



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

May 13, 2016

Dr. David Wright
President
Indiana Wesleyan University
4201 South Washington Street
Marion, Indiana 46953

Dear Dr. Wright:

The purpose of this letter is to respond to your March 18, 2016, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for Indiana Wesleyan University (University) of Marion, Indiana from Title IX of the Education Amendments of 1972. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. We are processing your request and have determined that we need further information.

Section 901(a)(3) of Title IX, 20 U.S.C. § 1681(a)(3), and the Department's implementing regulation at 34 C.F.R. § 106.12 provide that Title IX and its regulations do not apply to an educational institution controlled by a religious organization to the extent that application of Title IX would not be consistent with the controlling organization's religious tenets. Such educational institutions are allowed to claim an exemption from Title IX by identifying the provisions of the Department's Title IX regulations that conflict with a specific tenet of the controlling religious organization.

An educational institution will normally be considered to be controlled by a religious organization under Title IX if one or more of the following conditions prevail:

- (1) It is a school or department of divinity, defined as an institution or a department or branch of an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects; or
- (2) It requires its faculty, students or employees to be members of, or otherwise espouse a personal belief in, the religion of the organization by which it claims to be controlled; or

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- (3) Its charter and catalog, or other official publication, contains an explicit statement that it is controlled by a religious organization or an organ thereof or is committed to the doctrines of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.

Your letter states that the University was “founded by The Wesleyan Church to provide higher education within a Christian environment for Wesleyan youth, and remains an institution of The Wesleyan Church to this day.”

Although your letter states that the University was founded by and is an institution of the Wesleyan Church, it does not sufficiently state that the University is controlled by the Church. Thus, OCR requires further information to determine whether the Church’s relationship with the University meets the standard for “control” as described above. If you would like OCR to make a determination regarding the University’s religious exemption request, please provide additional clarification regarding whether the Wesleyan Church or another religious organization controls the University. Feel free to provide any explanation or supporting documentation that may be helpful to OCR’s understanding. If you no longer wish to pursue your request for an exemption at this time, please let us know and we will treat your request as withdrawn.

Thank you for your cooperation. If you have any questions, please do not hesitate to contact me. I can be reached at (202) 453-6048.

Sincerely,



Seth M. Galanter
Principal Deputy Assistant Secretary
Office for Civil Rights
U.S. Department of Education

Letter to Catherine Lhamon
March 18, 2016
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As you are aware, the EEOC has begun declaring that the ban on sex discrimination in Title VII of the Civil Rights Act of 1964 forbids discrimination on the basis of sexual orientation.⁶ It is conceivable that the Department of Education's Office for Civil Rights could interpret Title IX of the Education Amendments of 1972 the same way. To the extent this supposition is correct, it appears as though compliance with Title IX, if interpreted by ED OCR to reach sexual orientation discrimination, would also be inconsistent with IWU's theological commitments. IWU therefore also seeks exemption on this basis out of an abundance of caution.

IWU has also adopted The Wesleyan Church's *Church and Culture* statement, which contains a chapter entitled Sanctity of Life, which reads in pertinent part as follows:

We believe that life is a gift from God and must always be regarded as sacred. Because God created human beings in His image, all people share in the divine dignity. Abortion, euthanasia, and unethical human experimentation violate the God-given dignity of human beings...

The Wesleyan Church seeks to recognize and preserve the sanctity of human life from conception to natural death and is opposed to the use of induced abortion. Scripture seems to indicate [sic] that God sees each unborn as a person being formed in the womb with a purpose and a future in mind (Ps. 139). It also instructs us to be fervent in protecting those who cannot protect themselves (Prov. 31:8-9).

IWU accordingly requests that your office acknowledge that the University is exempt from Title IX and the following implementing regulations (to the extent they are interpreted to reach gender identity and/or sexual orientation discrimination, and to the extent they restrict the University's freedom to apply and enforce the Wesleyan Church's statement on the sanctity of life):

- 34 C.F.R. § 106.21 (admission)
- 34 C.F.R. § 106.22 (preference in admission)
- 34 C.F.R. § 106.23 (recruitment)
- 34 C.F.R. § 106.31 (education programs or activities)
- 34 C.F.R. § 106.32 (housing)
- 34 C.F.R. § 106.33 (comparable facilities)
- 34 C.F.R. § 106.34 (access to classes and schools)
- 34 C.F.R. § 106.36 (counseling)
- 34 C.F.R. § 106.37 (financial assistance)
- 34 C.F.R. § 106.38 (employment assistance to students)
- 34 C.F.R. § 106.39 (health and insurance benefits and services)
- 34 C.F.R. § 106.40 (marital or parental status)
- 34 C.F.R. § 106.41 (athletics)

⁶ See <http://www.eeoc.gov/decisions/0120133080.pdf> (last visited Mar. 4, 2016)

Letter to Catherine Lhamon

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34 C.F.R. § 106.43 (standards for measuring skill or progress in physical education classes)

34 C.F.R. § 106.51-61 (relating to employment)

Thank you in advance for your consideration. I look forward to hearing from you soon. If you require anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "David Wright". The signature is written in a cursive style with a large, sweeping initial "D".

Dr. David Wright
President, Indiana Wesleyan University

OFFICE OF



THE PRESIDENT

March 18, 2016

Catherine Lhamon, Assistant Secretary
U.S. Department of Education, Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100

Re: Request for Religious Exemption from Certain Applications of Title IX

Dear Ms. Lhamon:

I hereby request, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, that the Department of Education's Office for Civil Rights acknowledge that Indiana Wesleyan University (IWU) is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to curtail the University's freedom to act in accordance with its religious convictions. As President of IWU, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

IWU was founded by The Wesleyan Church to provide higher education within a Christian environment for Wesleyan youth, and remains an institution of The Wesleyan Church to this day.¹ The Wesleyan Church has issued a statement entitled, "A Wesleyan View of Gender Identity and Expression," a copy of which is attached for your convenience. Among other things, the statement declares that "all humans have the same responsibility for stewarding physical attributes and abilities" and that "[g]ender assignment is a divine prerogative."

The statement invokes *The Discipline of The Wesleyan Church*, observing that the "article of religion" on "Marriage and the Family" asserts the binary nature of human sexual identity and expression. The statement sets forth the Church's specific religious convictions about gender identity expression:

1. Gender differentiation is sacred.
2. The Church is an advocate for social holiness for all persons.
3. Gender identity reflects God's sovereignty.
4. Gender non-conformity that disrupts marriage and adult family relationships violates the law of love and the sanctity of the family.
5. Reconciliation with God is the foundation for reconciliation with oneself and with others.
6. Those who are navigating gender identity issues deserve the Church's compassion and ministry.

¹ Indiana Wesleyan University, <http://www.indwes.edu/About/IWU-Profile/>; The Wesleyan Church, Wesleyan Colleges and Universities, <http://www.wesleyan.org/144/wesleyan-colleges-and-universities>.

DR. DAVID WRIGHT

Letter to Catherine Lhamon
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7. When necessary, church discipline of gender non-conforming individuals must be administered in holy love.

As you know, the Office for Civil Rights has not issued regulations or guidance explaining how an educational institution's response to a transgender individual might violate Title IX and its accompanying regulations. As you also know, however, the resolution agreement² between the Arcadia Unified School District and ED OCR (and the Department of Justice) requires the school district to permit transgender students to use the restroom, locker room, and overnight accommodations of their choice, and to participate in athletic programs as a member of their chosen sex.³ It is thus reasonable to suppose that ED OCR believes that such responses are required by Title IX. It is also reasonable to presume that your office interprets Title IX to impose gender identity non-discrimination obligations upon covered institutions in the employment context. To the extent these suppositions are correct, it appears as though compliance with Title IX, as interpreted by ED OCR to reach transgender "discrimination," would be inconsistent with the religious tenets of IWU and The Wesleyan Church.

