



FOUNDATION  
AGAINST  
INTOLERANCE  
& RACISM

October 24, 2022

Ms. Angélica Infante-Green  
Commissioner of Education  
Rhode Island Department of Education  
255 Westminister Street  
Providence, RI 02903

*Sent via email*

Dear Commissioner Infante-Green:

The Foundation Against Intolerance & Racism (FAIR) is a nonpartisan, nonprofit organization dedicated to advancing civil rights and liberties and promoting a common culture based on fairness, understanding, and humanity. Our website, [fairforall.org](http://fairforall.org), can give you a fuller sense of our identity and activities.

We write in response to a report submitted to us through our reporting site, [fairtransparency.org](http://fairtransparency.org), regarding the Rhode Island Department of Education's "Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students" policy. That policy requires teachers and staff to conceal transgender students' gender identity from their parents, unless the student consents or the school is "legally required" to disclose the information:

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.

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.

The policy also suggests that school districts should store transgender students' chosen name in unofficial records, presumably to keep such information from their parents: "[T]o the extent that the school is not

legally required to use a student's legal name and gender on [unofficial] school records or documents, the school should use the name and gender requested by the student.”

Although we appreciate that the Department may be seeking to protect its transgender students, its policy is inconsistent with constitutional and statutory law. First, contrary to the suggestion that FERPA prohibits disclosure of a student's name and gender to their own parents, that statute *mandates* such disclosure, upon parental request at the very least. Specifically, FERPA explicitly gives parents “the right to inspect and review the education records of their [minor] children.” 20 U.S.C. § 1232g(a)(1)(A). The term “education records” means “information directly related to a student” that is “maintained by an educational agency or institution or by a person acting for such agency or institution,” *id.* § 1232g(a)(4)(A)—colloquially known as “official records.” Few things are more directly related to a student than their name and gender/sex, which are routinely (and appropriately) reflected in a student's official records and must, therefore, be available to parents under FERPA.

By directing schools to store transgender students' name and gender only in unofficial locations, the policy contravenes FERPA. Where information is stored or how it is labeled does not change its character or disclosability: a student's name and gender are “education records,” regardless of where they are kept or how they are marked. FERPA would be eviscerated if schools could escape compliance by simply moving information around or calling it “unofficial.” Moreover, the Department's policy establishes different rules for transgender students and non-transgender students: the gender and name of the former can be hidden from parents, while those of the latter may not be. That is the case even if a non-transgender student uses a name at school that differs from their legal name. Nothing in FERPA authorizes different disclosure rules depending on the student's gender identity.

Second, concealing children's gender transition from their own parents violates those parents' constitutional rights. The Supreme Court has consistently held that parents have a “fundamental right” under the Due Process Clause of the Fourteenth Amendment to direct the upbringing, care, and control of their children. *See, e.g., Troxel v. Granville*, 530 U.S. 57, 65-6 (2000) (“[T]he interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court.”). It is parents, and not the state or its schools, who have the primary role in the care and rearing of children. *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (stating that it “is now established beyond debate” that parents have the “primary role” in rearing their children); *see Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (“[A] child is not the mere creature of the State.”). Parental authority over their minor children is broad. *Parham v. J.R.*, 442 U.S. 584, 602 (1979). It includes involvement in their children's medical and personal decisions, as “most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment.” *Id.* at 603. Because gender transition profoundly affects a child's mental, emotional, and physical development, involvement in that process is well within the scope of parents' fundamental rights.

The Department's gender non-disclosure policy deprives parents of those rights with no due process. It directs school personnel to actively conceal a student's gender transition from their parents upon the

child's command, unless disclosure is required by law.<sup>1</sup> There is no process, no preliminary finding of parental unfitness, no appeal, and no notice. Thus, parents not only are denied input into the extremely consequential matter of their child's gender transition, but also are kept from even knowing whether their child is entering the transition process. Such double infringement upon parents' fundamental due process rights is unconstitutional.

“[T]here is a presumption that fit parents act in the best interests of their children.” *Troxel*, 530 U.S. at 68. That presumption originates from the historical recognition that the natural bond between parent and child leads parents to act in the best interests of their children. *Parham*, 442 U.S. at 602. Without ample evidence that a parent is unfit to raise children, the state may not “inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.” *Troxel*, 530 U.S. at 68-9. The Department's non-disclosure policy turns that longstanding principle on its head by presuming (if not concluding) that parents must be unfit to address their child's gender transition simply if their child says so. The consequences of such policies are amplified in the case of adolescents, who frequently conceal information from their parents (often very effectively) not because of a lack of support, but as a byproduct of the normal teenage separation process. In many cases, children experiencing gender dysphoria reject their parents, rather than the other way around.

Certainly, it is correct that parents' fundamental rights regarding their children do not include the right to demand that the school curriculum be tailored to their individual preferences. However, assisting a child in gender transition, which is what the Department's policy does, is not a curricular matter or within a school's purview. Rather, it is a form of therapeutic and psychosocial treatment that significantly affects the child's entire well-being, including outside of school and long after he or she has graduated. Children considering or undergoing transition require ongoing psychological, medical, and other forms of care beyond school hours that only their parents or guardians can provide or authorize. Additionally, emerging research indicates that children who socially transition are extremely likely to seek medical and surgical interventions, many of which result in permanent effects and dependencies. See Annelou de Vries *et al.*, *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment* (PEDIATRICS vol. 134 issue 4, Oct. 1, 2014); Annelou de Vries *et al.*, *Puberty Suppression in Adolescents with Gender Identity Disorder: A Prospective Follow-Up Study* (J. SEX. MED. vol. 8 issue 8, Aug. 2011). Public schools may not knowingly abridge parents' fundamental right to know of and be involved in a process that has such deep, broad, and lasting effects on their children's lives.

FAIR advocates for a healthy partnership between and among educators, students, and parents. That partnership is not honored when schools conceal records they are legally required to disclose and systematically deny parents their fundamental right to be involved in the care and upbringing of their children. However well-intentioned, the Department's gender policy must conform with constitutional and statutory requirements. We urge the Department to revise its policy to achieve a balance consistent with the rights of parents, guardians, and all students.

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<sup>1</sup> As discussed herein, disclosure is legally required under the Constitution and FERPA.

We would like to give the Department an opportunity to respond. Please let us know within the next five days if you intend to do so.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. Kim', written in a cursive style.

Letitia Kim  
FAIR Chief Legal Officer  
Foundation Against Intolerance & Racism

*cc: Colleen Brophy, Anthony Cottone, Vilma DiOrio, Andrew Lentz, Kaelyn Phelps, Sergio Spaziano*