Public Comment

June 29, 2015

Attn: Laura Lindstrand
Washington State Human Rights Commission
PO Box 42490
Olympia, WA 98541-2490

Re: LGBT Advocates' Comments ToWSHRC's Proposed Rulemaking On Sexual Orientation, Gender Identity, & Gender Expression

Dear Commissioners:

As advocates for the rights of LGBTQindividuals across the State of Washington, the American Civil Liberties Union of Washington Foundation, Equal Rights Washington, Gender Justice League, the Greater Seattle Business Association, Ingersoll Gender Center, Legal Voice, Oasis Youth Center, Pride Foundation, the Rainbow Center, and Professor Lisa Brodoff of Seattle University School of Law submit these comments to the Washington State Human Rights Commission's ("WSHRC") Proposed Rules on sexual orientation, gender identity, and gender expression.

Since 2006, the Washington Law Against Discrimination ("WLAD") has been one of the strongest state antidiscrimination statutes in the country. Currently, less than a quarter of the states have antidiscrimination laws protecting individuals on the basis of sexual orientation, gender identity, and gender expression. Of those states recognizing the civil rights of LGBTQ individuals, only about half have legislation as comprehensive as the WLAD, which prohibits discrimination in public accommodations, employment, housing, credit, and insurance. Despite nearly a decade of protection for sexual orientation, gender identity, and gender expression, however, discrimination against lesbian, gay, bisexual, and especially transgender people continues to occur. Many individuals and institutional actors lack a full understanding of rights and prohibited practices under Washington law, particularly around issues of gender identity and gender expression.

We thank the Human Rights Commission for drafting these Rules to address the need for increased public understanding about sexual orientation, gender identity, and gender expression under the law. Section I discusses recommendations for addressing our primary concerns with the Proposed Rules, which include: (1) developing consistent terminology for protected categories; (2) strengthening pre-employment protections; (3) increasing student access to appropriate gender-segregated school facilities; (4) clarifying prohibited employment practices related to transgender health and privacy; and (5) expanding anti-harassment protections to prohibit transgender-specific harassment. Section II contains our suggested amendments to additional provisions not included by the Commission in the current Proposed Rules.

I. COMMENTS TO PROPOSED RULES

This section will address comments to the Commission's new and amendatory Proposed Rules regarding sexual orientation, gender identity, and gender expression, as set forth in WSR 15-11-104. Selected portions of each Proposed Rule appear in grey boxes, with recommended deletions in strikethrough and suggested additions in bold italics.

A. Proposed Amendatory Sections in Chapter 162-12 WAC, Preemployment Inquiry Guide

162-12-100 Purpose.

(4) Definition: In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, gender identity, gender expression, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

1. Terminologyin all Proposed Rules should consistently enumerate sexual orientation, gender identity, and gender expression as protected classes.

Considering that the primary purposeof the Proposed Rulesis to "provide understanding to businesses, employers, and the public" about sexual orientation, gender identity, and gender expression, the Commission should improve clarity by using consistent terminology for these protected classes. WSR 15-11-104. Currently, some Rules referenceeither sexual orientation or gender identity, while others reference both sexual orientation and gender identity together. These inconsistencies make little sense in light of RCW 49.60.040(26), which defines "sexual orientation" to meanboth"sexual orientation" (homosexuality, heterosexuality, and bisexuality) and "gender expression or identity." And despite the singular statutory definition for "gender expression and identity," the Proposed Rules only ever mention "gender identity," omitting references to "gender expression" altogether.

To clarify the practical differences between sexual orientation, gender identity, and gender expression, the Commission should define these terms at the beginning of the WAC. Suggested definitions for these words, as well as additional words such as "transgender" and "gender transition," are discussed inSection II below. Additionally,all references to protected status in the Proposed Rules should enumerate the full range of protectedcategories within RCW 49.60.040(26). Listing sexual orientation, gender identity, and gender expression is preferable to using"sexual orientation"as a proxy for all three because "sexual orientation" is not commonly understood to encompass either gender identity or expression, and theabsence of these termsmay prevent public awareness of their existence.

162-12-140 Preemployment inquiries.

(3) The following examples of fair and unfair preemployment inquiries define what is an unfair practice under RCW 49.60.180(4) and 49.60.200. These examples, however, are not all inclusive. All preemployment inquiries that unnecessarily elicit the protected status of a job applicant are prohibited by these statutes irrespective of whether or not the particular inquiry is covered in this regulation.

SUBJECT	FAIRPREEMPLOYMENT INQUIRES	UNFAIRPREEMPLOYMENTINQUIRES
h. Marital Status (see also Name and Family)	None.	( ) Mr. ( ) Mrs. ( ) Miss ( ) Ms. Whether the applicant is married, in a domestic partnership,single, divorced,

		separated, engaged, widowed, has a same sex or different sex spouseor domestic partner, etc.
j. Name	Whether applicant has worked for this company or another employer under a different name and, if so, what name. Name under which applicant is known to references if different from present name.	Inquiry into original name where it has been changed by court order or marriageor domestic partnership. Inquiries about a name that would divulge marital status, domestic partnership status, lineage, ancestry, national origin or descent, or transgender status.
l. Organizations	Inquiry into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, sexual orientation, genderidentity, gender expression, marital status, domestic partnership status, religion, or national origin or ancestry of its members.	Requirement that applicant list all organizations, clubs, societies, and lodges to which he or she belongs.
t. Sexual Orientation, Gender Identity, or Gender Expression	None.	Any inquiry concerning sexual orientation, gender identity, gender expression, transgender status, or gender transition is prohibited.

(4) If an application form asks for the applicant to identify as male or female, designation by the applicant of a sex that is inconsistent with the applicant's assigned or presumed gender shall not be considered, without more, to be fraudulent or to be a misrepresentation for the purpose of adverse action on the application.

(5) An applicant's giving of a name publicly and consistently used by the applicant, even when the name given is not the applicant's legal name, shall not be grounds for adverse action, if the name given is consistent with the applicant's gender identity or expression. However, where use of a person's legal name is required by law or for a reasonable business purpose, the applicant may be required to disclose it.

2. Unfair pre-employment inquiries under Proposed Rule 162-12-140 should specifically address common name and transition-related inquiries that many transgender applicants face.

The primary goal of these recommendations is to capture some of the most common and frequent complaints from transgender people who face discrimination in pre-employment. In particular and of great concern is inconsistency in applications between legal and chosen name, and gender markers on identity documents. It is of paramount importance that the Human Rights

Commission clarify for employers that transgender people are not committing fraud or misrepresenting themselves if their identity documents do not match their chosen name. State and federal law has well established that free speech principles protect individuals who use names other than their legal name for non-fraudulent purposes. Setting a requirement to use one's "legal name" on applications has a disparate impact on transgender people, because such a requirement increases their risk of facing discrimination. Sections 4 and 5 are taken directly from the guidance set forth by the Washington D.C. Human Rights Commission's rules on non-discrimination with regards to gender identity and expression. We believe these two provisions greatly strengthen and clarify for employers the most common form of pre-employment discrimination against transgender applicants.

In addition, we would suggest that HRC take this opportunity to clarify in the WACs that discrimination based on a person's domestic partnership status is prohibited to the same extent that discrimination based on a person's marital status is prohibited. *See* RCW 1.12.080 (providing that whenever the term "marriage" or "marital" is used in the Revised Code of Washington, the term "shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons" to the extent it does not conflict with federal law).

B. Proposed Amendatory Sections in Chapter 162-16 WAC, Employment

162-16-200 General purpose and definitions.

(4) Definition:

In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, *gender identity*, *gender expression*, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

To be consistent with other Rules and to promote clarity for stakeholders about the scope of the law, the Proposed Rule should explicitly refer to sexual orientation, gender identity, and gender expression.*See* section A(1),*supra.*

C. Proposed New Sections in Chapter 162-32 WAC, Sexual Orientation, Gender Identity, and Gender Expression

162-32-010 General purpose and scope.

This chapter interprets and implements the sexual orientation, *gender identity, and gender expression* discrimination protections of RCW 49.60.030, *49.60.040*, 49.60.180, and 49.60.215 and provides guidance regarding certain specific forms of sexual orientation,*gender identity, and gender expression* discrimination.

To be consistent with other Rules and to promote clarity for stakeholders about the scope of the law, the Chapter title and Proposed Rule should explicitly refer to sexual orientation, gender identity, and gender expression. The Rule should also refer to RCW 49.60.040, the statutory provision that defines gender identity and gender expression as protected statuses.*See* section A(1), *supra.*

162-32-020 Leave policies and reasonable accommodation.

This section outlines the ways in which employers are responsible for ensuring non-discriminatory leave policies and reasonable accommodation.

(1) During the course of the reasonable accommodation process, an employee may disclose personal information such as his or her sexual orientation or gender identity. It is the employer's duty to maintain a high level of confidentiality and to protect the health information disclosed during the reasonable accommodation process. The employer shall protect health information about sexual orientation, gender identity, gender expression, and transgender status.