The Wesleyan Church has also issued a statement entitled, "A Wesleyan View of Homosexuality," a copy of which is attached for your convenience.⁴ Among other things, the statement declares that "[i]t is the historic and sustained conviction of The Wesleyan Church that homosexual activity is contrary to the known will of God as revealed to us in the Bible." The statement sets forth a detailed Scriptural basis for the Church's view, invoking both the Old and New Testaments of Holy Scripture. The statement quotes *The Discipline of The Wesleyan Church*, declaring that "[s]exual relationships outside of marriage and sexual relationships between persons of the same sex are immoral and sinful. The depth of the sinfulness of homosexual practice is recognized, and yet we believe the grace of God sufficient to overcome both the practice of such activity and the perversion leading to its practice." (*Discipline* 410:5).

Significantly, the statement, which is consistent with IWU's practices, sets forth not just the Church's views on homosexual behavior but also mandates a loving and compassion response to members of the gay community:

[W]e call on Wesleyans to respond to the homosexual community with **both** boundless compassion **and** a call to biblical standards of sexual morality. We do not, cannot, and will not endorse homosexual activity as a lifestyle; just as we cannot, do not, and will not endorse all other kinds of behaviors that displease God. But we also do not, cannot, and will not endorse condemning, hate-filled, self-righteous attitudes toward those in the gay community.⁵

² Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, *available at* http://www.ncrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf.

³ *Id.*

⁴ The statement is also available on the web at <https://www.wesleyan.org/235/a-wesleyan-view-of-homosexuality> (last visited Mar. 4, 2016)

⁵ *Id.*

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The request letter indicates that students and employees at Marion College must adhere to tenets of The Wesleyan Church relative to a prohibition of pregnancy that occurs out of wedlock. Based on this principle, Marion College has requested and is granted by this letter exemption to § 106.21(c) (marital or parental status of applicants for admission), § 106.40 (marital or parental status of students), and § 106.57 (marital or parental status of employees and applicants for employment).

Marion College also requested exemption from § 106.31(b)(5) concerning rules of appearance. Section 106.31(b)(5) was formally revoked and deleted from the Title IX regulation. Therefore, an exemption for appearance codes is not necessary.

Marion College also requested the opportunity to apply for exemptions from certain sections if the understanding of the requirements was incorrect. The interpretation that Title IX permits separation of housing and restroom facilities by sex (§§ 106.32 (b) and 106.33, respectively) is correct. However, § 106.61, regarding sex as a bona-fide occupational qualification, does not apply to hiring only women as resident directors for women's dormitories. If you wish to limit the employment of resident directors in women's dormitories to women only, you will need to apply for a religious exemption from the employment sections of the Title IX regulation which you deem applicable. You should briefly describe the religious tenet(s) or practices on which this institution policy is based. Your request should be forwarded to the regional office.

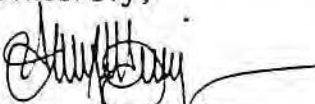
This letter should not be construed to grant exemption from any section of the Title IX regulation not specifically mentioned. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption herein granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

Page 3 - Dr. James P. Hill, Jr.

I hope this letter responds fully to your request. I regret the inordinate delay in responding to your original request. If you have any questions, please do not hesitate to contact the Chicago Regional Office for Civil Rights. The address is:

Linda A. McGovern
Acting Regional Civil Rights Director
Department of Education
Office for Civil Rights, Region V
300 South Wacker Drive, 8th Floor
Chicago, Illinois 60606

Sincerely,



Harry M. Singleton
Assistant Secretary
for Civil Rights

Enclosures

cc: Linda A. McGovern, Acting Regional Civil Rights Director, Region V

Recess: The Board recessed from 10:05 to 10:20.

Changing the Name of Marion College to Indiana Wesleyan University: Where as: 1) A new name will more accurately reflect our denominational and theological heritage; 2) This institution of higher learning is offering more graduate programs; 3) A name change will increase recognition and visibility; 4) Changing the name will help avoid confusion between Marion College and Marian College in Indianapolis; 5) The Executive Committee of Marion College, on January 30, 1988, supported the change of name of Marion College to Indiana Wesleyan University. Be it therefore recommended that the name of Marion College be changed to Indiana Wesleyan University.

Adopt New Name: A motion was made and supported to formally adopt the new name change as of July 1, 1988, to Indiana Wesleyan University.

Carried

One Year Grace Period: A motion was made and supported to give one year of grace which may be an advantage to the institution or its constituents concerning the name change usage.

Carried

Adjournment: The meeting adjourned at 11:00 a.m. with prayer by Dr. Lee Haines.

Respectfully submitted,

Burdette Shattuck, Secretary



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

SEP 13 1985

Dr. James P. Hill, Jr.
President
Marion College
4201 South Washington Street
Marion, Indiana 46952

Dear President Hill:

The Office for Civil Rights of the Department of Education (OCR/ED) is in the process of resolving a number of pending requests for religious exemption from Title IX of the Education Amendments of 1972. Our records indicate that Marion College filed such a request, but there is no record that OCR adequately acknowledged this request.

We have recently reviewed the request filed by former President Goodman (copy enclosed) in which he described several policies practiced at Marion College as consistent with the tenets of the religious organization that controls the institution. These policies would violate certain sections of the regulation implementing Title IX (copy enclosed) absent a religious exemption. The former President supplied information in his request letter that establishes that the institution is controlled by a religious organization and that tenets followed by this organization conflict with specific sections of the Title IX regulation. Therefore, I am granting Marion College an exemption to those sections of the Title IX regulation specified in the request letter. The exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by the institution. Marion College is hereby exempted from the requirements of the following sections of the Title IX regulation: 34 C.F.R. § 106.21(c), § 106.40, and § 106.57. The basis for our decision to grant this exemption is discussed in further detail below.

The request letter indicates that Marion College is controlled by The Wesleyan Church. The Wesleyan Church and Marion College practice tenets that "require a standard of moral purity opposing sexual promiscuity and all factors and practices which promote it Further the general rules of the Church require (1) the preservation of the sanctity of the home . . . and (2) the high regard of marriage vows The Discipline of The Wesleyan Church also requires appropriate discipline for violators" This relationship between The Wesleyan Church and Marion College adequately establishes that Marion College is controlled by a religious organization as is required for consideration for exemption under § 106.12 of the Title IX regulation.



February 16, 1993

Ms. Eleanor Baker
U. S. Department of Education
Office of Civil Rights
400 Maryland Avenue, S.W.
Washington, D.C. 20202


Dear Ms. Baker:

Thank you for your assistance today with reference to Title IX religious exemptions for Indiana Wesleyan University (Marion College).

Enclosed are copies of items relating to our change in name from Marion College to Indiana Wesleyan University which became effective July 1, 1988.

Again, thank you for your help in sending copy of the letter which granted the exemptions.

Sincerely,


(Miss) Mary Ellen Martin
Secretary to President Barnes

Enclosures 3

Recess: The Board recessed at 10:05 to 10:20.

Changing of College Name: A motion was made and supported to change the name of Marion College to Indiana Wesleyan University and submit the same for a vote at a special called full board meeting on Saturday, March 5, 1988.

Carried

Executive Session: The Board recessed for executive session.

Respectfully submitted,

~~EXHIBIT~~ Shattuck, Secretary



MARION COLLEGE
4201 SO WASHINGTON STREET, MARION, INDIANA 46952. TELEPHONE (317) 674-6901

McKinnin
7/22

June 28, 1976

Mr. Peter E. Holmes
Director of the Office for Civil Rights
Department of Health, Education, and Welfare
Office of the Secretary
Washington, D. C. 20201

Dear Mr. Holmes:

Marion College has reviewed its current policies and practices in regard to full compliance with the provisions of Title IX. Action has been taken to fully comply with the requirements of Title IX including steps to modify any practice or action required to bring the institution into full compliance in all parts of the act not covered by exemption.

