

STATE OF RHODE ISLAND
SUPREME COURT

JANE DOE

Plaintiff/ Appellant

vs.

C.A. No. SU-2025-0296-A

ANGÉLICA INFANTE-GREEN, in her
capacity as the Commissioner of Elementary
and Secondary Education,
Rhode Island Department of Education

Defendant/Appellee

DEFENDANT/APPELLANT JANE DOE
RULE 12A STATEMENT OF THE CASE

This appeal is from the Plaintiff¹, Jane Doe, the mother of a daughter who was secretly transitioned to a boy in Rhode Island public school district because of Rhode Island Commissioner of Elementary and Secondary Education 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.” (“Regulation”) That Regulation defines “sex” to include “gender, sexual orientation, gender identity, or gender expression”.

¹ Plaintiff was granted leave to proceed under a pseudonym by Order of a different Justice of the Superior Court on May 28, 2025. We ask that this Court also continue to use the pseudonym to protect the privacy rights of the student in this case.

BACKGROUND:

Plaintiff brought this action in the Superior Court pursuant to

R.I. Gen. Laws § 42-35-7, which provides:

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.

Plaintiff's daughter was the victim of sexual abuse by a family member was she was 5 years old. The perpetrator was related to her father and was convicted of child sexual assault and sentenced to prison. As a result of the sexual assault, Plaintiff's daughter has suffered mental health issues, including gender dysphoria. Unbeknownst to Plaintiff, her daughter began to socially transition to a boy at school, with the help of school personnel.

Because of the Commissioner Regulation, Rhode Island Department of Education ("RIDE") guidance, and the policy the School District was forced to enact, these school personnel felt emboldened and compelled to encourage the daughter's social transition, and to hide this fact from Plaintiff. Plaintiff only discovered this secret transitioning when her daughter attempted to commit suicide in the 10th grade.

The school district continued to keep secrets from Plaintiff, including refusing to release school records of her daughter's social transition. Plaintiff also has two boys who also attend the school district, and fears that they may be subject to the effects of the Commissioner Regulation.

Plaintiff fears that school personnel will allow girls in these boys' bathrooms and private facilities, may compel her boys to use gender pronouns of classmates which do not comport to biological reality under threat of punishment, and may keep thoughts of their social transitioning secret from her.

In 1985, the General Assembly enacted R.I. Gen. Laws § 16-38-1.1. That statute provides in relevant part:

- (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.
- (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.

(3) Each local education agency shall designate an equal opportunity officer who shall be responsible for overseeing compliance with this section within the local education agency district.

(4) The board of regents shall designate an equal opportunity officer who shall be responsible for overseeing compliance with this section within schools operated by the board.

(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.

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. It is important to note that the original statute was enacted in 1985 and was last amended in 2013 to include paragraph (iv). See P.L. 2013, ch. 522, § 1.

No regulation was issued pursuant to this statute for over thirty years. Then, in 2018, the Rhode Island Commissioner of Elementary and Secondary Education enacted Regulation 200-RICR-30-10-1, which 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*)

1.2 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.

On August 19, 2025, the Trial Justice denied Plaintiff’s request for Declaratory Judgment and dismissed the complaint. First, the Court found that the term “sex” as used in the § 16-38-1.1 is ambiguous. He based his conclusion on his reading of the definition of “sex” in certain dictionaries from 1983, finding that “sex” could have meant “gender identity” back then.

Finding the statutory language ambiguous, the Court then turned to “well established maxims of statutory construction in an effort to glean the intent of the legislature,” citing this Court’s recent decision in *Rhode Island Truck Center, LLC v. Daimler Trucks N. America, LLC*, 338 A.3d 1056 (R.I. 2025).

Citing the rule of statutory construction of *in pari materia*, the Trial Justice found to maintain “harmony” with various statutes, policies of the Rhode Island Board of Education and the Rhode Island Constitution, he must find that the term “sex” includes “gender”.

Judgment was entered on September 8, 2025, and this appeal timely ensued.