~~(1)~~ (2) Leave. When an employer grants leave or time off of work to employees for medical or health reasons, the employer shall treat leave requests to address medical or health care needs ~~related to an individual's~~*without regard to* the employee's sexual orientation~~or~~, gender identity, *or gender expression*~~in the same manner as requests for all other medical conditions~~. For example:

(a) If an employer provides paid sick leave for periods of disability that require medical leave, the employer should provide paid sick leave for periods of disability related to an individual's sexual orientation ~~or~~, gender identity,*or gender expression* that require medical leave;

(b) If the employer's policy requires a medical provider's statement to verify the leave period as a reasonable accommodation, a medical provider's statement may be required to verify the leave period as a reasonable accommodation for the disabling condition related to the individual's sexual orientation ~~or~~,gender identity, *or gender expression. However, an employee who requests such leave shall not be required to provide a more detailed medical provider's statement than any other employee for another medical condition;*

(c) If the employer's policy permits the retention and accrual of benefits, such as seniority, retirement, and pension rights, during the leave period for other disabilities, the policy must also permit such accrual of benefits during leave for disabling conditions ~~related~~*without regard* to an individual's sexual orientation~~or~~,gender identity,*or gender expression*;

(d) If an employer allows an employee to use shared leave for disabling conditions, the employer must apply the same policies and procedures ~~for disabling conditions related~~*without regard*to an individual's sexual orientation~~or~~,gender identity, *or gender expression.For example, a gay or lesbian employee shall have the same opportunity to request and use shared medical/disability leave as that of a heterosexual employee.*

(2) Reasonable accommodation. An employer shall provide reasonable accommodation for a disability ~~when the disability is related to the individual's sexual orientation, or gender identity, or gender expression~~*regardless of the individual's sexual orientation, gender identity, or gender expression,*absent undue hardship to the employer. ~~Such reasonable accommodation includes, but is not limited to, medical leave for medical and counseling appointments, surgery, and recovery from surgery that are related to gender reassignment procedures and treatments. An undue hardship as a reason for denying an accommodation in situations involving disabilities relating to sexual orientation and gender identity shall be analyzed in the same manner as with accommodations for any other disability.~~

(a) Employers shall provide reasonable accommodations to individuals undergoing gender transition, including medical leave for medical and counseling appointments, surgery, and recovery from gender reassignment procedures, surgeries, and treatments.

(b) Consistent with WAC 162-30-020, employers shall provide leave for pregnancy, childbirth, and pregnancy related conditions without regard to sexual orientation, gender identity, or gender expression. For example, if a

transgender man becomes pregnant, he should be afforded the same leave and benefits for pregnancy, childbirth, and related conditions as any other pregnant person.

(3) Nothing in this section is intended to suggest that a person's sexual orientation ~~or~~, gender identity, *or gender expression*is a disabling condition.

1. **Proposed Rule 162-32-020 should be amended to clarify protections for transgender employees who request leave and to remove references to disabilities related to sexual orientation.**

We recommended that the Commission clarify that employers have an obligation to both provide leave for gender transition-related care, as well as to protect the privacy of any information that they learn through the process of granting disability leave. Many transgender people have reported that in applying for medical leave, they are subjected to a higher standard of inquiry, which often involves invasive and unnecessary questions about their genitals. To address these practices, the Commission should strengthen language in the proposed rules prohibiting higher standards of proof related to medical leave. We also believe that outlining reasonable accommodations on the basis of gender identity or expression is necessary. Such accommodationsincludemedical leave for transgender individuals recovering from gender transition-related surgeries or procedures.

162-32-030 Employee benefits and privileges.

(1) Consistent and equal basis. Employee benefits provided in whole or in part by an employer must be consistent between all employees and equal for all employees, regardless of the employee's sexual orientation, *gender identity, or gender expression*. For example, it is an unfair practice to:

(a) Provide health insurance coverage to an employee's ~~opposite~~*different* sex spouse *or domestic partner* but to fail to provide health insurance coverage to an employee's same sex spouse *or domestic partner* (except in situations where such a rule is prohibited or pre-empted by federal law.)

(b)*Provide health insurance coverage that excludes coverage for transition-related care, or otherwise denies or excludes services on the basis of gender identity or related medical conditions.*

~~(b)~~(c) Provide ~~paternity~~*parental* leave or bonding time for the ~~father~~*parent* of a child newly born or adopted into a ~~heterosexual~~*different sex* relationship, but fail to provide the same ~~paternity~~*parental* leave or bonding time ~~to~~*for* the parent of a child newly born or adopted into a ~~same-sex~~*same sex* relationship.

(2) Other benefits and privileges of employment. All other employee benefits, provided formally or informally including, but not limited to, health club memberships, discount programs, training, staff retreats, company gatherings and parties, and use of company vehicles or other company services, shall be provided on an equal basis to all employees regardless of the employee's sexual orientation, *gender identity, or genderexpression*. If the benefit or privilege is extended to the employee's ~~opposite~~*different* sex spouse *or domestic partner*, it must be extended to an employee's same sex spouse *or domestic partner*as well.

2. WAC 162-32-030 should explicitly state that providing health insurance coverage containing transgender-specific exclusions constitutes an unfair employment practice.

Many gay, lesbian, bisexual, and transgender people face disparate treatment in the extension of health, family, and medical leave benefits from their peers in workplaces. We are recommending a number of changes to strengthen and clarify the obligation of employers to ensure that all employees are treated fairly and without discrimination. As the Office of the Insurance Commissioner outlined in his June 24th, 2014 letter to insurance companies that the Washington Law Against Discrimination prohibits categorical exclusions of coverage for transgender healthcare, we also believe that under this same principle – employers are obligated under the law to ensure that their transgender employees have the same access to health insurance coverage as non-transgender employees.

162-32-040 Harassment.

(1) Harassment. Harassment based on an individual's sexual orientation ~~or~~, gender identity, *or gender expression* is prohibited. ~~Sexual orientation harassment~~*Harassment based on sexual orientation, gender identity, or gender expression* in employment is offensive and unwelcome behavior serious enough to affect the terms and conditions of employment ~~and which occurred because of an individual's sexual orientation or gender identity and~~that can be imputed to the employer.

(2) Harassment in a place of public accommodation.*Harassment based on sexual orientation, gender identity, or gender expression in a place of public accommodation is offensive and unwelcome behavior serious enough to alter the individual's experience at the place of public accommodation, or severe enough that the individual has no choice but to leave the place of public accommodation. In schools, such harassment is offensive and unwelcome behavior serious enough to interfere with or limit a student's ability to participate in or benefit from services, activities, or opportunities offered by a school district. (RCW 49.60.040(14); RCW 49.60.250.)*

~~(2)~~ (3) Prohibited conduct. Prohibited conduct may include, but is not limited to, the following:

(a) Asking intrusive and unwelcome personal questions about an individual's sexual orientation, gender identity, gender expression, gender transition, or transgender status;

(b) Intentionally causing distress to an individual by disclosing the individual's sexual orientation, gender identity, gender expression, gender transition, or transgender status~~against his or her wishes~~;

(c) Using offensive names, slurs, jokes, or terminology regarding an individual's sexual orientation, gender identity, or gender expression, gender transition, or transgender status;

(d) ~~The deliberate misuse of~~Deliberately misusing an individual's preferred name, form of address, or gender-related pronoun (except on official documentation, if the individual has not officially obtained a name change);

(e) Posting offensive pictures or sending offensive electronic or other communications regarding an individual's sexual orientation, gender identity, gender expression, gender transition, or transgender status;

(f) Unwelcome physical conduct~~.~~;

(g) Failing to take corrective measures to address known discriminatory harassment against individuals to whom a duty is owed, such as employees, tenants, public school students, and customers.

~~(3) Harassment in a place of public accommodation. Sexual orientation harassment in a place of public accommodation is offensive and unwelcome behavior serious enough to alter the individual's experience at the place of public accommodation, or severe enough that the individual has no choice but to leave the place of public accommodation, due to the individual's sexual orientation, and perpetrated by the place of public accommodation.~~

During school, at work, and in places of public accommodations, harassmentbased on sexual orientation, gender identity, and gender expression works to exclude many LGBTQindividuals from full participation in society.Transgender and gender nonconforming communities face the highest and most life-threatening levels of harassment. To this end, gaining clarity around the standards for harassment based on sexual orientation, gender identity, and gender expression as applied across various contexts, with specific examples of discriminatory harassment in each context, would help stakeholders understand precisely what harassment looks like when it occurs in a particular place or is committed by a particular person.These variables are important to illustrate, particularly for many transgender individuals who face pervasive levels of discrimination. The Commission should provide examples for dynamics beyond standard relationships such as employer-employee. For instance, harassment based on sexual orientation, gender identity, and gender expression may not only occur at the hands of employers at work, but also by co-workers outside the normal work setting and byclients at work, where employers fail to adequately protect their workers from such harassment.

162-32-050 Dress and grooming standards.