Pursuant to the provision of section 86:12 of Title IX I request exemption of Marion College from the provisions of sections 86:21 (c); 86:40 (a) and (b); and 86:57 to the extent that they may deal with pregnancy out of wedlock. The sections of the act are inconsistent with the special directions and the general rules of The Wesleyan Church by which Marion College is controlled.

The special directions of The Wesleyan Church for its members published in the 1972 Discipline of The Wesleyan Church require a standard of moral purity opposing sexual promiscuity and all factors and practices which promote it (see the Discipline p. 51 paragraph 187 (5)). Further the general rules of the church require (1) the preservation of the sanctity of the home (see the Discipline p. 36 paragraph 131(11) and (2) the high regard of marriage vows (see the Discipline p. 36 paragraph 131 (14)). The Discipline also requires appropriate discipline for violators (see Discipline p. 37 paragraph 132).

While it is the expectation of Marion College to apply college rules and regulations equally to men and women there may be occasions in the instance of pregnancy out of wedlock where the evidence against the father may be insufficient to meet due process requirements whereas such would not be the case with the woman. To deal with neither party because we could not deal with both would be tantamount to sanction of a moral situation which violates a tenet of our church.

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Mr. Holmes

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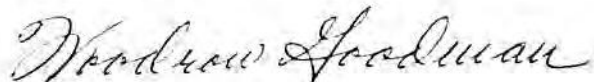
June 28, 1976

Further, I request exemption of Marion College from the provisions of section 86:31 to the extent that appropriate differences may be required between the sexes in regulations concerning dress. The specific tenet of the church with which the requirements of Title IX may be insistent is found in the church's general rules on dress (see Discipline paragraph 131 (8)). The application of this tenet does require some differences in the dress code in specific circumstances for example the acceptable style of swim suits for men would be different than the acceptable style of swim suits for women.

It is our understanding that Title IX permits separation of housing by sex (86:32 (b)), separation of restroom facilities (86:33), and special requirements for employment such as a women to be resident director in a women's dormitory (86:61). If our understanding of these sections should be in error or at anytime these sections should be interpreted as prohibiting administration based on sex Marion College would desire the opportunity to request specific exemption in these areas, also.

The provision of Title IX for the request of specific exemptions based on religious tenets is appreciated, as is your favorable consideration of these requests.

Sincerely,



Woodrow Goodman
President

OFFICE OF



THE PRESIDENT

June 2, 2016

Seth M. Galanter, Principal Deputy Assistant Secretary
U.S. Department of Education, Office for Civil Rights
400 Maryland Avenue S.W.
Washington, DC 20202-1100

Re: Request for Additional Information

Dear Mr. Galanter:

Indiana Wesleyan University (IWU or University) is in receipt of your letter from May 13, 2016, whereby the U.S. Department of Education, Office for Civil Rights (OCR) has requested additional information to support the University's Title IX religious exemption request. Specifically, the OCR is requesting clarification on whether The Wesleyan Church controls the University.

There are three key documents that illuminate the authority and control The Wesleyan Church exerts over the University: (1) *The Discipline of The Wesleyan Church*, (2) the *General Board Standards of The Wesleyan Church for Educational Institutions*, and (3) the "Articles of Incorporation of Indiana Wesleyan University". Each of these documents will be highlighted below.

The Discipline of The Wesleyan Church

In *The Discipline of The Wesleyan Church*, the general duties of the Church's Education and Clergy Development Division are given. One of the primary duties cited is to:

Give leadership to and oversee the educational institutions of Wesleyan Higher Education (2365:2)¹ ensuring that biblical Wesleyan theology and values are reflected in every discipline and that the vision and purpose of the educational

¹ *The Discipline of The Wesleyan Church*: <http://www.wesleyan.org/d/XgmYw/2012WesleyanDiscipline.pdf> (last accessed 5/31/16).

DR. DAVID WRIGHT

Page 2: Response to Mr. Galanter

institutions and approved seminaries is aligned with and complementary to the vision and purpose of The Wesleyan Church (2341).²

The Discipline goes on to state that, “Ultimate authority over the educational institutions of The Wesleyan Church rests with the General Conference (1590:13).” In practice this authority is delegated by the General Conference to the General Board, who has the power to (1) establish, merge, or dissolve an educational institution; (2) provide for and deal with all matters pertaining to charters and bylaws; (3) appoint Board of Trustees for the institution; and, (4) to revise The Wesleyan Church’s *Standards of the General Board for Educational Institutions* (2362:1-4).³

Standards of the General Board for Educational Institutions

In order to effectuate its control over Wesleyan educational institutions and their ongoing service to the public (GB-1102), the Church abides by the *Standards of the General Board for Educational Institutions*, a copy of which is enclosed for your convenience. According to the *Standards*, “The structuring of the control of Wesleyan educational institutions shall be such as to perpetuate these institutions as a responsible arm of the total ministry of The Wesleyan Church.” (GB-1104). These *Standards* “set forth the detailed regulations by which the GB [General Board] carries out the delegated responsibility of controlling and operating the educational institutions of The Wesleyan Church.” (GB-1176).

In describing the governance of Wesleyan higher education, the *Standards* reveal:

The Church does not believe that education should be isolated from the mainstream of church life. Therefore it attempts to integrate even the governance of its institutions of higher learning with the governance of the Church itself. The General Conference systematizes the financial contributions of its congregations in support of the education institutions, defines certain broad patterns of governance, and then delegates all further power to the GB. The GB in turn determines the *GB Standards for Educational Institutions* and serves as or elects the board of control of each institution. Each board of control is so constituted and its powers so defined as to provide for the integration of the school and the denomination (GB-1124).

Articles of Incorporation

Control of Indiana Wesleyan University is not just memorialized in denominational documents, but also in the institution’s “Articles of Incorporation”, also included for your reference. Article III declares, “This corporation shall be under the control, supervision,

² *Id.*

³ *Id.*

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and patronage of The Wesleyan Church as successor of The Wesleyan Methodist Church of America. The General Conference of said Church shall make regulations from time to time for the general control and to provide for the management of the University.”

While stewardship of the University is delegated to the Board of Trustees, the “Articles of Incorporation” are very clear that ultimate authority resides with the General Board of The Wesleyan Church:

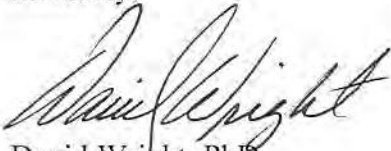
In the event that the Board of Trustees fail for any reason to govern, to manage, or to control the University in agreement with the bylaws and the *Standards for Educational Institutions of The Wesleyan Church*, the General Board of Administration of The Wesleyan Church may assume full responsibilities to govern, to manage, and to control the University including the right to the title of the existing property and assets of the University; providing that the then existing mortgages, liens, or other obligations shall be equally binding upon the General Board of Administration of The Wesleyan Church acting in the capacity of and as successors to the Board of Trustees of the University (Article III, paragraph four).

These three documents speak to the continued interwoven relationship between IWU and The Wesleyan Church. While there is operational autonomy granted through the Board of Trustees, ultimate dominion over the University belongs to The Wesleyan Church.

I trust you will find these documents helpful in making your determination; however, should you have further questions, please do not hesitate to contact me.

Thank you again for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Wright".

David Wright, PhD

President, Indiana Wesleyan University



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 18, 2017

David Wright, Ph.D
President
Indiana Wesleyan University
4201 South Washington Street
Marion, Indiana 46953

Dear President Wright:

I write to respond to your March 18, 2016, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested a religious exemption for Indiana Wesleyan University (University) of Marion, Indiana, from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681. In response to a request from OCR on May 13, 2016, you submitted further information on June 2, 2016, about the University's eligibility for exemption from Title IX.

Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. Title IX and its implementing regulation at 34 C.F.R. § 106.12 provide that Title IX does not apply to an educational institution controlled by a religious organization to the extent that application of Title IX would be inconsistent with the controlling organization's religious tenets. Therefore, such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law or regulation that conflict with those tenets.

Your request states that the University is "an institution of The Wesleyan Church." Your June 2016 letter explains that the University's Articles of Incorporation make clear that the University "shall be under the control, supervision, and patronage of The Wesleyan Church as a successor of The Wesleyan Methodist Church of America. The General Conference of said Church shall make regulations from time to time for the general control and to provide for the management of the University." You further state that, according to the University's Articles of Incorporation, "ultimate authority resides with the General Board of The Wesleyan Church." Specifically, "[i]n the event that the Board of Trustees fail for any reason to govern, to manage, or to control the University in agreement with the bylaws and the *Standards for Educational Institutions of The Wesleyan Church*, the General Board of Administration of The Wesleyan Church may assume full responsibilities to govern, to manage, and to control the University."

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www.ed.gov

Dr. David Wright – page 2

Your March 2016 letter requests a religious exemption from certain provisions of Title IX “to the extent that they are interpreted to curtail the University’s freedom to act in accordance with its religious convictions.” In support of this request, you cite to the a statement issued by The Wesleyan Church entitled, “A Wesleyan View of Gender Identity and Expression,” which declares that “all humans have the same responsibility for stewarding physical attributes and abilities” and that “[g]ender assignment is a divine prerogative.” According to your letter, the statement also asserts that “[g]ender non-conformity that disrupts marriage and adult family relationships violates the law of love and the sanctity of the family.” Your letter also cites to the Wesleyan Church’s statement entitled, “A Wesleyan View of Homosexuality,” which declares that “homosexual activity is contrary to the known will of God” and, in quoting *The Discipline of the Wesleyan Church*, declares that “[s]exual relationships outside of marriage and sexual relationships between persons of the same sex are immoral and sinful.” Your letter also asserts that the University adopted The Wesleyan Church’s *Church and Culture* statement, which “seeks to recognize and preserve the sanctity of human life from conception to natural death and is opposed to the use of induced abortion.”

You state that, for these reasons, the University is requesting an exemption from the following regulatory provisions “to the extent they are interpreted to reach gender identity and/or sexual orientation discrimination, and to the extent they restrict the University’s freedom to apply and enforce the Wesleyan Church’s statement on the sanctity of life:”

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.22 (governing preference in admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31 (governing education programs or activities)
- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities);
- 34 C.F.R. § 106.34 (governing access to classes and schools);
- 34 C.F.R. § 106.36 (governing counseling);
- 34 C.F.R. § 106.37 (governing financial assistance);
- 34 C.F.R. § 106.38 (governing employment assistance to students);
- 34 C.F.R. § 106.39 (governing health and insurance benefits and services);
- 34 C.F.R. § 106.40 (governing marital or parental status);
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.43 (governing standards for measuring skill or progress in physical education classes); and
- 34 C.F.R. §§ 106.51-61 (governing employment).

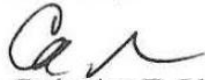
The University is exempt from these provisions to the extent that they prohibit discrimination on the basis of sexual orientation or gender identity or restrict the University’s freedom to apply and enforce the Wesleyan Church’s statement on the sanctity of life and compliance would conflict with the controlling organization’s religious tenets.

Dr. David Wright – page 3

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights



OFFICE OF THE PRESIDENT

January 30, 1996

*PETS
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New Director
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VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

*PLEASE CONTROL
TO PETS
B*

Honorable Norma V. Cantu'
Assistant Secretary for Civil Rights
U.S. Department of Education
330 C Street NW
Room 5000
Washington, D.C. 20202

RE: Lee College, Cleveland, Tennessee

Dear Ms. Cantu':

This letter is an official request for the exemption of Lee College, Cleveland, Tennessee from the requirements of 20 USC 1681 as allowed under Section (a) (3).

Lee College is a private, four-year liberal arts college, affiliated with the Church of God, Cleveland, Tennessee. Lee College has approximately 2,500 undergraduate students and has begun a graduate program in the field of music. Other graduate programs are being investigated and it is anticipated that other graduate programs will be implemented in the near future.

From the time it was founded in 1918, Lee College has been directly associated with the Church of God, Cleveland, Tennessee. A significant portion of its students are in training to become ministers in the Church of God and other denominations. The Church of God selects the college's Board of Directors.

The Church of God is a Protestant evangelical denomination whose basic tenets come directly from the Holy Bible, as interpreted generally by the Church of God. Included in these basic tenets are fundamental religious beliefs concerning morality and proper living. They encompass abstention from certain forms of immorality, including but not limited to pre-marital sex, adultery, homosexuality, and other practices which may fall within such definitions. Beyond teachings and doctrinal commitments propounded by the Church of God, the Church of God also encourages its members to follow certain practical commitments of spiritual disciplines, church commitment, stewardship, and moral purity.

January 30, 1996
Page 2

Within the broad concept of "moral purity", the Church of God and Lee College adhere to certain beliefs regarding conduct which may be acceptable to some members of society, but which are not so accepted by the Church of God or Lee College. A firm definition of "immorality" may be impossible, in light of changes in society and its patterns and habits. Therefore, while a strict definition of "immorality" or "moral purity" may not be easy to obtain, certain practices such as sexual involvement either before marriage or with someone other than the marriage partner after the marriage is strictly forbidden by the Church of God, as it interprets scripture. Also included in this definition would be a prohibition against adultery or homosexual behavior.

In light of the above and because of its close ties to the Church of God and in particular, its belief in the right of an institution connected with a religious body to adhere to any and all biblical tenets as interpreted by it and the Church of God, Lee College hereby requests official exemption from the above statutory provisions, and other rights to which it is entitled under applicable law to the extent these practices would be considered discriminatory.

If you require further information or assistance, please do not hesitate to contact me.

Cordially,

A handwritten signature in black ink that reads "C. Paul Conn" with a horizontal line extending to the right.

Charles Paul Conn, President
Lee College
Cleveland, Tennessee



March 5, 1996

Honorable Norma V. Cantu'
Assistant Secretary for Civil Rights
U.S. Department of Education
330 C. Street NW - Room 5000
Washington, D.C. 20202

SUBJECT: Lee College, Cleveland, Tennessee

Dear Miss Cantu':

This letter is to serve as an amended official request for exemption of Lee College, Cleveland, Tennessee, under the provisions of 20 USC 1681 (a) (3).

Lee College is a private, four-year liberal arts college, affiliated with the Church of God, Cleveland, Tennessee. Lee College has approximately 2,500 students and also has begun a graduate program in the field of music. Other graduate programs are being investigated and planned.

From its original organization in 1918, Lee College has been directly associated with the Church of God, Cleveland, Tennessee. A significant portion of its students are in training as ministers in the Church of God and other denominations. The Church of God selects the college's Board of Directors.

The Church of God is a Protestant evangelical denomination basing its basic tenets directly from the Holy Bible, as interpreted generally by the Church of God. Included in these basic tenets are fundamental religious beliefs concerning morality and proper living. These basic tenets encompass such things as abstention from certain forms of immorality, including but not limited to pre-marital sex, adultery, homosexuality, and other practices which may fall within such definitions. Beyond teachings and doctrinal commitments propounded by the Church of God, the Church of God also encourages its members to follow certain practical commitments of spiritual disciplines, church commitment, stewardship, and moral purity.

