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September 7, 2022

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

Re: Proposed amendments of regulations implementing Title IX of the Education Amendments of 1972 (Docket ID ED-2021-OCR-0166)

Dear Secretary Cardona:

As the chief executive officer of the State of Montana, I have a duty to see laws are faithfully executed and a responsibility to preserve equal opportunity for girls and women as well as the rights of students and parents.

I write to strongly oppose the Department of Education's (Department) efforts to grossly contort and misguidedly reinterpret Title IX of the Education Amendments of 1972 (Title IX). The Department's proposed amendments of Title IX misunderstand and distort the law's explicit intent, and if implemented, will undermine the positive developments that have resulted from the landmark 50-year-old law.

As importantly, I write to support and stand with girls and women who rely on Title IX as a protection of equal opportunity, which the Department threatens with its proposed amendment.

For a half century, Title IX has advanced equal educational opportunities for women and girls. As you are aware, the text of Title IX plainly reads, "No person in the United States shall, *on the basis of sex*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance".

As our nation marks the 50th anniversary of Title IX, it is deeply disturbing that the Biden administration (Administration) is misleading the public about the foundational purpose of Title IX to force a narrow, extreme political agenda on students in primary, secondary, and postsecondary schools, as well as on their parents. Through the Department and Administration's efforts to manipulate the plain language of Title IX and subsequently force schools to adopt the Biden administration's radical political agenda, you are putting students' education, sports programs, and other extracurricular activities in jeopardy.

As you know and despite the Department's dedicated efforts to willfully misinterpret it for the Administration's extreme agenda, the U.S. Supreme Court's 2020 *Bostock v. Clayton County* decision evaluated the issue before it: Title VII of the Civil Rights Act as it relates to labor and employment law. In fact, the court's decision was explicit in acknowledging the case's narrow consideration: "The only question before us is whether an employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual 'because of such individual's sex.' ... Whether other policies and practices might or might not qualify as unlawful discrimination...are questions for future cases, not these."

At no point in the court's *Bostock* opinion did the court address Title IX and education. In fact, Justice Samuel Alito observed in his dissent:

The briefs in these cases [including Title IX] have called to our attention the potential effects that the Court's reasoning may have under some of these laws, but the Court waves those considerations aside. As to Title VII itself, the Court dismisses questions about "bathrooms, locker rooms, or anything else of the kind." Ante, at 31. **And it declines to say anything about other statutes whose terms mirror Title VII's** [including Title IX].

The *Bostock* decision, upon which the Department relies so heavily in its effort to mangle Title IX, does not and cannot apply to Title IX. Despite this plain fact, the Department and Biden administration are determined to impose its willful misinterpretation on Montana schools and students.

The proud history of Title IX has long been revered for ensuring that women have equal access to opportunities at educational institutions in the United States, as well as protection against sexual harassment and discrimination.

And yet, the Administration's proposed changes to Title IX would end female-only sports, spaces, and services as we know it. It would force female athletes to compete with biological male athletes. Beyond sports, however, the Department and Administration are going down a path that could further undermine girls and women by eliminating sex-separate bathrooms, locker rooms, and dormitories.

The shaky foundation upon which the Department and Administration's far-reaching amendments are built is susceptible to litigation. In the interim, however, schools, colleges, and universities put themselves in grave legal liability should they comply with these amendments, were they adopted.

Furthermore, should the Department and Administration's amendments to Title IX be adopted, primary, secondary, and postsecondary schools will face not only serious legal liability but also another unfunded federal mandate. Schools will have to reallocate resources, which could otherwise be dedicated to the education of students, to comply with these unfunded mandates. Colleges and universities, with a demonstrable, ever-expanding administrative bloat, will

continue growing its bureaucracy, hiring more administrators, and passing along the cost of these compliance administrators to students and parents through even higher tuitions.

Ultimately and unfortunately, the Department and Biden administration's proposed amendments, if implemented, will lead to further arbitrary federal burdens on school policies and programming, the politicization of local schools, and the artificial creation of conflict among educators, families, and students. It is not lost on me, nor should it be lost on you, that the Biden administration's proposed changes to Title IX could lead to the types of discrimination and harassment that the law seeks to prevent.

The Department and Biden administration's proposed amendments to Title IX undermine the very intent of Title IX – to advance and protect equal opportunity of girls and women in schools, athletics, and other extracurricular activities.

I urge the Department and President Biden to withdraw these agenda-driven changes to Title IX. Should you and President Biden choose to proceed with your extreme amendments, I assure you the State of Montana will protect and defend the educational rights and opportunities of girls and women under Title IX.

Sincerely,



Greg Gianforte  
Governor