(1) Standards allowed. Covered entities may require standards of dress or grooming that serve a reasonable business or institutional purpose, such as promoting safety, developing a company identity, or projecting a professional, positive public image.

(2) Prohibited standards. Covered entities cannot require an individual to dress or groom in a manner that is not consistent with that individual's gender identity. *Transgender and gender nonconforming individuals have the right to comply with dress codes in a manner consistent with their gender identity or gender expression. To the extent they are otherwise lawful, gender-specific dress codes cannot be invoked to prevent transgender or gender nonconforming individuals from dressing in a manner consistent with their gender identity.*

We suggest this additional language to help ensure that both transgender and gender nonconforming individuals cannot be required to dress in a manner that is inconsistent with their gender identity or gender expression.Language similar to the language in section (2) can be found in various versions of federal guidance materials on gender identity rights, including the U.S. Department of Labor's "DOL Policies on Gender Identity: Rights and Responsibilities," http://www.dol.gov/oasam/programs/crc/20150422GenderIdentity.htm, and the U.S. Office of Personnel Management's "Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace," http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/.

162-32-060 Gender segregated facilities.

(1) Facility use. All covered entities~~, except school districts or other primary and secondary schools,~~ shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing

rooms, and homeless shelters, that are consistent with that individual's gender identity.

~~In such facilities where undressing in the presence of others occurs, covered entities, except for school districts and other primary or secondary schools, shall allow access to and use of a facility consistent with that individual's gender identity.~~

Transgender or gender nonconforming individuals should not be required to provide proof of any particular medical procedure or be subject to a higher burden of proof than non-transgender individuals with respect to access or use of facilities.

Example: An individual tells his supervisor that he is transitioning from female to male and will use the men's restroom from now on, not the women's restroom. The supervisor requires the employee to provide documentation that he has had sex reassignment surgery and must use the women's restroom until he does so. This is a violation of RCW 49.60.

(2) Cannot require use inconsistent with gender identity. A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual's gender identity, or request or require an individual to use a separate or gender-neutral facility *because of the individual's sexual orientation, gender identity, gender expression, or transgender status.*

(a) If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender identity, the person expressing discomfort should be directed to a separate or gender neutral facility, if available.

(b) Any action taken against a person who is using a ~~restroom~~gender-segregated facility, such as removing a person, should be taken due to that person's ~~actions~~conduct or behavior while in the ~~restroom~~facility, and must be unrelated to sexual orientation, gender identity, or gender expression. The same standards of conduct and behavior must be consistently applied to all ~~restroom~~facility users, regardless of sexual orientation, gender identity, or gender expression.

(3) Schools. School districts and other primary and secondary schools should allow students to use the restroom, *locker room, or other gender-segregated facility* that is consistent with their gender identity.~~consistently asserted at school. School districts and other primary and secondary schools should assess the use of locker rooms by transgendered students on a case-by-case basis, with the goals of maximizing the student's social integration and equal opportunity, ensuring the student's safety and comfort, and minimizing the stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.~~*Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided access to an alternative restroom, locker room, or other facility. No student, however, should be required to use an alternative restroom, locker room, or other facility because they are transgender or gender nonconforming.*

(4) Provision of options encouraged. Whenever feasible, covered entities are encouraged to provide options for privacy, such as single-use gender-neutral bathrooms or private changing areas, that are available to any individual desiring privacy.

Our primary concern with this provision is the imposition of a heightened standard on students' access to gender-segregated facilities in school. While the Proposed Rules affirm the right of every individual to access gender-segregated facilities consistent with the individual's gender identity, the Rules suspend this right for primary and secondary students in school. For

these students, gender identity must first be "consistently asserted," and for locker rooms, case-by-case determinations are the default rule before the student's own choice of the most appropriate facility. To the extent that public schools, as explicitly recognized by WAC 162-28-030,qualify as places of public accommodation, we recommend that the Commission apply the same standard to gender-segregated facilities in schools as all other public accommodations. This will not only grant students the freedom to access facilities consistent with their gender identity, but also will avoid inserting model policy guidance for schools into regulations. Explicitly stating, without qualification, the right of all students to access gender-consistent facilities and leaving conditional policy guidance out of the rules best ensures student rights are respected.

PROPOSED AMENDATORY SECTIONS IN CHAPTER 162-36 WAC, REAL ESTATE TRANSACTIONS

162-36-005 Discrimination.

(1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, sexual orientation, gender identity, gender expression, marital status, race, creed, color, national origin, families with children status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person:

...

(2) It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, sex, sexual orientation, gender identity, gender expression, national origin, families with children status, or with any sensory, mental or physical disability and/or the use of a trained dog guide or service animal by a disabled person.

...

(4) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, creed, national origin, sex, sexual orientation,gender identity, gender expression, disability, the use of a trained dog guide or service animal by a disabled person, or families with children status.

(5) Nothing in this chapter limits the applicability of any reasonable federal, state or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

To be consistent with other Rules and to promote clarity for stakeholders about the scope of the law, the Proposed Rule should explicitly refer to sexual orientation, gender identity, and gender expression.*See* section A(1), *supra*.

162-36-010 Soliciting buyers from neighbors of listed house.

Some real estate firms have a practice of sending letters, post cards or printed circulars to residents of a neighborhood where they have a home listed for sale in order to obtain referrals of prospective buyers of the home. Such a practice does not necessarily discriminate against persons on the basis of race, creed, color, national origin, sex, sexual orientation, gender identity, gender expression, marital status, families with children status, the presence of a sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. However, the practice can have a discriminatory effect, and thereby

constitute an unfair practice in a real estate transaction within the meaning of this chapter, where:

(1) It is used only in neighborhoods occupied entirely or predominantly by persons of a single race, creed, color, national origin, sex, sexual orientation, gender identity, gender expression, marital status, families with children status, have the presence of a sensory, mental or physical disability, or who use a trained dog guide or service animal as a disabled person, or

(2) Persons of a particular race, creed, color, national origin, sex, sexual orientation, gender identity, gender expression, marital status, families with children status, have the presence of a sensory, mental or physical disability, or use a trained dog guide or service animal as a disabled person living in the same neighborhood are not sent solicitations, or

(3) The content or language of the solicitation invites, promotes or perpetuates residential segregation or discrimination on the basis of race, creed, color, national origin, sex, sexual orientation, gender identity, gender expression, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person.

To be consistent with other Rules and to promote clarity for stakeholders about the scope of the law, the Proposed Rule should explicitly refer to sexual orientation, gender identity, and gender expression.*See* section A(1), *supra.*

162-36-020 Content and language of solicitation.

... A solicitation which indicates that the recipient of the solicitation can control the type of persons who will move into the neighborhood by referring appropriate prospective buyers, is likely to be understood as an invitation to discriminate on the basis of race, creed, color, national origin, sex, sexual orientation, gender identity, gender expression, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person. Phrases such as "uphold the standards of the community" (when the "standards" are unspecified) are likely to be understood the same way. Accordingly, it is an unfair practice under RCW 49.60.222 and WAC 162-36-010 for the content or language of a neighborhood solicitation to:

...

(3) Make reference to an assumed standard of the community which the solicitor, buyer or seller must or will uphold, unless the particular community standard is identified specifically, and the standard does not have the effect of excluding persons of a particular race, creed, color, national origin, sex, sexual orientation, gender identity, gender expression, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person.

To be consistent with other Rules and to promote clarity for stakeholders about the scope of the law, the Proposed Rule should explicitly refer to sexual orientation, gender identity, and gender expression.*See* section A(1), *supra.*

II. RECOMMEDATIONS FOR ADDITIONAL AMENDATORY SECTIONS NOT INCLUDED IN THE PROPOSED RULES

This section identifies WAC provisions omitted from the Commission's Proposed Rulesthat should be added as amendatory sections to include language relating to sexual orientation, gender identity, and gender expression consistent with the Rules discussed in Section I.

162-04-010Definitions

"Gender expression or identity," as defined by RCW 49.60.040(26), means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is difference from that traditionally associated with the sex assigned to that person at birth. Although the terms "gender identity" and "gender expression" may also be used in this title in a manner consistent with this definition, these terms are commonly understood as distinct concepts. "Gender identity" commonly refers to a person's internal, deeply held sense of gender, while "gender expression" typically refers to a person's external manifestations of gender. In recognition of these differences, for purposes of clarity these rules will generally use the terms separately.

"Gender transition" refers to the social and/or medical process a person undergoes to better reflect his or her gender identity. During this process, some individuals will require medically necessary care such as therapy, surgery, and hormone therapy.

...

"Marital status" refers to the legal status of being married, single, *in a domestic partnership*, divorced, or widowed.

...

"Protected class" means the persons who are members of (or who are treated as members of) one of the groups against whom discrimination is declared to be an unfair practice by the law against discrimination. Protected classes include persons between the ages of forty and seventy, persons of any race, creed, color, national origin, sex, *sexual orientation, gender identity, gender expression*, or marital status, and persons who are handicapped.

...