Honorable Norma V. Cantu'

March 5, 1995

Page Two

The college adheres to biblical tenets as its standard of faith and practice. The tenets require the college to act in ways which may conflict with specific Section IX regulations. The faculty, employees, and students of the college are expected to conduct themselves in a manner consistent with the tenets of the Christian faith. The college requires, for instance, Christian sexual conduct on the part of its employees and student body. The college's religious tenets for instance, would not permit the college to treat pregnancy, childbirth, or termination of pregnancy of an unmarried woman as a temporary disability. The college expects its personnel to be Christian role models and an employee or student living with a member of the opposite sex out of wedlock would be considered morally delinquent. The college has religious tenets regarding human sexuality, proper living environments, respect for the institution of marriage, language, and modest attire. Scholarship funds, and career offerings related to ministerial training students may be provided differently on the basis of sex. The college also offers sex-separate organizations to students. The college deems it necessary to minister in unique ways to men as compared to women in preparing students to fulfill their roles as mothers and fathers in the context of religious beliefs in the sanctity of the home.

Therefore, this college requests an exemption from 34C.F.R. section 106.21© (Marital or parental status of applicants for admission); 106.40 (Marital or parental status of students); 106.51 (b)(6) (Granting leaves of absence for employees for pregnancy, childbirth, false pregnancy, termination of pregnancy, child care); 106.57 (Marital or parental status of employees); and 106.60(a) (Preemployment inquiries as to marital status).

Further, this institution requests an exemption to 106.31 for membership practices in student organizations which are required by religious tenets to be limited on the basis of sex. We request exemption to 106.36 regarding counseling and use of appraisal and counseling materials to the extent the college's religious tenets will require differentiating counseling between sexes. We request an exemption for 106.39 (Student health and insurance benefits and services).

For those employment positions which are restricted on the basis of sex in accordance with the college's religious tenets we request an exemption to 105.1 (Employment); 106.52 (Employment criteria); 106.53 (Recruitment of employees); 106.55 (Job classification and structure); and 106.59 (Advertising).

Honorable Norma V. Cantu'
March 5, 1996
Page Three

To the extent that counseling, scholarship funds and career funding related to ministerial training students are provided differently on the basis of sex and the requirement that certain sex-separate clubs and organizations exist, the college requests an exemption from 106.31 (Education programs and activities); 106.34 (Access to course offerings); 106.36 (Counseling and use of appraisal in counseling materials); 106.37 (Financial assistance); 106.38 (Employment assistance to students); and 106.14 regarding membership practices of certain organizations.

If you require further information or assistance, please do not hesitate to contact me.

Cordially,



Charles Paul Conn, President
Lee College
Cleveland, Tennessee

CPC:scg



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

Dr. Charles Paul Conn
President
Lee College
P.O. Box 2430
Cleveland, Tennessee 37320-2430

FILE COPY

Dear Dr. Conn:

The Office for Civil Rights (OCR) of the U.S. Department of Education received your request (copy enclosed), dated January 30, 1996, for religious exemption for Lee College (College) from Title IX of the Education Amendments of 1972, and its implementing regulation, at 34 C.F.R. Part 106 (1992). This letter is in response to your request.

In your request, you described several policies and practices at Lee College as consistent with the tenets of the religious organization that controls the College. These policies would violate certain sections of the regulation implementing Title IX (copy enclosed) absent a religious exemption. You supplied information in your request that establishes that the College is controlled by a religious organization and that tenets followed by this organization conflict with specific sections of the Title IX regulation. Therefore, I am granting Lee College an exemption to those sections of the Title IX regulation specified in your request letter.

The exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by Lee College. Lee College is hereby exempted from the requirements of the following sections of the Title IX regulation: 34 C.F.R. §§ 106.21(c), 106.31, 106.34, 106.36, 106.37, 106.38, 106.39, 106.40, 106.51, 106.52, 106.53, 106.55, 106.57, 106.59, and, 106.60. The basis for our decision to grant this exemption is discussed in detail below.

Your letter indicates that the College is controlled by the Church of God, a Protestant evangelical denomination whose basic tenets come directly from the Holy Bible, as interpreted generally by the Church of God. The Church of God fosters the College and selects the College's board of directors. In addition, a substantial number of the College's students are in training to become ministers in the Church of God. This relationship between the Church of God and the College



Page 2 - Dr. Charles Paul Conn

adequately establishes that Lee College is controlled by a religious organization as is required for consideration for exemption under 34 C.F.R. § 106.12 of the Title IX implementing regulation.

In your letter, you indicate that there are certain biblical tenets that the College uses as its standard of faith and practice which are directly related to issues such as human sexuality, cohabitation, the institution of marriage, and other subjects of a moral character or dimension. The institution practices the following tenets:

1. Of particular relevance and significance is the institution's role in encouraging those intending to marry and become parents to adhere to the College's religious tenets regarding the Christian view of the sanctity of marriage and the importance of family life. Based on these principles, the College is granted by this letter exemption the following Sections of 34 C.F.R.:

§ 106.40	Marital or parental status
§ 106.51	Employment

2. In keeping with the College's religious beliefs, some positions of employment within the institution may be restricted on the basis of gender. Based on these principles, the College is granted by this letter exemption from the following Sections of 34 C.F.R.:

§ 106.52	Employment criteria
§ 106.53	Recruitment
§ 106.55	Job classification and structure
§ 106.57	Marital or parental status
§ 106.59	Advertising

3. The College provides an education to a significant number of students who are training for the ministry. The College may provide different scholarship assistance and academic and professional counseling to ministerial students on the basis of gender. The College may deem it necessary to minister in unique and different ways to men and women in encouraging and preparing them to fulfill their roles as committed Christian citizens. The College is therefore granted by this letter exemption from the following Sections of 34 C.F. R.:

§ 106.21(c)	Admission; prohibitions relating to
§ 106.31	Education programs and activities
§ 106.34	Access to course offerings
§ 106.36	Counseling and use of appraisal and counseling materials

Page 3 - Dr. Charles Paul Conn

§ 106.37	Financial assistance
§ 106.38	Employment assistance to students

This letter should not be construed to grant exemption to any section of the Title IX regulation not specifically mentioned. If OCR receives a complaint on these issues against the College, we are obligated to determine initially whether the allegations fall within the exemptions granted. Also, in the unlikely event that a complaint alleges that the practices followed by the College are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the College, or if the organization denies that it controls the College, this exemption will be rescinded.

I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,

Susan Bowers
Acting Director,
Policy, Enforcement, and
Program Service
Office for Civil Rights

Enclosure



LIBERTY UNIVERSITY
OFFICE *of the* PRESIDENT

January 16, 2014

Via FedEx Delivery

Ms. Robin C. Murphy
Team Leader
Office for Civil Rights, District of Columbia Office
U.S. Department of Education
Lyndon Baines Johnson Building
Room 4E214
400 Maryland Avenue, SW
Washington, DC 20202-1475

Re: OCR Complaint No. 11-14-2014

Dear Ms. Murphy:

This letter continues our discussion that grew out of the November 8, 2013 letter Liberty University received from the District of Columbia Office of Civil Rights (OCR), within the U.S. Department of Education. In the November 8th letter, OCR informed Liberty that a complaint had been filed against the University alleging that Liberty's Student Honor Code discriminates against female students because the policy allows the University to discipline students who have abortions.

As we stated in our December 6th response letter, Liberty has no record of imposing any discipline under the abortion provision of its Honor Code. In addition, Liberty has never viewed the violation, identified in the Honor Code simply as "Abortion," to be applicable only to females, and since learning of the complaint, Liberty has elected to revise the code to clarify that it applies equally to both male and female students. Therefore, Liberty maintains that its Honor Code is nondiscriminatory, and does not treat students differently on the basis of gender.

Nevertheless, the Department has asked Liberty to formally claim a religious exemption under 34 C.F.R. § 106.12, by providing (1) the names the religious entity that oversees the University; (2) a description of the specific religious tenets that the University believes are inconsistent with Title IX; and (3) the provisions of the Title IX regulation from which the University claims an exemption.