SUMMARY OF ISSUES:

1. The Trial Court erred by finding that the term “sex” as used in R.I. Gen. Laws § 16-38-1.1 is ambiguous.

The Trial Justice ignored the argument below that in R.I. Gen. Laws § 16-38-1.1 was based on Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* In June of 2016, the Rhode Island Department of Education (“RIDE”), issued a “Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students.” In issuing this Guidance, RIDE cited extensively to federal law. With regard to gender identity, it relied heavily on Title

IX, and a May 2016 “joint guidance” from the U.S. Departments of Justice and Education (which has been revoked and no longer exists). RIDE also cited to state law and made this 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*)

This Court also looks to Federal law when interpreting anti-discrimination statutes. *See Decamp v. Dollar Tree Stores, Inc.*, 875 A.2d 13, 21 (R.I. 2005) (*citing Newport Shipyard, Inc. v. R.I. Comm'n for Hum. Rts.*, 484 A.2d 893, 898 (R.I. 1984)) (adopting Federal Courts’ *prima facie* burden shifting analysis under Title VII of the Civil Rights Act of 1964 to the R.I. Fair Employment Practices Act, R.I. Gen. Laws ch. 28-5) *See also, Center For Behavioral Health, Rhode Island, Inc. v. Barros*, 710 A.2d 680, 685 (R.I. 1998): (“Section 28-5-6(2) [of the R.I. Fair Employment Practices Act] states that “[b]ecause of sex” or “on the basis of sex” includes, but are not limited to pregnancy, childbirth, and other related medical conditions. In construing these provisions, we have previously stated that this Court will look for guidance to decisions of the federal courts construing Title VII of the Civil Rights Act of 1964.”)

Because Title IX does not define “sex,” courts “look to the ordinary meaning of the word when it was enacted in 1972.” *Adams v. School Bd. of St. Johns Cnty.*, 57 F.4th 791, 812 (11th Cir. 2022) (en banc):

[T]he overwhelming majority of dictionaries” from “the time of Title IX’s enactment show that when Congress prohibited discrimination on the basis of ‘sex’ in education, it meant biological sex, i.e., discrimination between males and females.” *Id.* Indeed, just one year after Title IX was enacted, a plurality of this Court explained that sex “is an immutable characteristic determined solely by * * * birth” that distinguishes “male and female” individuals. *Frontiero v. Richardson*, 411 U.S. 677, 681, 686 (1973). And Title IX itself makes clear that Congress shared this understanding of the term, as the statute repeatedly uses “sex” to refer to the binary difference between males and females. *E.g.*, 20 U.S.C. 1681(a)(8) (“students of one sex” and “of the other sex”); 20 U.S.C. 1681(a)(2) (“students of both sexes”).

The ordinary meaning of “sex” had not changed by 1985. In fact, as late as 2013, the R.I. General Assembly was still referring to “separate restrooms, dressing, and shower facilities for males and females;” . . . “separate human sexuality classes for male and female students;” . . . prohibiting “female participation in all contact sports provided that equal athletic opportunities which effectively accommodate the interests and abilities of both sexes are made available;” . . . and “providing 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.” See P.L. 2013, ch. 522, § 1.

While the Trial Justice may have thought that the term “sex” was ambiguous enough in 195, the General Assembly clearly did not.

2. Even if the term “sex” is ambiguous, the Trial Court used the wrong statutory construction to glean the intent of the legislature, which intent was clearly to use the term “sex” to me either male or female.

The Trial Court chose to utilize the statutory construction doctrine of *in pari materia*. However, that concept only applies if there are two statutes either in conflict, as was the case in *Purcell v. Johnson*, 297 A.3d 464 (R.I. 2023), or where one statute is silent on a topic, and the Court looks to similar statutes to discern a statute’s meaning. See e.g. *Horn v. Southern Union Co.*, 927 A.2d 292 (R.I. 2007), where the Court looked to the R.I. Fair Employment Practices Act to determine the statute of limitations for the R.I. Civil Rights Act. In this case, there is nothing inherently inconsistent with R.I. Gen. Laws § 16-38-1.1 and any other statute cited by the Commissioner.