"Sexual orientation" means heterosexuality, homosexuality, or bisexuality, and includes an individual's actual or perceived sexual orientation. As defined by RCW 49.60.040(26), the term "sexual orientation" also includes gender identity and expression, but for purposes of clarity these rules generally use the terms "sexual orientation," "gender identity," and "gender expression" separately.

"Transgender person" means a person whose gender identity or expression differs from the gender assigned to that person at birth.

1. **WAC 162-04-010 should be amended to include definitions for all terminology related to sexual orientation, gender identity, and gender expression used throughout Title 162, and to clarify that discrimination based on perceived sexual orientation is prohibited.**

To expand upon the meaning of "sexual orientation," "gender identity," and "gender expression" as these terms are used throughout Title 162, definitions for each term should be added to this section. Definitions for additional words appearing in the Proposed Rules but not defined under the WLAD, including "gender transition" and "transgender," should also be added.

Additionally, the HRC should take this opportunity to clarify that discrimination based on perceived sexual orientation is prohibited under the WLAD. Failing to do so would ignore the fact that discrimination is often based simply on the perception that a person is lesbian or gay. Such discrimination has the same discriminatory intent and effect as discrimination based on a person's actual sexual orientation, and should be subject to remedies under the WLAD in light of the mandate of liberal construction of the law.

The HRC has previously interpreted similar statutes to prohibit discrimination based on the perception that a person belongs to a protected class. *See, e.g.*, *Barnes v. Washington Natural Gas Co.*, 22 Wn. App. 576, 591 P.2d 461 (1979) (affirming HRC's interpretation of the WLAD to apply to any disability "perceived to exist, whether or not it exists in fact.").

We recognize that Division III of the Washington Court of Appeals has held that discrimination based on perceived homosexuality is not prohibited by the WLAD. *See Davis v. Fred's Appliance*, 171 Wn. App. 348, 359-61, 287 P.3d 51 (2012). However, the Washington Supreme Court has never ruled on this issue, nor have the other two divisions of the Washington Court of Appeals – none of whom are bound by the decision of Division III. In addition, the U.S. Supreme Court has indicated that "[o]nly a judicial precedent holding that the statute unambiguously forecloses the agency's interpretation, and therefore contains no gap for the agency to fill, displaces a conflicting agency construction." *Nat'l Cable &Telecomms. Ass's v. Brand X Internet Servs.*, 545 U.S. 967, 983-84 (2005). Therefore, the *Davis* decision should not preclude the HRC from interpreting the statute to prohibit discrimination based on a person's perceived sexual orientation – just has it has in the context of other protected classes.

162-04-020 Organization and Operations

(5) **Authority and duty.** It is the commission's duty to administer the law against discrimination, chapter 49.60 RCW, which has as its purpose the elimination and prevention of discrimination because of race, creed, color, national origin, sex, ***sexual orientation, gender identity, gender expression,*** marital status, age or handicap. The commission has the authority and duty to, among other things: . . .

WAC 162-16-240 – Bona Fide Occupational Qualification

Under the law against discrimination, there is an exception to the rule that an employer, employment agency, labor union, or other person may not discriminate on the basis of protected status; that is if a bona fide occupational qualification (BFOQ) applies. The commission believes that the BFOQ exception should be applied narrowly to jobs for which a particular quality of protected status will be essential to or will contribute to the accomplishment of the purposes of the job. The following examples illustrate how the commission applies BFOQs:

~~(1) Where it is necessary for the purpose of authenticity or genuineness (e.g., model, actor, actress) or maintaining conventional standards of sexual privacy (e.g., locker room attendant, intimate apparel fitter) the commission will consider protected status to be a BFOQ.~~

(2) A 911 emergency response service needs operators who are bilingual in English and Spanish. The job qualification should be spoken language competency, not national origin.

(3) An employer refuses to consider a person with a disability for a receptionist position on the basis that the person's disability "would make customers and other coworkers uncomfortable." This is **not** a valid BFOQ.

(4) A person with a disability applies for promotion to a position at a different site within the firm. The firm does not promote the person because doing so would compel the firm to install an

assistive device on equipment at that site to enable the person to properly perform the job. This is **not** a valid BFOQ.

2. BFOQ

The proposed rules do not propose any changes to this existing WAC regarding bona fide occupational qualifications (BFOQs). The existing WAC includes an example (number 1) which is highly problematic from the perspective of eliminating discrimination based upon gender identity or gender expression. For example, it could suggest that a transgender woman could be refused work as a female model or as a female intimate apparel fitter based on concerns about her "authenticity" or "conventional standards of sexual privacy." This may effectively permit discrimination against transgender people to continue in certain professions based on prejudice, rather than based on bona fide occupational qualifications.

We would suggest eliminating example (1) above. We would also encourage the Commission to adopt language regarding BFOQs that is consistent with the comments submitted by the National Center for Transgender Equality, who suggested:

In the rare cases when specific assignments or duties are differentiated by sex in a "bona fide occupational qualification," the employer should assign those job duties based on an individual's gender expression or identity. Under no circumstances may an employer require an employee to accept a gender-specific assignment or duty contrary to their gender expression or identity, or limit gender-specific assignments or duties for that employee.

WAC 162-28-030 Schools are places of public accommodation.
(1) All public and private schools and other educational facilities in the state of Washington, except those operated or maintained by a bona fide religious or sectarian institution, are "places of public resort, accommodation, assemblage or amusement" for purposes of the Washington state law against discrimination, chapter 49.60 RCW.
(2) Definition: In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.
"Protected status" is short for the phrase, "race, creed, color, national origin, sex, ***sexual orientation, gender identity, gender expression***, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.215).

WAC 162-40-055 Rules concerning applications.
Rules concerning applications comply with Regulation B Equal Credit Opportunity 12 C.F.R. 202, Section 202.5, except where community property law is governed by the state of Washington at chapter 26.16 RCW, ~~Husband and wife—~~Rights and liabilities—Community property.

WAC 162-40-065 Rules concerning evaluation of applications.
Rules concerning evaluation of applications comply with Regulation B Equal Credit Opportunity 12 C.F.R. 202, Section 202.6, except where community property law is governed by the state of Washington at chapter 26.16 RCW, ~~Husband and wife—~~Rights and liabilities—Community property.

WAC 162-40-075 Rules concerning extensions of credit.
Rules concerning extensions of credit comply with Regulation B Equal Credit Opportunity 12 C.F.R. 202, Section 202.7, except where community property law is governed by the state of Washington at chapter 26.16 RCW, ~~Husband and wife—~~Rights and liabilities—Community property.

WAC 162-40-171 Notifications.
Rules concerning notifications comply with Regulation B Equal Credit Opportunity 12 C.F.R. 202, Section 202.9, except where community property law is governed by the state of Washington at chapter 26.16 RCW, ~~Husband and wife—Rights and liabilities—Community property~~.

WAC 162-40-181 Furnishing of credit information.
Rules concerning furnishing of Credit Information comply with Regulation B Equal Credit Opportunity 12 C.F.R. 202, Section 202.10, except where community property law is governed by the state of Washington at chapter 26.16 RCW, ~~Husband and wife—Rights and liabilities—Community~~ property.

WAC 162-40-191 General rule.
A consumer reporting agency shall not report to a creditor any information relating to an applicant's race, creed, color, national origin, sex, ***sexual orientation***, ***gender identity***, ***gender expression***, or the presence of any sensory, mental, or physical disability or that the applicant uses a trained dog guide or service animal because of a disability.

WAC 162-40-211 Record retention.
Rules concerning record retention conform to Regulation B Equal Credit Opportunity 12 C.F.R. 202, Section 202.12, except where community property law is governed by the state of Washington at chapter 26.16 RCW, ~~Husband and wife—Rights and liabilities—Community property~~.

WAC 162-40-251 Remedies.
An administrative law judge may order, or the commission's staff may propose upon a finding of reasonable cause to believe a violation of chapter 49.60 RCW has occurred, or in prefinding settlement efforts, remedies, including but not limited to:
(8) Requiring the posting of a notice in view of applicants for credit stating that it is an unfair practice for any person furnishing credit to deny or terminate such credit or to adversely affect an individual's credit standing because of such individual's race, creed, color, sex, ***sexual orientation***, ***gender identity***, ***gender expression***, national origin, or marital status.

III. CONCLUSION

Although marriage equality is finally the law of the land in all fifty states, anti-LGBTQ discrimination remains a pervasive problem in Washington State and throughout the country. We thank the Human Rights Commission for its efforts to provide greater clarity and guidance regarding the protections provided by our state law prohibiting discrimination based on sexual orientation, gender identity, and gender expression. We hope that the Commission will adopt our comments in order to help better ensure that legal equality becomes *lived equality* for LGBTQ Washingtonians.