Ms. Robin C. Murphy
January 16, 2014
Page 2

In the spirit of continuing the discussion, Liberty is pleased to submit the following information:

1. Liberty University, the largest Christian university in the world, was founded in 1971 as a ministry of the Thomas Road Baptist Church ("TRBC"). The University's Articles of Incorporation provide the TRBC Board of Directors with the power to remove any University trustee the Board finds to be "undermining the mission of the [University] as reflected in the Liberty University Doctrinal Position," with the trustee having notice and opportunity to appear before the TRBC board prior to such determination. (*See Arts. of Inc., art. v, § 7.*) The Doctrinal Position of the University may only be amended by the Board of Trustees with the consent of the Board of Directors of TRBC. This ongoing oversight ensures that TRBC's mission-oriented intentions in founding Liberty University continue to be implemented. Thus, the TRBC Board of Directors maintains this continuing oversight of the University's board of trustees and has the power to make its own interpretations on important issues related to the religious doctrine of the University.
2. Since 1971, the mission of the University has been to develop Christ-centered men and women with the values, knowledge, and skills essential for impacting tomorrow's world. Liberty University is synonymous with "Training Champions for Christ," a motto it continues to proudly proclaim. The teachings of the Christian faith are central to the University's purpose, mission, and the holistic development that it seeks to foster in its students. The University's purpose, as stated in its Articles of Incorporation, is to glorify God by "equipping men and women in higher education in fidelity to the Christian faith expressed through the Holy Scriptures, the orthodox religious and moral foundations of that education being a central and perpetual purpose and mission ..." (*See Arts. Of Inc., art. iii.*) The University's mission statement provides that "[e]ducation as the process of teaching and learning, involves the whole person, by developing the knowledge, values, and skills which enable each individual to change freely. Thus it occurs most effectively when both instructor and student are properly related to God and each other through Christ." (*See Liberty University, Mission Stmt., (Nov. 2, 2010).*)

Ms. Robin C. Murphy
January 16, 2014
Page 3

The University has sought to accomplish its purpose and mission in several ways. First, all subjects, both religious and non-religious, are taught from a biblical worldview. Second, the faculty members at the University must affirm the University's Doctrinal Position before instructing students. Third, undergraduate residential students are required to attend convocation services three times a week, and faculty and staff are required to attend services once a week. Collectively, these efforts ensure that the tenets and teachings of the Christian faith anchor each student's education and growth at Liberty.

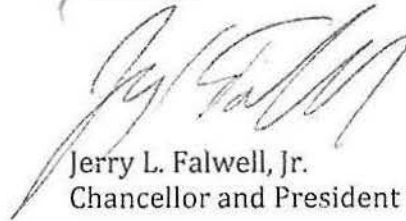
Liberty takes pride in its Christian form of education, and its unwavering commitment to the faith-based principles that it instills in each student that attends the University. Like many of Liberty's disciplinary policies, the policy regarding student abortions reflects a bona fide and sincerely-held religious conviction, maintained in accordance with the established religious tenets upon which Liberty University was founded. The genuine religious and historic Biblical basis for opposing abortion, as derived from Holy Scripture, is clear and widely recognized in the United States, and is held out unequivocally as TRBC doctrine. That doctrine is proclaimed in numerous books, sermons and public statements by the late Rev. Dr. Jerry Falwell, Sr., the founder of both TRBC and the University.

3. As we have repeatedly stated, Liberty believes that its disciplinary policy is nondiscriminatory. However, to the extent that the Department is concerned that Liberty's policy may run counter to the prohibitions on discrimination under Title IX, the University contends that its policy regarding abortion is founded on religious tenets that must be exempt under Title IX as a permissible exercise under the First Amendment. Specifically, in this context, Liberty claims exemption from the provisions of 34 C.F.R. 106.31(b) on the basis that Liberty's policy is founded on and consistent with its religious tenets and those of TRBC.

Ms. Robin C. Murphy
January 16, 2014
Page 4

Please do not hesitate to contact us if you require further information or clarification regarding Liberty's position on this matter.

Sincerely,



Jerry L. Falwell, Jr.
Chancellor and President

cc: Mark Hine, Senior Vice President for Student Affairs
Ronald S. Godwin, Senior Vice President for Academic Affairs and Provost
David Corry, Esq., General Counsel
Kay Bhagat, Esq., Kay.Bhagat@ed.gov
Jane Ehrenfeld, Esq., Jane.Ehrenfeld@ed.gov
Martha Russo, Esq., Martha.Russo@ed.gov



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 22, 2014

Jerry L. Falwell, Jr.
Chancellor and President
Liberty University
1971 University Boulevard
Lynchburg, VA 24515

Dear Mr. Falwell:

The purpose of this letter is to respond to your January 16, 2014, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for Liberty University (University) of Lynchburg, Virginia from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, as it relates to imposing discipline on students who have abortions. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. The implementing regulation at 34 C.F.R. § 106.40(b) prohibits a recipient from discriminating against any student on the basis of a student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom.

The implementing regulation at 34 C.F.R. § 106.12 provides that Title IX does not apply to educational institutions controlled by religious organizations to the extent that application of Title IX would be inconsistent with the institution's religious tenets. Therefore, such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law and/or regulation that conflict with those tenets.

Your request explained that the University was founded "as a ministry of the Thomas Road Baptist Church ('TRBC') and that the University's Articles of Incorporation state that the University's purpose is "to glorify God by 'equipping men and women in higher education in fidelity to the Christian faith expressed through the Holy Scriptures, the orthodox religious and moral foundation of that education being a central and perpetual purpose and mission.'" You note that faculty members must affirm the University's Doctrinal Position before instructing students, and that faculty, staff, and undergraduate residential students are required to attend convocation services. Your request states that "the policy regarding student abortions reflects a bona fide and sincerely-held religious conviction, maintained in accordance with the established religious tenets upon which Liberty University was founded. The genuine religious and historic Biblical basis for opposing abortion, as derived from Holy Scripture is . . . held out unequivocally as TRBC doctrine."

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

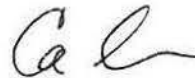
Jerry L. Falwell, Jr. – page 2

You further state that, for these reasons, the University is requesting an exemption from Title IX and its implementing regulation at 34 C.F.R. § 106.31(b) to allow the University to maintain a policy allowing for the discipline of students who have an abortion. Because 34 C.F.R. § 106.40(b) is the provision that would be most applicable to such a policy, we instead interpret your request as a request for a religious exemption from 34 C.F.R. § 106.40(b). Based on the foregoing considerations, the University is exempt from the requirements of 34 C.F.R. § 106.40(b) governing termination of pregnancy.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education



okbu.edu

David Wesley Whitlock
President

405.585.5801 | FAX 405.585.5811

OBU Box 61241 | 500 West University | Shawnee, OK 74804

November 24, 2014

Ms. Catherine E. Lhaman
Assistant Secretary for Civil Rights
United States Department of Education
400 Maryland Ave. S.W.
Washington, DC 20202-1100

Re: Claim of Title IX Religious Tenet Exemption

Dear Ms. Lhaman,

As President of Oklahoma Baptist University, I am the highest ranking official of this institution. I submit the following statement in order to claim on behalf of the University the religious tenet exemption from Title IX of the Education Amendments of 1972 which is provided for in 20 U.S.C. 1681, 1682, and which is the subject of 34 C.F.R. 106.12.

Oklahoma Baptist University is a Southern Baptist institution of higher education. It is an Oklahoma nonprofit corporation whose principal office address is 500 West University, Shawnee, Oklahoma 74804. I enclose the Charter and Bylaws of the University.

