

**Congress of the United States**  
**Washington, DC 20515**

September 5, 2023

The Honorable Miguel A. Cardona, Ed.D.  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202

Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
U.S. Dept of Ed. Office for Civil Rights  
400 Maryland Avenue, S.W.  
Washington, DC 20202

Dear Secretary Cardona and Assistant Secretary Lhamon:

For over 50 years, Title IX of the Education Amendments of 1972 (Title IX) has been in effect to ensure that students are protected from sex discrimination in education, and over the years, many religious schools have notified the Department of Education (the Department) of their statutorily allowed exemptions from Title IX. However, Baylor University's recent letter<sup>1</sup> seeking an exemption from Title IX protections against sexual harassment, as it applies to LGBTQI+ students, is not only unprecedented, but is a blatant attempt to interfere and pressure the Department to stop an ongoing sex-based harassment investigation. That is unacceptable.

We write to express concern over the Department's July 25, 2023, letter in which it generally acknowledges Baylor University's federal exemption from provisions of Title IX, "to the extent that they are inconsistent with the University's religious tenets." We are alarmed by Baylor University's claim to an exemption from Title IX's regulations prohibiting sexual harassment, and we urge the Department to clarify the narrow scope of this exemption and assure students at religious institutions that they continue to have protections against sex-based harassment. Although the Department acknowledges limitations to Baylor University's request for an exemption for sex-based harassment,<sup>2</sup> we urge the Department to state unequivocally Baylor University does not maintain a categorical exemption from Title IX's regulations prohibiting sex-based harassment, including sexual harassment.

Moreover, recent reports suggest that Baylor University should not be allowed to claim religious exemptions because it is no longer controlled by a religious organization.<sup>3</sup> We thus also urge the

---

<sup>1</sup> US Department of Education (ED). <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/baylor-university-request-05012023.pdf>

<sup>2</sup> US Department of Education (ED). <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/baylor-university-response-07252023.pdf>

Department to investigate these claims to determine whether Baylor University should be allowed to avail itself of religious-based exemptions from Title IX.

This notable exemption to Title IX's sexual harassment rules claimed by Baylor University raises significant concerns over the federal civil rights protections from discrimination against LGBTQI+ students—the very protections being safeguarded by the Biden-Harris Administration — and may have broad consequences that weaken Title IX protections for all students in schools across the nation. Indeed, given the very public and troubling history<sup>4</sup> of sexual assault at Baylor University, rather than seek an exemption from protecting against sex-based harassment, including sexual harassment, within the institution, Baylor University should instead be focused on improving and strengthening its response to harassment. Baylor University actively seeking to invoke this exemption sends an alarming message that it wants harassment to go unchecked, making its campus dangerous and unsafe for all students.

As we await implementation of proposed changes to Title IX by the Biden-Harris Administration, we request the Department and the Office for Civil Rights (OCR) to clarify that their letter to Baylor University does not unconditionally shield it from the regulatory provision 34 C.F.R. §§ 106.30(a), 106.44-45 (sexual harassment). Without additional clarification, the Department's letter may suggest Baylor University qualifies for sweeping exemptions from various Title IX provisions, including protections against sexual harassment and other sex-based harassment. The Department has not yet ruled on the pending sex-based harassment complaints filed against Baylor University in 2021.<sup>5</sup> We urge the Department to investigate fully and resolve these relevant open complaints of sex-based harassment filed by LGBTQI+ students at Baylor University.

The proposed Title IX regulations released by the Biden-Harris Administration and the Department in July 2022 are significant. The proposed changes will clarify, expand, and strengthen protections for students who experience sex-based harassment, including sexual harassment, and will ultimately protect LGBTQI+ students from discrimination.<sup>6</sup> These rule changes are necessary as there has been an uptick in legislation at every level of government that politicize education and put LGBTQI+ students at risk.<sup>7</sup> We support the Department making clear that discrimination “on the basis of sex” includes discrimination based on sexual orientation, gender identity, and sex characteristics, including intersex traits. However, the Department's July 25, 2023, letter, without clarification, and Baylor University's efforts to skirt all Title IX enforcement, may pave the way for discrimination and blatant harassment to occur on college campuses without consequence.