Sincerely,

Jenni Wong, Robina Public Interest Fellow, ACLU of Washington Foundation
Monisha Harrell, Equal Rights Washington
Danni Askini, Executive Director, Gender Justice League
Matt Landers,Public Policy & Communications Manager, Greater Seattle Business Association
Marsha Botzer, Founder and Co-Chair, Ingersoll Gender Center
David Ward, Legal & Legislative Council, Legal Voice
Seth Kirby, Executive Director, Oasis Youth Center
Kris Hermanns, Executive Director, Pride Foundation
Michelle Douglas, Executive Director, Rainbow Center
Professor Lisa Brodoff, Seattle University School of Law

Lindstrand, Laura (HUM)

From: Lindstrand, Laura (HUM)
Sent: Tuesday, June 30, 2015 10:37 AM
To: Rulemakingcomments (HUM)
Subject: FW: Proposed rules

From: Calandra Sechrist [Calandra.Sechrist@k12.wa.us]
Sent: Monday, June 29, 2015 4:58 PM
To: Lindstrand, Laura (HUM); Ortiz, Sharon (HUM); Rulemakingcomments (HUM)
Subject: Proposed rules

Ms. Ortiz and Ms. Lindstrand,

We want to commend the Human Rights Commission on its proposed rules prohibiting discrimination on the basis of sexual orientation, gender identity, and gender expression. We greatly appreciated the opportunity to review the proposed rules and attend the public hearing last week.

As we heard during the public hearing, Tacoma School District and others have recommended that schools be included with all other covered entities in WAC 162-32-060(1)—by stating that they "shall allow individuals the use of gender-segregated facilities...consistent with that individual's gender identity," rather than separating schools into subsection (3).

If the Human Rights Commission is considering making changes in response to these comments, please know that OSPI would support you in doing so.

Our office expects to revise our guidelines, Prohibiting Discrimination in Washington Public Schools, over the next year. In doing so, we anticipate clarifying our guidance regarding discrimination of students on the basis of gender expression and gender identity, including guidance about gender-segregated facilities. We anticipate proposing revisions to these guidelines to clarify that public schools must—as opposed to "should"—allow students access to gender-segregated facilities consistent with their gender identity. This would be consistent with the Washington State School Directors Association's Transgender Student Policy and Procedure, and with how the U.S. Department of Education, Office for Civil Rights and the U.S. Department of Justice have resolved complaints under Title IX of the Education Amendments of 1972 with respect to sex and gender-based discrimination (see OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70).

Including schools with all other covered entities in WAC 392-190-060(1) would also alleviate any potential uncertainty about whether teachers, school employees, and school visitors—in addition to students—are protected from discrimination based on their gender identity or gender expression when accessing gender-segregated facilities in school buildings.

Because of this, it might not be necessary to distinguish schools from other employers or places public accommodation in WAC 162-32-060.

We hope this is helpful as you work on finalizing the rules. Please feel free to call or e-mail if you have any questions!

Respectfully,

Callie Sechrist
Director, Equity and Civil Rights
Office of Superintendent of Public Instruction
360-725-6162 | TTY: 360-664-3631

www.k12.wa.us/Equity

This information is for educational and informational purposes only. It is not intended to provide legal advice. For legal advice specific to the facts and circumstances of your individual situation, please contact an attorney. This e-mail, related attachments, and any response may be subject to public disclosure under state law.

V

Lindstrand, Laura (HUM)

From: Sid Jordan [sid.peterson@gmail.com]
Sent: Monday, June 29, 2015 10:34 PM
To: Rulemakingcomments (HUM)
Subject: WAC guidelines on non-discrimination protections based on gender identity/sexual orientation
Attachments: Feedback - SJP.docx

Dear Commissioners,

I was unable to give verbal comments at the final public hearing last week in Tacoma on the new WAC guidelines on non-discrimination protections related gender identity and sexual orientation. Thank you for your consideration of comments by email.

Over the last four years I have worked on a federally funded demonstration project focused on increasing access to services for LGBTQ victims of crime. My comments are wholly my own (and not those of the project), although they have been shaped by my experience providing training and technical assistance to organizations in King County and statewide. The protections afforded by RCW 49.60 are critical -- and sometimes life saving -- in helping to ensure that resources and supports available to vulnerable people. When it comes to access for transgender people, many agencies do no more than the minimum inscribed in the law (if they comply at all). I appreciate all efforts to gather and consider as much public opinion from those most impacted.

In regard to facility use WAC 162-32-060:
I strongly believe this section could be improved to better ensure protections for the *many* trans, intersex and/or gender variant people for whom gender identity as a "man" or "woman" is not a reality or possibility. The current text does not do tis adequately. As a trans person myself who does not strongly identity as a man or a woman (and is often perceived differently by different people), I must navigate daily decision-making about facility use. My decisions are often based on how I believe I'm being perceived by others and my own sense of safety -- not based on a "consistent" gender identity. I believe the most protective and constitutional approach would be to simply provide guidance that entities cannot discriminate ibased on gender identity or expression. I have attached here my suggested edits to this section. My comments also reflect my belief that rules for schools must be strongly opposed and students should be afforded the same protections as adults.

Thank you for your consideration and please to not hesitate to reach out for further clarification.

Best,

Sid Peterson

WAC 162-32-060 Gender segregated facilities.

(1) **Facility use.** All covered entities~~, except school districts or other primary and secondary schools, shall allow individuals the use of~~ that provide gender-segregated facilities, such as restrooms, locker rooms, and dressing rooms~~, and homeless shelters,~~ that are consistent with that ~~individual's~~ cannot discriminate based onsex, gender identity or expression.

~~In such facilities where undressing in the presence of others occurs, covered entities, except for school districts and other primary or secondary schools, shall allow access to and use of a facility consistent with that individual's gender identity.~~

(2) **Cannot require use inconsistent with gender identity.** A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual's gender identity, or request or require an individual to use a separate or gender-neutral facility.

(a) If another person expresses concern or discomfort about another~~person who uses a~~ individual's use of a facility ~~that is consistent with the person's gender identity~~based on any protected class, the person expressing discomfort should be directed to a

Comment [1]:

Comment [2]:
This should be included under housing protections. If it is included here, it should be established more broadly than "homeless" shelters. Perhaps "shelters and temporary housing programs" in order to cover shelters that is not expressly for "homeless" — such as domestic violence shelter, emergency shelters...
This opens up another are where W

Comment [3]:
Redundant with the above.

separate ~~or gender neutral~~ facility, if available.

(b) Any action taken against a person who is using a restroom, such as removing a person, should be taken due to that person's actions or behavior while in the restroom, and must be unrelated to gender identity. The same standards of conduct and behavior must be consistently applied to all restroom users, regardless of gender identity.

~~(3) **Schools.** School districts and other primary and secondary schools should allow students to use the restroom that is consistent with their gender identity consistently asserted at school. School districts and other primary and secondary schools should assess the use of locker rooms by transgendered students on a case by case basis, with the goals of maximizing the student's social integration and equal opportunity, ensuring the student's safety and comfort, and minimizing the stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.~~

(4) **Provision of options encouraged.** Whenever feasible, covered entities are encouraged to provide ~~options for privacy, such as~~ single-use gender-neutral bathrooms or private changing areas, that are available to any individual desiring privacy.

Comment [4]:
The language "should allow" is not as strong as "cannot discriminate" language. Why would the protections be different (and less) for transgender students?

Comment [5]:
This is a very high burden trans youth, many who do not or cannot assert a consistent gender identity at school. I sincerely hope that the school exemptions are removed here entirely, but if they remain, please consider rewording this to be similar to the above (whereby schools cannot discriminate based on gender identity or expression.)

Lindstrand, Laura (HUM)

From: Kathryn [foresterkathryn@hotmail.com]
Sent: Monday, June 29, 2015 4:25 PM
To: Rulemakingcomments (HUM)
Subject: Comments on Proposed Rule-making

To Whom It May Concern:

I would like to address an issue that I have encountered multiple times.

On employment applications, it is common to ask for applicants to reveal previous names if they exist. For a transgender, this is particularly difficult as it typically requires us to effectively "out" ourselves to a prospective employer. If we do not disclose our name change, then if it is later revealed that we changed our name, then we can be discharged for filing a "false" employment application. Either way, a significant window exists for discriminating against transgender applicants.

On the proposed rules, it indicates that changes of name may be required to be disclosed as it relates to previous employment. As most transgender individuals do not have financial resources sufficient to independently support themselves without employment, working under our birth name is usually necessary prior to transition. Thus, we are shackled with an adverse history that will always follow us given the existing rules governing transgender identities contributing to ever greater unemployment and social assistance.

Do we have a right to privacy, especially post-surgical transition? Who has a right to know these sensitive facts in the absence of clear demonstration that it would impact our working capacity? In the Age of Snowden, when the federal government deems everyone a viable target for spying, the value of individual privacy appears diminished. This is only true if we collectively make it this way. As a society, the importance of human rights as a societal value most reveals itself in how we treat our most vulnerable members. As such, it is not difficult to see that the transgender community as a class are among the most vulnerable of society's minorities. If we are serious about human rights, I implore you to re-examine and modify the proposed rules to protect transgender identities through improved standards for our right to privacy.