Oklahoma Baptist University is controlled by a religious organization. That organization is the Baptist General Convention of the State of Oklahoma. (See the University's Charter.) This Convention is a Southern Baptist general body whose constituency is the cooperating Southern Baptist churches of Oklahoma. It is an "association of churches" in the terminology of the Internal Revenue Code. Pursuant to the University's Charter and Bylaws, the Baptist General Convention of the State of Oklahoma controls the University in part by exercising its right to select the entire membership of the board of directors of the University, the governing body of the University. (See the University's Bylaws, especially Articles I and II.)

The Convention's authority over the University constitutes control by the Convention which is more than sufficient to cause the institution to be exempt from Title VII of the Civil Rights Act of 1964's general prohibition against religious discrimination in employment under 42 U.S.C. 2000e-2, § 703(e)(3) as an educational institution "which is in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious

Ms. Catherine E. Lhaman
November 24, 2014
Page 2

corporation, association or society.” (See, for example, the decision of the United States Circuit Court of Appeals, Eleventh Circuit, regarding our sister Southern Baptist university in Killinger v. Samford University, 113 F. 3d 196 (1997)).

This request for exemption is from provisions of Title IX to the extent application of those provisions would not be consistent with the Convention’s religious tenets regarding marriage, sex outside of marriage, sexual orientation, gender identity, pregnancy, and abortion. I identify those provisions to be:

Admissions:

34 C.F.R. § 106.21 including but not limited to (b)(iii) (governing differential treatment on the basis of sex in admissions); and (c) (governing admissions prohibition on the basis of marital or parental status).

Recruitment:

34 C.F.R. § 106.23 (governing nondiscriminatory recruitment).

Education Programs or Activities:

34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions), and (b)(7) (otherwise limiting any person in the enjoyment of any right, etc);
34 C.F.R. § 106.32 (governing housing);
34 C.F.R. §106.33 (governing comparable facilities such as restrooms and locker rooms);
34 C.F.R. § 106.40 (governing different rules based on marital or parental status of students);
and
34 C.F.R. § 106.41 (governing athletics);

Employment:

34 C.F.R. § 106.51 (governing employment);
34 C.F.R. § 106.52 (employment criteria);
34 C.F.R. § 106.53 (recruitment);
34 C.F.R. § 106.57 (governing the consideration of marital or parental status in employment decisions); and
34 C.F.R. § 106.60 (governing pre-employment inquiries).

The mission of the University is stated as follows:

As a Christian liberal arts university, Oklahoma Baptist University transforms lives by equipping students to pursue academic excellence, integrate faith with all areas of knowledge, engage a diverse world, and live worthy of the high calling of God in Christ

Ms. Catherine E. Lhaman
November 24, 2014
Page 3

The purpose of the University is declared in its Charter, to wit:

The purpose of this corporation is to encourage, support, provide, and maintain Christian education and to engage in Christian undertakings which are in keeping with the purpose of the Baptist General Convention of the State of Oklahoma.

Southern Baptist religious tenets have been described most extensively and most recently in *The Baptist Faith and Message 2000*, a statement of faith adopted by the Convention. That statement is attached.

In regard to marriage, sex outside of marriage, sexual orientation, gender identity, pregnancy and abortion, the following statements are illustrative:

“Marriage is the uniting of one man and one woman in covenant commitment for a lifetime. It is God’s unique gift to reveal the union between Christ and His church and to provide for the man and the woman in marriage the framework for intimate companionship, the channel of sexual expression according to biblical standards, and the means for procreation of the human race. . . . Children, from the moment of conception, are a blessing and heritage from the Lord.” *XVII The Family, The Baptist Faith and Message 2000*.

“Man is the special creation of God, made in His image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God’s creation.” *III Man, The Baptist Faith and Message 2000*. (The Southern Baptist Convention elaborated on this tenet most recently in 2014 by the adoption of a resolution “On Transgender Identity.” It is attached.)

“Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual immorality, including adultery, homosexuality, and pornography. . . . We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.” *XV The Christian and the Social Order, The Baptist Faith and Message 2000*.

The University’s policies are rooted in these religious tenets. (See, for example, the University’s Policy on Sex, Sexuality and Gender Identity which is attached.)

Application of a regulation would not be consistent with these tenets if the regulation prohibited the institution from following its policies, that is if the regulation prohibited the University:

From engaging in recruiting and admissions under a policy which called for the consideration of an applicant for admission’s sexual orientation, transgendered status, marital status, past and present practices regarding marriage, sex outside marriage, pregnancy, and abortion (these considerations collectively referred to hereafter as

Ms. Catherine E. Lhaman
November 24, 2014
Page 4

“student and employee characteristics”), and prohibited the institution from treating that person differently as a result of that consideration;

From subjecting students to rules of behavior, sanctions, or other treatment because of these student characteristics. Examples would be the institution’s rules regarding eligibility for employment of the student by the institution; the assignment of housing, restrooms and locker rooms, and restrictions to athletic activities by birth sex; rules prohibiting homosexual conduct including but not limited to a prohibition of a student’s engaging in sex with a person of his or her birth sex; prohibition of sex outside of marriage between a man and a woman; sanctions as the result of pregnancy and abortion; and

From making all employment decisions, including but not limited to selection criteria and pre-employment inquiries, recruitment, the decision to employ, retention decisions, and decisions regarding sanctions, in a manner which takes into consideration these employee characteristics.

Thus, this claim for exemption includes exemption from these specified regulations to the extent the regulation would require the institution to treat marriage, sex outside of marriage, homosexuality, gender identity, pregnancy and abortion in a manner that is inconsistent with the religious tenets of the Convention.

I trust this letter is sufficient, but if you have any questions, please let me know. Thank you for your attention to this matter.

Sincerely,



David W. Whitlock
President

cc: James P. Guenther, Esq.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

December 16, 2014

David Wesley Whitlock
President
Oklahoma Baptist University
500 West University
OBU Box 61241
Shawnee, OK 74804

Dear President Whitlock:

The purpose of this letter is to respond to your November 24, 2014, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for Oklahoma Baptist University (University) of Shawnee, Oklahoma from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.

The implementing regulation at 34 C.F.R. § 106.12 provides that Title IX does not apply to an educational institution controlled by a religious organization to the extent that application of Title IX would be inconsistent with the controlling organization's religious tenets. Therefore, such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law and/or regulation that conflict with those tenets.

Your request explained that the University "is a Southern Baptist institution of higher education" and stated that it is controlled by the Baptist General Convention of the State of Oklahoma. Your letter enclosed a copy of the University's charter, which states that the University's purpose is "to encourage, support, provide, and maintain Christian education and to engage in Christian undertakings which are in keeping with the purpose of the Baptist General Convention of the State of Oklahoma." You also enclosed a copy of the University's bylaws, which state that the "Board of Trustees of the University shall consist of thirty Trustees who shall be elected by the Baptist General Convention of the State of Oklahoma." (Article II, Section 1.) The bylaws further state that the "President of the University must be an active member of a church affiliated with The Baptist General Convention of the State of Oklahoma." (Article V, Section 2.)

Your letter requests a religious exemption from the provisions of Title IX that "would not be consistent with the Convention's religious tenets regarding marriage, sex outside of marriage, sexual orientation, gender identity, pregnancy, and abortion." In support of this request, you cite to The Baptist Faith and Message 2000, the most recent statement of faith adopted by the Convention. According to your letter, that statement of faith explains that the tenets of the Convention are that marriage is between one man and one woman and serves as the means for procreation, that God made man in male and female form, and that the "gift of gender is thus part of the goodness of God's creation." You further cite the Convention's belief that one should "speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death."

