

[SERCK SUGGESTED EDITS AND ADDITIONS AFTER LEGAL REVIEW AND RESEARCH 5-20-16]

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Resolution #16-44

Approved by the Faculty Senate: April 19, 2016

Approved by the Chancellor: *pending*

Resolution of support for the current Nondiscrimination policy at East Carolina University, as follows:

Whereas, North Carolina House Bill 2 [1] states that Public agencies shall require every multiple-occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex; and

Whereas, North Carolina House Bill 2 defines biological sex as "The physical condition of being male or female, which is stated on a person's birth certificate;" and

Whereas, North Carolina House Bill 2 fails to protect the citizens of North Carolina from discrimination based on~~excludes~~ sexual orientation, sex (with the exception of "biological sex"), gender identity, age, disability, political affiliation, and military status ~~in the regulation of discriminatory practices~~; and

Whereas, the North Carolina Senate Judiciary IV Committee considering House Bill 2 could not agree [2] on the definition of gender identity, with one of the bill sponsors claiming that gender identity refers to one's biological sex based on the birth certificate; and

~~**Whereas**, The U. S. Employment Non-Discrimination Act of 2013 prohibits covered entities (employers, employment agencies, labor organizations, or joint labor-management committees) from engaging in employment discrimination on the basis of an individual's actual or perceived sexual orientation or gender identity; and~~

Whereas, transgender youth have a high suicide rate that is exacerbated by lack of access to bathroom facilities corresponding to their gender identity [4], and in the Charlotte area there have been two recent suicides of transgender youth ages 16 and 18; and

Whereas, The U. S. Equal Employment Opportunity Commission [3] considers it discriminatory, and in violation of Title VII of the Civil Rights Act of 1964, for an employer to discriminate based on gender identity, including to denying an employee equal access to a common restroom corresponding to the employee's gender identity; and

Whereas, The United States Departments of Justice and Education have declared [5] that any university receiving Federal funds violates of Title IX of the Education Amendments of 1972 if it discriminates based on gender identify; and

Whereas, on April 2016, the United States Court of Appeals [6] (which encompasses North Carolina) held in a case entitled *G. G. v. Gloucester County School Board*, that discrimination based on gender identity violates Title IX; and

Whereas, North Carolina may lose considerable economic benefits including the possible loss of federal funds due to violations of Title IX of the Education Amendments of 1972 and/or Title VII of the Civil Rights Act of 1964; and

Commented [SSL1]: This statute has never made it through the House, so it is not law. However, this concept is covered by the laws and lawsuit mentioned below.

Whereas, East Carolina University, as an institution dedicated to the free and respectful exchange of ideas and the ideal that a diversity of experiences and perspectives enriches our community, has a moral mandate to protect our entire community;

Therefore, Be It Resolved That the Faculty Senate recommends that in its Nondiscrimination policy, East Carolina University, (consistent with the United States Departments of Justice and Education) uses the definition of gender identity as “one's inner sense of one's own gender, which may or may not match the sex assigned at birth”, and

Be It Further Resolved That the Faculty Senate recommends that sexual orientation, gender identity, and veteran status continue to be included as protected classes in the East Carolina University Nondiscrimination policy, which includes in part as quoted here:

“9.1.1. East Carolina University prohibits unlawful discrimination based on the following protected classes: race/ethnicity, color, genetic information, national origin, religion, sex (including pregnancy and pregnancy related conditions), sexual orientation, gender identity, age, disability, political affiliation, and veteran status.”

1. <http://www.ncleg.net/Sessions/2015E2/Bills/House/PDF/H2v4.pdf>

2. <http://www.wral.com/news/state/nccapitol/video/15596204/>

3.

http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm

4. Kristie L. Seelman, “Transgender Adults’ Access to College Bathrooms and Housing and the Relationship to Suicidality”, Journal of Homosexuality, Feb. 25 (2016).

5. Dear Colleague Letter of May 13, 2016.

6. <http://www.ca4.uscourts.gov/Opinions/Published/152056.P.pdf>