Sincerely,

Kathryn Forester

✓

Lindstrand, Laura (HUM)

From: Lindstrand, Laura (HUM)
Sent: Tuesday, June 16, 2015 9:24 AM
To: Rulemakingcomments (HUM)
Subject: FW: WSHRC Rulemaking

From: Ack, Nicole [mailto:ackn@evergreen.edu]
Sent: Thursday, June 11, 2015 11:19 AM
To: Lindstrand, Laura (HUM)
Cc: Ack, Nicole
Subject: RE: WSHRC Rulemaking

Dear Laura,

Thank you for the opportunity to provide the Washington State Human Rights Commission (WSHRC) with feedback regarding its proposed rulemaking (CR-102, implementing RCW 34.05.320), in reference to the addition of sexual orientation and gender identity as protected classes to the Washington Law Against Discrimination.

The request for feedback states that "Stakeholders have requested clarification explanation of the law in the form of rules," and in regards to gender expression in public accommodations, we would find such clarification helpful as well, and would suggest considering some of the language we have seen used elsewhere (see links below for full documents), such as: consistently and exclusively asserts, full-time gender presentation, and publically and exclusively asserted.

NCAA: https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf

EEOC guidance: http://www.seyfarth.com/publications/si051012

City of San Francisco: http://www.hrc.org/resources/entry/restroom-access-for-transgender-employees

We also would request that the WSHRC consider clarifying the status/protections of someone who identifies as "questioning."

Thank you again for the opportunity.

Sincerely

Nicole S. Ack, MA, SPHR
Civil Rights Officer and Equal Opportunity Administrator
ICSEW Representative and Wellness Coordinator
The Evergreen State College
2700 Evergreen Parkway, NW
Olympia, WA 98505

360.867.5371
ackn@evergreen.edu

From: Lindstrand, Laura (HUM) [mailto:Laura.Lindstrand@hum.wa.gov]
Sent: Thursday, May 28, 2015 10:55 AM
To: Ack, Nicole
Subject: WSHRC Rulemaking

Laura Lindstrand
Policy Analyst
Washington State Human Rights Commission
711 S. Capitol Way, Ste. 402, PO Box 42490
Olympia, WA 98504
(360) 359-4923
(800) 233-3247

V

Lindstrand, Laura (HUM)

From: Woods, Chamene (ATG)
Sent: Monday, June 29, 2015 1:42 PM
To: Rulemakingcomments (HUM)
Subject: Correspondence regarding proposed rulemaking

Good Afternoon,

Attached please find correspondence regarding proposed rulemaking for sexual orientation and gender identity. Thank you.

Proposed
lemaking for Sexu

Chamene M. Woods
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
Direct Line: (206) 464-7744
Fax: (206) 464-6451
ChameneW@atg.wa.gov

Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue #2000 • Seattle WA 98104-3188

June 29, 2015

Laura Lindstrand
Washington State Human Rights Commission
P.O. Box 42490
Olympia, WA 98541-2490
rulemakingcomments@hum.wa.gov

Via electronic mail and first-class mail

RE: Proposed Rulemaking for Sexual Orientation and Gender Identity

Dear Ms. Lindstrand:

The Office of the Attorney General respectfully submits the following comments to the Washington State Human Rights Commission ("the Commission") regarding the Proposed Rulemaking for "Sexual Orientation and Gender Identity." As a coordinate agency with shared enforcement authority over Washington Law Against Discrimination ("WLAD"), we appreciate the opportunity to comment on the proposed rules. These comments were prepared by the Consumer Protection Division, Civil Rights Unit, and Torts Division in the Office of the Attorney General. Please feel free to contact Consumer Protection Division Chief Shannon Smith at shannons@atg.wa.gov, Civil Rights Unit Chief Colleen Melody at colleenm1@atg.wa.gov, or Torts Managing Assistant Attorney General Christopher Lanese at christopherl@atg.wa.gov to discuss.

1. Proposed WAC 162-32-010 General purpose and scope.

Comment and Proposed Change: Consider adding the following language to the introductory provision: "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth. Perceived sexual orientation, perceived gender expression, and perceived gender identity are protected classes for purposes of this chapter.

Explanation: Consistent with the statutory definition of "sexual orientation," *see* RCW 49.60.040(26), this WAC section may be an appropriate place to restate that "sexual orientation" covers gender expression and gender identity. The terms "gender expression" and "gender identity" do not appear consistently in the proposed regulations.

Additionally, this rulemaking is an opportunity to clarify that discrimination based on perceived sexual orientation, like discrimination based on perceived gender expression or identity, is illegal.

In Washington, discrimination based on "perceived" status is protected where the protected trait may not readily be observed. *See* RCW 49.60.040(7)(a) (perceived disability); RCW 49.60.174 (perceived HIV or hepatitis C infection). Prohibiting discrimination based on perceived traits is consistent with the Legislature's directive that the WLAD "be construed liberally" to safeguard the "public welfare, health, and peace of the people" from the "threa[t]" and "menac[e]" of discrimination." *See* RCW 49.60.010; RCW 49.60.020.

The Commission's interpretive view matters. In 2012, the Court of Appeals held that the WLAD did not cover discrimination based on perceived sexual orientation. *See Davis v. Fred's Appliance, Inc.*, 171 Wn. App. 348, 360 (2012). The *Davis* court may have reached a different result with the Commission's guidance. That court approvingly cited "the rule that, when an agency is charged with enforcing a statute, that agency's interpretation of the statute should be given great deference." *Id.* The instant rulemaking provides a chance to clarify for future courts that the WLAD's protections do not hinge on whether a discriminator correctly perceives the victim's sexual orientation, gender identity, or gender expression.

2. Proposed WAC 162-32-030 Employee benefits and privileges.

Comment and Proposed Change: In subsection (b), consider changing as follows: Provide ~~paternity~~ <<parental>> leave or bonding time for the ~~father~~ <<parent>> of a child newly born or adopted into a heterosexual relationship, but fail to provide the same ~~paternity~~ <<parental>> leave or bonding time to the parent of a child newly born or adopted into a same-sex relationship.

Explanation: The proposed change provides clarity, in the context of this example, that all parents are covered.

3. Proposed WAC 162-32-040 Harassment.

First Comment and Proposed Change: Consider deleting the second sentence in subsection (1) titled "Harassment."

Explanation: This sentence appears intended to define the elements of hostile-environment harassment claim in employment. Harassment based on sexual orientation, gender identity, or gender expression is not limited to employment, and is also actionable

in housing, credit, insurance, education, and other contexts not referenced here. As drafted, this provision may create confusion about the scope of the WLAD's anti-harassment protections. Subsection (2), titled "Prohibited conduct" would apply to all covered activities, including but not limited to employment. Subsection (2) is a helpful aid for regulated entities and protected individuals to better understand the contours of harassment.

Second Comment and Proposed Change: Consider deleting subsection (3), titled "Harassment in a place of public accommodation." Alternatively, consider revising it to read as follows: Harassment is one type of discrimination that may occur in a place of public accommodation. Discrimination based on harassment may be proven by demonstrating offensive and unwelcome behavior that alters the individual's experience at the place of public accommodation.

Explanation: As drafted, subsection (3) appears, without statutory basis, to erect a higher burden of proof for public accommodation claims based on sexual orientation than for claims based on any other protected class.

The WLAD creates a simple "right to the full enjoyment" of places of public accommodation. RCW 49.60.030(1)(b). The proposed regulation may be read to add, for claims based on sexual orientation, additional requirements that the conduct be "serious," "severe," or that the victim "ha[ve] no choice but to leave."

These extra elements do not apply to public accommodations claims based on race, national origin, religion, sex, disability, or any other protected class. In the disability context, for example, the Commission provides that places of public accommodation may not "treat a disabled person as not welcome, accepted, desired, or solicited the same as a nondisabled person." WAC 162-26-070(4); *see also id.* at (5) (prohibiting segregation of disabled persons in places of public accommodation); WAC 162-28-030(3) (defining schools as places of public accommodation and prohibiting conduct that "directly or indirectly results in any distinction, restriction or discrimination" based on any protected status). Requiring sexual orientation discrimination to be "serious" or "severe" treats this protected class less favorably than the others.

The proposed regulation does not identify who determines whether discriminatory treatment is "serious" or "severe." Litigation will be required to establish whether these thresholds are measured from the perspective of the victim, the harasser, a "reasonable person," or from some other perspective.

In addition, requiring sexual orientation discrimination be severe enough that the victim has no choice but to leave the establishment could result in a victim tolerating harassment in order to obtain goods or services if located in an area where there are no other establishments offering the same goods or services.

Finally, the "*at* the place of public accommodation" and "*leave* the place of public accommodation" language in the draft rule may be read to imply that a victim must

personally visit a place of public accommodation to experience discrimination. (Emphasis ours). The WLAD is not so restrictive. For example, a restaurant that posts a "No Gays Allowed" sign in its window or on its website would certainly be liable for discrimination, even if no victim ever attempted to eat there. Likewise, a school that refuses to accept applications from transgender students violates the WLAD, even if no victim visits the school or attempts to enroll.

