UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 20, 2016

Honorable Ron Wyden
U.S. Senate
Washington, DC

Dear Senator Wyden:

Thank you for your letter of December 18, 2015, to former Secretary Duncan, in which you expressed concern about the rights of lesbian, gay, bisexual, transgender (LGBT) and gender-nonconforming students and asked the U.S. Department of Education to increase transparency about educational institutions that have received religious exemptions under Title IX of the Educational Amendments of 1972 (Title IX). I am pleased to respond on behalf of Acting Secretary King. I am sending an identical response to the cosigners of your letter.

The Department's Office for Civil Rights (OCR) enforces Title IX, which prohibits sex discrimination in educational programs and activities operated by recipients of Federal financial assistance. OCR is committed to full enforcement of the jurisdiction Congress has given us, working to ensure that all students, including LGBT and gender-nonconforming students, have access to safe, supportive, and nondiscriminatory learning environments. To help schools meet their obligations under Title IX, the Department has clarified that Title IX protects all students, including LGBT students, and prohibits discrimination based on gender identity and gender nonconformity.[1] And, along with our colleagues at the U.S. Department of Justice, the Department has joined several legal briefs articulating school districts' Title IX obligations toward LGBT and gender-nonconforming students.[2] Further, OCR has negotiated with school

[1] *See, e.g.,* Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities (Dec. 1, 2014) at Q. 31, www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf ("Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes"); Title IX Resource Guide (Apr. 2015) at 1, 15-16, 19, 21-22, www.ed.gov/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf.

[2] *See, e.g., G.G. v. Gloucester County School Board*, No. 15-2056 (4th Cir. Oct. 28, 2015), www.justice.gov/crt/case-document/gg-v-gloucester-county-school-board-brief-amicus; *Carmichael v. Galbraith*, No. 12-11074 (5th Cir. Apr. 1, 2013), www.justice.gov/sites/default/files/crt/legacy/2013/04/17/carmichaelbrf.pdf.

districts to create effective remedies to resolve Title IX complaints filed on behalf of LGBT students.[3]

In recent years, the Department has received an increasing number of requests for religious exemptions from Title IX. As your letter noted, Title IX includes an exemption for any educational institution that is controlled by a religious organization to the extent that application of Title IX would not be consistent with the religious tenets of the controlling organization. Thus, ever since 1972, Title IX has explicitly prohibited OCR from enforcing some of Title IX's provisions against the small subsection of schools that qualify for this exemption. The statutory exemption is limited in scope. Because it is an exemption for religiously controlled schools, it does not apply to public schools, or colleges or universities run by state or local governments. Additionally, even a school that is controlled by a religious organization is exempt only to the extent that Title IX conflicts with the controlling organization's religious tenets.

I appreciate your suggestion that we provide more transparency about the religious exemption requests received and OCR's responses. I agree. OCR currently publishes some basic information on its website at http://www.ed.gov/ocr/frontpage/pro-students/rel-exempt-pr.html. OCR has also released a list of educational institutions that have sought or received religious exemptions, as well as copies of the exemption requests and OCR's responses, to reporters, advocacy organizations, academics, and other members of the public who have requested them under the Freedom of Information Act. OCR is in the process of preparing those requests and responses for posting on our website with a basic search tool so that applicants, students, parents, and others can be better informed about which educational institutions have sought and/or received a religious exemption. I expect to have those documents posted sometime in the coming months.

This change is consistent with my commitment to transparency more generally. All the documents mentioned above regarding LGBT students are publicly available for schools to review as they develop and revise their antidiscrimination policies and procedures. In addition, in 2013, OCR instituted a new policy of uploading nearly every resolution agreement and letter issued by OCR onto our website. As a result, parents, schools, teachers, students, and the public now have access to more than 800 resolutions that provide examples of what schools are doing to

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[3] *See, e.g.*, OCR Case No. 09-11-1031, *Tehachapi Unified Sch. Dist.*, (June 29, 2011), www.ed.gov/ocr/docs/investigations/09111031.html; OCR Case No. 05-11-5901, *Anoka-Hennepin Sch. Dist. No. 11*, (Mar. 15, 2012), www.ed.gov/ocr/docs/investigations/05115901.html; OCR Case No. 09-12-1020, *Arcadia Unified Sch. Dist.*, (July 24, 2013), www.justice.gov/crt/about/edu/documents/arcadialetter.pdf (resolution letter); and www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf (resolution agreement). OCR Case No. 09-12-1095, *Downey Unified Sch. Dist.*, (Oct. 14, 2014), www.ed.gov/documents/press-releases/downey-school-district-letter.pdf (resolution letter); and www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf (resolution agreement); *See, e.g.*, OCR Case No. 05-14-1055, *Township High Sch. Dist. 211*, (Dec. 3, 2015), http://www.ed.gov/news/press-releases/settlement-reached-palatine-ill-township-high-school-district-211-remedy-transgender-discrimination.

come into compliance with civil rights laws. OCR has also publicized lists of schools under investigation in the various areas of law it enforces, including a list of colleges subject to pending sexual violence cases. These lists have increased awareness and knowledge of what OCR is doing to protect students and have encouraged schools to take action to satisfy civil rights laws.

Thank you for writing to offer your valuable insights as we seek to ensure that schools understand their responsibilities and students understand their rights under Title IX.

Sincerely,

Catherine E. Lhamon
Assistant Secretary for Civil Rights