



Angélica Infante-Green
Commissioner

State of Rhode Island
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

October 26, 2022

By email
(letitia@fairforall.org)

Letitia Kim
Chief Legal Officer
Foundation Against Intolerance & Racism
485 Madison Avenue, 16th Floor
New York, New York, 10022

Re: Your October 24 letter to Commissioner Infante-Green re *Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students*

Dear Ms. Kim:

Thank you for your recent letter on behalf of the Foundation Against Intolerance & Racism (the “Foundation”) concerning the Rhode Island Department of Education’s (the “Department’s”) 2016 *Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students* (the “Guidance”).

FAIR has alleged that the Guidance:

- (3) “direct[s] schools to store transgender students’ names and gender only in unofficial locations,” and thereby violates the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, 34 CFR Part 99. *See* your October 24 letter at 2;
- (2) requires teachers and staff to “conceal[] children’s gender transition from their own parents,” and thus “violates those parents’ constitutional rights.” *See id.*; and
- (3) “assist[s] a child in gender transition.” *Id.* at 3.

In fact, these claims are not supported by the actual text of the Guidance, which mirrors that of several other states, reflects best practices as articulated by the U.S. Department of Education, and otherwise complies with FERPA and analogous state law. *See generally*

references cited in the Guidance at p. 11 and R.I. Gen. Laws § 16-71-3 (making clear that “[t]he parent, legal guardian, or eligible student, shall have . . . [t]he right to personally inspect and review records in existence at the time of the request that are required to be kept by law or regulation of the student within ten (10) days of the request”).

Contrary to your inaccurate characterization, the Guidance actually provides that “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.” *Id.* at 7 (emphasis added). Thus, since both FERPA and R.I. Gen. Laws § 16-71-3 are both expressly referenced in the Guidance, *see id.* at 3-4, and since both federal and state law mandate that parents of children under eighteen have the right to inspect and review educational records, school staff are “legally required” under the Guidance to disclose educational records to such parents upon request, whether not the records reveal a student’s transgender status. Accordingly, the Guidance is squarely in compliance with both FERPA and state access law and in no way wrongly authorizes or directs school staff to deny parents’ access rights as your letter implies.

Moreover, your claim that the Guidance “suggests that school districts should store transgender students’ chosen name in unofficial records, presumably to keep such information from their parents,” *see* your October 24 letter at 1, is way off base. There simply is no reference to “unofficial” school records in the Guidance, nor is there any reference to where or how such records are to be stored. The Guidance simply provides that:

. . . 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.

Id. at 8 (emphasis added). Notably, the fact that a school “is not legally required to use a student’s legal name and gender” on certain “school records or documents” does not inherently mean that these “other school records and documents” are not “education records” that would have to be provided upon request to the parent of a student under eighteen years of age under FERPA.

Finally, there is absolutely no textual support in the Guidance for your bald conclusion that the Guidance “assist[s] a child in gender transition.” *See* your October 24 letter at 3. In fact,

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the Guidance takes no position on such issues but, instead, merely seeks to assist local educational agencies protect the privacy rights of children under federal and state law.

Very truly yours,

A handwritten signature in black ink, appearing to read "A. Cottone". The signature is written in a cursive, flowing style.

Anthony F. Cottone,
Chief Legal Counsel

cc: Commissioner Angélica Infante-Green