4. Proposed WAC 162-32-060 Gender segregated facilities.

Comment and Proposed Change: In subsection (b), consider changing "transgendered students" to "transgender students."

Explanation: Corrects typo to employ appropriate terminology.

✓

Lindstrand, Laura (HUM)

From: Arli Christian [achristian@transequality.org]
Sent: Monday, June 29, 2015 2:51 PM
To: Rulemakingcomments (HUM)
Subject: Comments on Proposed Rules on Sexual Orientation and Gender Identity
Attachments: NCTE Comments on WA Nondiscrim Regulations June 2015.pdf

Hello,

Attached please find comments from the National Center for Transgender Equality on the proposed regulations on sexual orientation and gender identity. Please feel free to follow up if you have any questions.

Regards,
Arli

Arli Christian
State Policy Counsel
National Center for Transgender Equality
1325 Massachusetts Ave NW, Suite 700
Washington, DC 20005
(202) 903-0112
achristian@transequality.org

National Center for TRANSGENDER EQUALITY

Comments on Washington State Proposed Sexual Orientation and Gender Identity Rules

The National Center for Transgender Equality applauds the Washington Human Rights Commission for seeking to implement regulations to provide guidance on interpreting the law against discrimination on the basis of sexual orientation and gender identity, and submits these comments to help strengthen the ability of these regulations to protect transgender individuals in the State of Washington.

NCTE's comments on selected portions of each Proposed Rule appear in the boxes, with recommended deletions in strikethrough and additions in **bold**.

Overall Comments

Wherever the regulations say sexual orientation it should be written as: "sexual orientation **(including gender expression or identity)**,"

Sexual orientation is defined in Washington Code 49.60.040 as including "gender expression or identity." Because the common usage understand of sexual orientation does not include gender expression or identity, it should be specifically delineated with every use of sexual orientation throughout the regulation to clarify the inclusion. Alternative forms could be to list it separately, or to offset it with commas, such as, "sexual orientation, gender expression or identity" or "sexual orientation, including gender expression or identity," depending on the punctuation rules of the WAC.

WAC 162-12-140 Preemployment inquiries.

(3) j. Name.
FAIR PREEMPLOYMENT INQUIRIES
Whether applicant has worked for this company or another employer under a different name and, if so, what name. Name under which applicant is known to references if different from present name. **Whether applicant has a preferred name they wish to be called.**
UNFAIR PREEMPLOYMENT INQUIRIES
Inquiry into original name where it has been changed by court order or marriage. Inquiries about a name that would divulge marital status, lineage, ancestry, national origin or descent, **sex at birth, or gender expression or identity.**

(3) t. Sexual Orientation
FAIR EMPLOYMENT INQUIRIES
Inquiries regarding applicant's preferred gender pronoun.
UNFAIR PREEMPLOYMENT INQUIRIES

Any inquiry concerning sexual orientation **(including gender expression or identity), transgender status, sex assigned at birth, gender transition, or related medical history** is prohibited.

(4) If an application asks for an applicant to identify as male or female, an applicant may designate their sex according to their gender expression or identity, and it shall not be considered fraudulent or to be a misrepresentation for the purpose of adverse action on the application.
(5) Applicants may use their preferred name in an application rather than their legal name. An applicant using a preferred name, even when the name given is not the applicant's legal name, shall not be grounds for adverse action. However, where use of a person's legal name is required by law or for a reasonable business purpose, the applicant may be required to disclose it after a conditional offer has been made.

Failure to disclose information relating to an employee's gender is a common pretext for discrimination against transgender workers, who have no obligation to affirmatively disclose this information.[1] At least one jurisdiction, the District of Columbia, has established by regulation that it is unlawful discrimination for an employer to take adverse action solely based on an employee's giving their "publicly and consistently used name" and self-identified gender in an application rather than their legal name or assigned gender.[2]

WAC 162-32-020 Leave policies and reasonable accommodation.

(2) Reasonable accommodation. An employer shall provide reasonable accommodation for a disability ~~when the disability is related to the individual's sexual orientation, or gender identity, or gender expression~~ **regardless of the individual's sexual orientation, gender identity, or gender expression**, absent undue hardship to the employer. ~~Such reasonable accommodation includes, but is not limited to, medical leave for medical and counseling appointments, surgery, and recovery from surgery that are related to gender reassignment procedures and treatments. An undue hardship as a reason for denying an accommodation in situations involving disabilities relating to sexual orientation and gender identity shall be analyzed in the same manner as with accommodations for any other disability.~~ **Employers shall provide reasonable accommodation to individuals undergoing gender transition, including medical leave for medical and counseling appointments, surgery, and recovery from gender reassignment procedures, surgeries, and treatments, as they would for any other medical condition.**

[1] *See* Lopez v. River Oaks Imaging & Diagnostic Group, 542 F. Supp. 2d 653 (S.D. Tex. 2008) (finding that transgender employee stated Title VII claim where employer claimed she "misrepresented" herself by failing to disclose her transgender status in hiring process).
[2] D.C. Mun. Reg. § 4-807.1

WAC 162-32-030 Employee benefits and privileges.

(1) Consistent and equal basis. …For example, it is an unfair practice to: …
(c) Provide health insurance coverage that excludes coverage for transition-related care, or otherwise denies or excludes services on the basis of gender expression or identity or related medical conditions.

Prohibiting exclusion of transition-related care is consistent with the Washington Office of Insurance Commissioner's bulletin and consistent with eight other states (California, Colorado, Connecticut, Illinois, Massachusetts, New York, Oregon, and Vermont) and the District of Columbia who have, by regulations or guidance, interpreted state laws prohibiting gender identity or sex discrimination to prohibit insurance exclusions that target services for gender dysphoria for transgender people.[3]

(2) Other benefits and privileges of employment.
(a) All other employee benefits, provided formally or informally including, but not limited to, health club memberships, discount programs, training, staff retreats, company gatherings and parties, and use of company vehicles or other company services, shall be provided on an equal basis to all employees regardless of the employee's sexual orientation. If the benefit or privilege is extended to the employee's opposite sex spouse, it must be extended to an employee's same sex spouse as well.
(b) In the rare case when specific assignments or duties are differentiated by sex in a "bona fide occupational qualification", the employer should assign those job duties based on an individual's gender expression or identity. Under no circumstances may an employer require an employee to

[3] *See* 10 Cal. Code Reg. § 2561.2 (2012); Brent A. Barnhart, Director, Dep't of Managed Health Care, California Health & Human Services Agency, Letter No. 12-K, Gender Nondiscrimination Requirements (2013), *available at* http://www.dmhc.ca.gov/Portals/0/AboutDMHC/DirectorsLetters/dl12k.pdf; Div. of Insurance, Colorado Dep't of Regulatory Agencies, Bull. No. B-4.49, Insurance Unfair Practices Act Prohibitions on Discrimination Based Upon Sexual Orientation (2013), *available at* http://www.one-colorado.org/wp-content/uploads/2013/03/B-4.49.pdf; Connecticut Insurance Dep't, Bull. No. IC-37, Gender Identity Nondiscrimination Requirements (2013), *available at* http://www.ct.gov/cid/lib/cid/Bulletin_IC-37_Gender_Identity_Nondiscrimination_Requirements.pdf; District of Columbia Dep't of Insurance, Securities, & Banking, Bull. No. 13-IB-01-30/15 (Revised), Prohibition of Discrimination in Health Insurance Based on Gender Identity or Expression (2014), *available at* http://disb.dc.gov/sites/default/files/dc/sites/disb/publication/attachments/Bulletin-ProhibitionDiscriminationBasedonGenderIdentityorExpressionv022714.pdf; Illinois Dep't of Insurance, Bull. No. 2014-10, Healthcare for Transgender Individuals (2014), *available at* http://insurance.illinois.gov/cb/2014/CB2014-10.pdf; Div. of Insurance, Massachusetts Office of Consumer Affairs & Business Regulation, Bull. No. 2014-03, Guidance Regarding Prohibited Discrimination on the Basis of Gender Identity or Gender Dysphoria Including Medically Necessary Transgender Surgery and Related Health Care Services (2014), *available at* http://www.mass.gov/ocabr/docs/doi/legal-hearings/bulletin-201403.pdf; Andrew M. Cuomo, Governor, New York State Department of Financial Services, Insurance Circular Letter No. 7, Health Insurance Coverage for the Treatment of Gender Dysphoria (December 11, 2014), *available at* http://www.dfs.ny.gov/insurance/circltr/2014/cl2014_07.pdf; Insurance Div., Oregon Dep't of Consumer & Business Services, Bull. No. INS 2012-1, Application of Senate Bill 2 (2007 Legislative Session) to Gender Identity Issues in the Transaction & Regulation of Insurance in Oregon 3 (2012), *available at* http://www.oregon.gov/DCBS/insurance/legal/bulletins/Documents/bulletin2012-01.pdf; Div. of Insurance, Vermont Dep't of Financial Regulation, Insurance Bull. No. 174, Guidance Regarding Prohibited Discrimination on the Basis of Gender Identity Including Medically Necessary Gender Dysphoria Surgery and Related Health Care (2013), *available at* http://www.dfr.vermont.gov/sites/default/files/Bulletin_174.pdf [hereinafter Vermont Insurance Guidance]; Letter from Mike Kriedler, Washington State Insurance Commissioner, to Health Insurance Carriers in Washington State (June 25, 2014) [hereinafter Washington Insurance Guidance], *available at* http://www.insurance.wa.gov/about-oic/news-media/news-releases/2014/documents/gender-identity-discrimination-letter.pdf.

accept a gender-specific assignment or duty contrary to their gender expression or identity, or limit gender-specific assignments or duties for that employee.
(c) If an employer has a policy of using a person's first name in or on email accounts, employee directories, business cards, ID badges, name tags, and similar items, the policy should allow for any transgender or gender non-conforming employee to use their preferred first name or initial of their first name, even if the person has not had a legal name change, unless there is a compelling business or institutional purpose not to accommodate the employee's preferred name.

