United States Senate

WASHINGTON, DC 20510

December 18, 2015

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Duncan:

As Senators committed to advancing equality and civil rights in the lives of every American, we are writing to request that the Department of Education's Office for Civil Rights immediately take steps to address the discrimination against lesbian, gay, bisexual, transgender and gender non-conforming students by bringing greater transparency to the waiver process under Title IX of the Education Amendments Act of 1972 (Title IX).

We applaud recent steps the Department has taken to ensure schools that accept federal funding are barred from discriminating against transgender or gender non-conforming students by expanding Title IX protections to include gender identity. Recent news reports, however, have outlined and demonstrated how private colleges and universities are increasingly turning to Title IX waivers to exempt themselves from these requirements on the basis of religious beliefs. We are concerned these waivers allow for discrimination under the guise of religious freedom. Already, we have seen this same path used in our legal system to undermine benefits for women, and used to facilitate discrimination on the basis of sexual orientation or gender identity.

When Title IX was passed in 1972 to combat discrimination on the basis of sex, Congress included a provision allowing educational institutions that are controlled by a religious organization to receive a waiver under Title IX if compliance "would not be consistent with the religious tenets of such organization." Exemption requests used to be rare, but according to a recent investigation by The Column, the Department of Education has granted waivers to 27 religious institutions in the last 18 months alone. Recently, there have been a number of conferences, webinars, trainings and discussions relating to how Christian colleges and universities can demonstrate their "sincerely held religious beliefs" and seek these waivers.[1]

According to The Column, total enrollment in schools that have received these Title IX waivers tops 80,000 students, and nearly $130 million in federal student aid and federal research dollars was sent to these institutions in 2014 alone.[2] At a very minimum, we believe students, parents, and taxpayers have a right to know when institutions of higher education – as recipients of tax

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[1] Birkey, Andy. "Dozens of Christian win Title IX Waivers to Ban LGBT Students." *The Column*. 1 Dec. 2015. Available: http://thecolu.mn/21270/dozens-christian-schools-win-title-ix-waivers-ban-lgbt-student

[2] Ibid.

dollars – seek and receive exemptions under Title IX as well as the justifications for those exemptions. Accordingly, we ask that you publish, on a publicly available website and in a searchable format, the Title IX waiver request letters sent by institutions of higher education as well as the Department of Education's responses.

It is critical that the federal government employ transparency in this matter as it will help guide students in making informed higher education decisions. Moreover, it will ensure that institutions controlled by religious organizations publicly account for their motives and justifications for seeking these waivers.

We thank you for your attention to this request and look forward to working with you.

Sincerely,

Ron Wyden

Al Franken

Edward J. Markey

Tammy Baldwin

Patty Murray

Jeff Merkley

Barbara Boxer

Bernard Sanders

cc: John B. King, Jr., Senior Advisor Delegated Duties of the Deputy Secretary of Education
Catherine E. Lhamon, Assistant Secretary for Civil Rights