. All discussion and documentation will be kept confidential, and the proceedings will be sealed unless the student and family make a specific request.

**OTHER GENDER-BASED ACTIVITIES, RULES, POLICIES, AND PRACTICES**

As a general matter, schools should evaluate all gender-based policies, rules, and practices and maintain only those that have a clear and sound pedagogical purpose. For example, rather than divide or group students on the basis of biological sex (e.g. boys and girls), educators could employ other creative strategies to create teams to work on problems or projects. Gender-based policies,
rules, and practices can have the effect of marginalizing, stigmatizing, and excluding students, whether they are gender non-conforming or not. In some circumstances, these policies, rules, and practices may violate federal and state law. For these reasons, schools should consider alternatives to such policies, rules and practices.

EDUCATION AND TRAINING

In order to further a safe and supportive school environment for all students, schools should incorporate education and training about transgender and gender non-conforming students into their anti-bullying curriculum, health education curriculum, student leadership trainings, and staff professional development.

As with other efforts to promote a positive school culture, it is important that student leaders and school personnel, particularly school administrators, become familiar with the terminology, best practices, guidance, and related resources, and that they communicate and model respect for the gender identity of all students. As recommended by GLSEN, the content of such professional development should include, but not be limited to:

• Terms, concepts, and current developmental understandings of gender identity, gender expression, and gender diversity in children and adolescents;

• Developmentally appropriate strategies for communication with students and parents about issues related to gender identity and gender expression that protect student privacy;

• Developmentally appropriate strategies for preventing and intervening in bullying incidents, including cyber bullying;

• School and district policies regarding bullying, discrimination, and gender identity/expression issues, transition, and responsibilities of staff; and

• Access to resources on working with transgender and gender non-conforming students.

COMMUNICATION WITH SCHOOL COMMUNITY

Superintendents and principals should review existing policies, handbooks, and other written materials to ensure that they reflect the inclusion of gender identity/expression in the anti-discrimination policy statements as appropriate. Schools should inform all members of the school community, including school personnel, students, and families, about federal and state law concerning transgender and gender non-conforming youth along with implications for school policy and practice.
REFERENCES

Advocates For Youth [www.advocatesforyouth.org]
American Psychological Association [www.apa.org]
Centers for Disease Control and Prevention [http://www.cdc.gov/]
District of Columbia Public Schools [dcps.dc.gov]
Family Acceptance Project at San Francisco State University [http://familyproject.sfsu.edu]
Gay & Lesbian Alliance Against Defamation [http://www.glaad.org/]
Gay, Lesbian & Straight, Education Network [http://www.glsen.org/]
Gender Spectrum [http://www.genderspectrum.org/]
Massachusetts Department of Elementary & Secondary Education [www.doe.mass.edu]
National Center for Transgender Equality [www.transequality.org/]
National School Boards Association 2016 Transgender Students in Schools [https://cdn-files.nsba.org/s3fs-public/reports/2016_Transgender_Guide.pdf?fR8tsknQRT6y2_Cy.WC6K2y2KEH.ewZg]
New York State Education Department [www.nysed.gov/]
RI Coordinated School Health – thrive [http://www.thriveri.org/]
RI Department of Education [www.ride.ri.gov]
Trans Student Educational Resources [http://www.transstudent.org/]
U.S. Department of Education [www.ed.gov/]
U.S. Department of Education Office of Civil Rights [www2.ed.gov/about/offices/list/ocr/index.html]
Youth Pride, Inc. [www.youthprideri.org/]

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