---

<sup>3</sup> Wingfield, M. (2023, August 24). 1,000 Baylor Alumni Call on school to “end unequal treatment” of LGBTQ students. Baptist News Global. <https://baptistnews.com/article/1000-baylor-alumni-call-on-school-to-end-unequal-treatment-of-lgbtq-students/>

<sup>4</sup> Chavez, N., & Croft, J. (2018, December 12). Ex-frat leader's plea deal is the latest in a series of Baylor Sex Assault scandals. CNN. <https://www.cnn.com/2018/12/12/us/baylor-sex-assault-cases-timeline/index.html>

<sup>5</sup> Knott, K. (n.d.). U.S. affirms Baylor exempt from protecting gay students from harassment. Inside Higher Ed | Higher Education News, Events and Jobs. <https://www.insidehighered.com/news/government/2023/08/11/us-affirms-baylor-exempt-protecting-gay-students-harassment>

<sup>6</sup> US Department of Education (ED). [The U.S. Department of Education Releases Proposed Changes to Title IX Regulations, Invites Public Comment | U.S. Department of Education](https://www.ed.gov/newsroom/2023/07/25)

<sup>7</sup> Roundup of anti-LGBTQ+ legislation advancing in states across the country. Human Rights Campaign. (n.d.). <https://www.hrc.org/press-releases/roundup-of-anti-lgbtq-legislation-advancing-in-states-across-the-country>

<sup>8</sup> [Movement Advancement Project | Religious Exemption Laws \(lgbtmap.org\)](https://www.lgbtmap.org/)

With a rise in attacks against LGBTQI+ people, students, and families across the country, we are concerned about institutions claiming exemptions, or carve-outs, from existing laws to make discrimination against LGBTQI+ people acceptable and legal. While some states are working to roll back existing protections to allow businesses, healthcare providers, and others who serve the public to harass and refuse to serve LGBTQI+ people<sup>8</sup>, we urge the Department to analyze the potential repercussions of its letter and clarify that students at religious educational institutions still have protections from sex-based harassment, including sexual harassment.


When Congress enacted Title IX in 1972, it created a liberal and expansive process for religiously controlled education institutions to notify the government when specific tenets of religious faith require exemption from discrete parts of Title IX. Congress never intended this process to allow for campuses where sex-based harassment and discrimination are broadly sanctioned or encouraged. Baylor University should take this opportunity to redirect its resources to ensuring the safety of its students, rather than abusing the Title IX exemption process that has been administered successfully for half a century.

Again, we request thorough, timely investigations into the pending sex-based harassment cases against Baylor University and further clarification on the implications of this particular exemption on students' rights to be protected from sex-based harassment. The results of this investigation examining the university's treatment of sex-based harassment cases on campus and its policy toward LGBTQI+ students will have broad implications on the ability of LGBTQI+ students to live and learn safely and enjoy the full benefits of campus life, at this university and beyond. We also request a review into the claims that Baylor University is not controlled by a religious organization and would therefore not be allowed to seek a religious exemption to Title IX.

We are grateful for the Biden-Harris Administration's efforts to work toward full equality, inclusion, and dignity for LGBTQI+ students through protecting and adding on to the progress Title IX has made. We look forward to continuing to work together to prevent and combat all forms of discrimination in schools and ensure that all students have supportive and safe learning environments.

We look forward to your prompt response.

Sincerely,



---

Adam B. Schiff  
Member of Congress



---

Greg Casar  
Member of Congress

*Joaquin CASTRO*

---

Joaquin Castro  
Member of Congress

*Mark Takano*

---

Mark Takano  
Member of Congress

*Veronica Escobar*

---

Veronica Escobar  
Member of Congress