The only relevant rule of statutory construction in this case is *expressio unius est exclusio alterius*. Under that doctrine, this Court must recognize that the omission of the terms “gender, sexual orientation, gender identity, or gender expression” from R.I. Gen. Laws § 16-38-1.1 was intentional. The Commissioner

had no power to re-write the statute to include those terms. *See, e.g., Finnimore & Fisher Inc. v. Town of New Shoreham*, 291 A.3d 977, 984 (R.I. 2023):

This Court has previously "availed [itself] of the rule of construction that states that an express enumeration of items in a statute indicates a legislative intent to exclude all items not listed." *Murphy*, 471 A.2d at 622 ; see 2A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 47:23 (7th ed. Nov. 2022 Update) ("In practice * * * all versions of the *expressio unius* rule reflect the same common sense premise that when people say one thing, they do not mean something else.").

See also, Ricci v. R.I. Commerce Corp., 276 A.3d 903, 908 (R.I. 2022) (General Assembly enumerated specific exceptions to LEOBOR, therefore other exclusions will not be read into the law). *Cf. Gorman v. Gorman*, 883 A.2d 732, 738 n.9 (R.I. 2005):

The venerable maxim of contract interpretation *expressio unius est exclusio alterius* is frequently a helpful interpretive guide in situations like the present one. See 5 Corbin on Contracts (Interpretation of Contracts) § 24.28 at 315-16 (Margaret N. Kniffin, rev. ed. 1998) ("The maxim *expressio unius est exclusio alterius* means literally 'the expression of the one is the exclusion of the other.' If the parties in their contract have specifically named one item or if they have specifically enumerated several items of a larger class, a reasonable inference is that they did not intend to include other, similar items not listed.").

Nor can the Commissioner rely on any other statute to justify the Regulation.

First, and most importantly, in the regulation itself the Commissioner cites to no other statutory authority. More importantly, the Commissioner cannot interpret statutes which do not involve "school law" as a justification for exercising her

jurisdiction. See *Asadoorian v. Warwick School Committee*, 691 A.2d 573, 581 (R.I. 1997) (Commissioner has no jurisdiction to determine whether a state statute violates the anti-discrimination in employment statute, Title VII, 42 U.S.C. § 2000e-2).

Finally, the Trial Court relied upon the case of *Bostock v. Clayton County*, 590 U.S. 644, 661 (2020), for the proposition that discrimination on the basis of transgender status is “inextricably bound up with sex.” What the Trial Justice failed to mention is that *Bostock* was limited to Title VII, and specifically, the Court did “not purport to address bathrooms, locker rooms, or anything else of the kind.” *Id.* at 681.

What the Trial Court also failed to note was that the U.S. Supreme Court has already ruled on this issue. In *United States Dep’t of Educ. v. Louisiana*, 603 U.S. 866 (2024), the Court upheld certain injunctions against the enforcement of 2024 Title IX regulations which attempted to include gender identity in the definition of sex. 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. And the U.S. Supreme Court is poised to clarify this ruling in two cases

which have recently been argued before it on this very issue. *See* 24-38 *Little v. Hecox* and 24-43 *West Virginia v. B. P. J.*, argued January 13, 2026.

CONCLUSION:

For the foregoing reasons, Plaintiff Jane Doe asks this Court to reverse the decision of the Trial Court, or place this matter down for full briefing.

Respectfully submitted,
Plaintiff/Appellant,
By her Attorney,

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**CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH RULE 18(B)**

1. This Rule 12A statement contains 2844 words, excluding the parts exempted from the word count by Rule 18(b).
2. This Rule 12A statement complies with the font, spacing, and type size requirements stated in Rule 18(b).
- 3.

/s/ Gregory P. Piccirilli, #4582

CERTIFICATION

I hereby certify that on January 16, 2026, I electronically filed and served this document through the electronic filing system upon the following parties:

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