Bona Fide Occupational Qualifications that discriminate on the basis of sex, while rare, should be applied to transgender people according to their gender expression or identity. A policy allowing the use of preferred first names or initials is important because many transgender people have not been able to afford a legal name change and may want to use their initials or their preferred name so that they are treated by colleagues appropriately as well as not be "outed" by the name on their work email, badges, etc.

WAC 162-32-040 Harassment.

(2) Prohibited conduct. Prohibited conduct may include, but is not limited to, the following:
(a) Asking unwelcome personal questions about an individual's sexual orientation, gender identity, ~~or~~ gender transition, **sex assigned at birth, transgender status, or related medical history;**
(b) Intentionally causing distress to an individual by disclosing the individual's sexual orientation, **gender expression or identity, sex assigned at birth, transgender status, or related medical history** against his or her wishes

Federal courts have recognized that transgender status is one of the especially private, personal matters that enjoys heightened privacy protection under the Constitution, stating, "The excrutiatingly [sic] private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really beyond debate."[4]

WAC 162-32-050 Dress and grooming standards.

(2) Prohibited standards. Covered entities cannot require an individual to dress or groom in a manner that is not consistent with that individual's gender **expression or** identity, **nor can they prohibit an individual from maintaining a gender-neutral appearance.**

This principle applies not only to transgender women and men, but also to individuals whose gender identity is not male or female. It is now well-recognized that a non-binary gender identity may also be a

[4] *See, e.g.*, Powell v. Schriver, 175 F.3d 107, 111 (2d Cir. 1999) (holding transgender prisoner had constitutional right to informational privacy regarding transgender status); *see also* Wyatt v. Fletcher, 718 F.3d 496, 513 (5th Cir. 2013) (applying *Powell* to privacy of sexual orientation); Sterling v. Borough of Minersville, 232 F.3d 190, 196 n. 4 (3rd Cir. 2000) (same); K.L. v. State of Alaska, Department of Administration, Division of Motor Vehicles, Case No. 3AN-11-05431 CI, 2012 WL 2685183 (Alaska Super. Ct. Mar. 12, 2012) (holding refusal to update gender designation on driver's licenses violated privacy rights of transgender people).

deeply rooted aspect of personal identity.[5] To the extent that an employer may lawfully maintain workplace policies or facilities that are segregated along binary gender lines (i.e. male and female), employees must be treated on the basis most consistent with their gender identity or expression.

WAC 162-32-060 Gender segregated facilities.

(1) Facility use. All covered entities~~, except school districts or other primary and secondary schools,~~ shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing rooms, and homeless shelters, that are consistent with that individual's gender identity. ~~In such facilities where undressing in the presence of others occurs, covered entities, except for school districts and other primary or secondary schools, shall allow access to and use of a facility consistent with that individual's gender identity.~~

(3) Schools. School districts and other primary and secondary schools should allow students to use the restroom **or locker room** that is consistent with their gender identity consistently asserted at school, **or otherwise shown to be a sincerely held part of the student's core identity. In rare cases,** ~~School districts and other primary and secondary~~ schools should assess the use of locker rooms by transgender~~ed~~ students, **including nonbinary students who do not identify as male or female,** on a case-by-case basis, with the goals of maximizing the student's social integration and equal opportunity, ensuring the student's safety and comfort, and minimizing the stigmatization of the student. ~~In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.~~ **Any student who is uncomfortable using the facility that is consistent with his/her/their gender identity should be provided a safe and non-stigmatizing private alternative. In no case should a transgender student be forced to use the locker room corresponding to their gender assigned at birth.**

Access to facilities that correspond with a student's gender identity is a guiding principle of various state education regulations on the prohibition of gender identity discrimination.[6] Additionally, a recent and highly publicized resolution agreement by DOJ and the Department of Education is consistent with this approach. Resolving a Title IX complaint that a transgender boy had been denied access to boys' restrooms and accommodations on overnight trips, the agreement provides for the student to be treated as male in all respects by this school.[7]

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[5] *See*, e.g., Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders, Version 5 451-53 (2013) (defining gender identity to include identities other than male or female, and specifying diagnostic criteria for gender dysphoria to include such identities); World Prof'l Assn. for Transgender Health, *Standards of Care*, at 171 (7th ed. 2011).

[6] *See* Connecticut Safe School Coalition, Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws 4 (2012) (interpreting Ct. Gen. Stat. § 46a-51(21)), *available at* http://www.ct.gov/chro/lib/chro/Guidelines_for_Schools_on_Gender_Identity_and_Expression_final_4-24-12.pdf; Mass. Dep't of Elementary and Secondary Educ., Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment: Nondiscrimination on the Basis of Gender Identity 11 (2013), *available at* http://www.doe.mass.edu/ssce/GenderIdentity.pdf; CAL. EDUC. CODE § 221.5(f) (West 2014).

[7] *See* Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division at 1-3 (OCR No. 09-12-1020) (DOJ No. 169-12C-70) (July 24, 2013) [hereinafter Arcadia Resolution Agreement], *available at* http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf.

(4) Provision of options encouraged. Whenever feasible, covered entities are encouraged to provide options for privacy, such as single-use gender-neutral bathrooms or private changing areas, that are available to any individual desiring privacy. **Whenever feasible, covered entities are encouraged to modify locker room or restroom facilities to provide additional privacy.**

(5) Single-occupancy facilities. All single-occupancy bathrooms or changing rooms or any other facility designed for one person to use at a time should always be labeled as gender-neutral, except if restricted by building or plumbing code requirements.

Allowing single-occupancy facilities to be sex-segregated is facially discriminatory.[8] Sex segregation of single-user facilities negatively impacts the status of transgender workers, particularly those with non-binary gender identities, by drawing unwanted attention and scrutiny to their gender identity and expression, contributing to workplace harassment.[9] Under Title VII case law, employers may not segregate workers in a way that negatively affects employees based on a protected characteristic.[10] In the context of single-occupancy facilities, it cannot be seriously argued that any legitimate, nondiscriminatory reason or bona fide occupational qualification exists for this form of segregation.[11] Following this principle, localities have started to implement regulations requiring gender neutral facilities.[12] It should be noted that there may be a Washington State statute or administrative code relating to building or plumbing that may affect your authority to require re-labeling of these single-use facilities.

We hope that you will take these suggestions into consideration, and please get in touch if you have any questions or we can provide you with any additional information.

Sincerely,

Arli Christian

Arli Christian, State Policy Counsel

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[8] *Cf.* E.E.O.C., *Facts about Race/Color Discrimination* ("Title VII is violated where minority employees are segregated by physically isolating them from other employees"); E.E.O.C., *Religious Garb and Grooming the Workplace: Rights and Responsibilities* ("With respect to religion, Title VII prohibits among other things…workplace or job segregation based on religion).

[9] *E.g.*, Herman, *supra* note xix ("Eighteen percent of respondents have been denied access to a gender-segregated public restroom [at work, school, or a public accommodation], while 68 percent have experienced some sort of verbal harassment and 9 percent have experienced some form of physical assault when accessing or using gender-segregated public restrooms");

[10] *See* 42 U.S.C. § 2000e-2(a)(2) (prohibiting "segregat[ion] [of] employees … in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise affect his status as an employee, because of such individual's…sex").

[11] *Compare* Int'l Union, United Auto., Aerospace and Agr. Implement Workers of Am., UAW v. Johnson Controls, 499 U.S. 187, 206 n. 4 (1991) (suggesting in dicta that Title VII may permit "considerations of privacy as a basis for sex-based discrimination").

[12] *See* D.C. MUN. REGS. tit. 4, § 802.2 (West 2014) (providing that all single-occupancy restroom facilities shall use gender neutral signage for those facilities); Phila. Code § 16-104 (2013); *see also* Resolution No. 2014-0828-04, Austin City Council (Aug. 28, 2104) (directing city manager to prepare code amendments to require gender-neutral signage for single-user restrooms).