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David Wesley Whitlock – page 2

You state that, for these reasons, the University is requesting an exemption from the following regulatory provisions to the extent that they prohibit discrimination based on marital status, sex outside of marriage, sexual orientation, gender identity, pregnancy, or abortion:

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions);
- 34 C.F.R. § 106.31(b)(7) (governing the limitation of rights, privileges, advantages, or opportunities);
- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities such as restrooms and locker rooms);
- 34 C.F.R. § 106.40 (governing different rules based on marital or parental status of students);
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.51 (governing employment);
- 34 C.F.R. § 106.52 (governing employment criteria);
- 34 C.F.R. § 106.53 (governing recruitment of employees);
- 34 C.F.R. § 106.57 (governing the consideration of marital or parental status in employment decisions); and
- 34 C.F.R. § 106.60 (governing pre-employment inquiries).

The University is exempt from these provisions to the extent that they prohibit discrimination on the basis of marital status, sex outside of marriage, sexual orientation, gender identity, pregnancy, or abortion and compliance would conflict with the controlling organization's religious tenets.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education

July 08, 2015

Catherine Lhamon, Assistant Secretary
U.S. Department of Education, Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100

Re: Request for Religious Exemption from Certain Applications of Title IX

Dear Ms. Lhamon:

I hereby request, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, that the Department of Education's Office for Civil Rights acknowledge that Toccoa Falls College is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to curtail the College's freedom to respond to individuals in accordance with its religious convictions. As President of the College, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

Toccoa Falls College was chartered in 1939 and is an affiliate college of the Christian and Missionary Alliance (C&MA).¹ The mission of Toccoa Falls College is to "glorify God through seeking and developing Christian servant leaders who will impact their world with the love and message of Jesus Christ."²

As an affiliate college of the C&MA, Toccoa Falls adheres doctrinally to the beliefs of the denomination.³ The College's policy on the Faith Community and Mission of the College (enclosed) which all members of the College community, including students and faculty, are required to adhere to, provides as follows with regard to sexuality and gender:

The creation of human beings was a special creative act of God. God created human beings, male and female, in His own image and thus they are unique with respect to all other life in the created order. Adam and Eve, equally made in the image of God, belonged to the created order that God himself declared to be very good, serving as God's agents to care for, cultivate, and govern creation, living in holy and devoted fellowship with their Maker. Gender is not a cultural construct, but a divine gift assigned by the Creator at conception. As such, students are not to adopt

¹ <http://www.tfc.edu/about-tfc/what-we're-about/history/>

² <http://www.tfc.edu/about-tfc/what-we're-about/>

³ <http://www.tfc.edu/about-tfc/what-we're-about/history/>; <http://www.tfc.edu/about-tfc/what-we're-about/>; *see also* Policy on the Faith Community and Mission of Toccoa Falls College (attached).

Letter to Catherine Lhamon
July 08, 2015
Page 2 of 4

a gender identity different from the one gifted them by their Creator. This gendered ordering of creation is to be accepted, honored, and reflected in sexual intimacy.⁴

As you know, the Office for Civil Rights has not issued regulations or guidance explaining how an educational institution's response to a transgender individual might violate Title IX and its accompanying regulations, though the Department of Education recently issued guidance on sexual violence prevention which incorporates discrimination based on "gender identity" as part of "sex discrimination" under the statute.⁵ And as you also know, the resolution agreement⁶ between the Arcadia Unified School District and ED OCR (and the Department of Justice) requires that school district to permit transgender students to use the restroom, locker room, and living accommodations of their choice, and to participate in athletic programs as a member of the sex to which they believe they belong.⁷ It is thus reasonable to suppose that ED OCR believes that such responses are required by Title IX. It is also reasonable to presume that your office interprets Title IX to impose gender identity non-discrimination obligations upon covered institutions in the employment context. To the extent these suppositions are correct, it appears as though compliance with Title IX, as interpreted by ED OCR to reach transgender "discrimination," would be inconsistent with the religious tenets of Toccoa Falls College.

Additionally, recently the EEOC has begun openly declaring that the ban on "sex" discrimination in Title VII of the Civil Rights Act of 1964 also forbids discrimination on the basis of "sexual orientation."⁸ It is conceivable that the Department of Education's Office for Civil Rights could interpret Title IX of the Education Amendments of 1972 the same way. To the extent these suppositions are correct, it appears as though compliance with Title IX, if interpreted by ED OCR to reach sexual orientation "discrimination," would also be inconsistent with the religious tenets of Toccoa Falls College, and the College therefore seeks exemption on this basis as well out of an abundance of caution.

Toccoa Falls College's policies also contain a summary of our beliefs regarding the sanctity of human life:

Likewise, Toccoa Falls College subscribes to the biblical belief that all life is sacred from conception to death, and that individuals are known by God from before the foundation of the world, and that human life begins at conception and that death is under the sovereignty of God and not man. The college accordingly believes that no procedures should be performed for the primary objective of terminating a pregnancy and taking the life of an unborn child (such procedures are referred to

⁴ See Policy on the Faith Community and Mission of Toccoa Falls College (attached).

⁵ U.S. Department of Education, Questions and Answers on Title IX and Sexual Violence, *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> at 5 ("Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation.")

⁶ Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, *available at* http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf.

⁷ *Id.*

⁸ See http://www.macon.com/2015/03/30/3668458_eec-issues-determination-letter.html?rh=1

Letter to Catherine Lhamon
 July 08, 2015
 Page 3 of 4

herein as abortions) except in rarest of circumstances where other biblical, moral principles prevail, such as where it is medically impossible to save the life of both the mother and the child. Similarly, the college believes that no medical procedure should be performed that takes the life of an individual prematurely (such procedures are referred to as euthanasia). The college's beliefs further prohibit paying for or otherwise facilitating such procedures.

As dictated by these beliefs, the college as an organization shall not fund abortions in any manner, including through a health care benefit plan that covers prescription drugs that induce abortions, except in the foregoing extraordinary circumstances unless in a particular situation (i) any such drug is prescribed and used solely for a non-abortive therapeutic treatment of a covered medical condition or for an abortion in the foregoing extraordinary circumstances and (ii) coverage is approved by the plan's governing body or the college's appropriate authority. In addition, the college shall not participate through its health care benefit plan in a program that uses the plan as a means for providing drugs used to induce abortion, except in the foregoing extraordinary circumstances. Any requirement to facilitate abortions or euthanasia by participating in such a program, and any penalty for failing to participate in such a program, would directly and substantially burden and undermine the college's exercise and expression of its biblical beliefs.⁹

Toccoa Falls College accordingly requests that your office acknowledge that the College is exempt from Title IX and the following implementing regulations (to the extent they are interpreted to reach gender identity or sexual orientation discrimination, and to the extent they restrict the College's freedom to apply and enforce its beliefs and policy regarding human life):

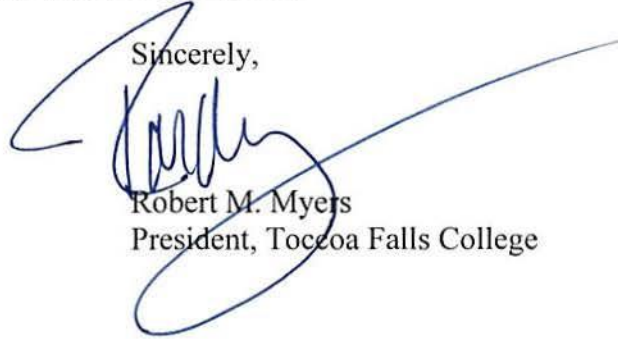
- 34 C.F.R. § 106.21 (admission)
- 34 C.F.R. § 106.22 (preference in admission)
- 34 C.F.R. § 106.23 (recruitment)
- 34 C.F.R. § 106.31 (education programs or activities)
- 34 C.F.R. § 106.32 (housing)
- 34 C.F.R. § 106.33 (comparable facilities)
- 34 C.F.R. § 106.34 (access to classes and schools)
- 34 C.F.R. § 106.36 (counseling)
- 34 C.F.R. § 106.37 (financial assistance)
- 34 C.F.R. § 106.38 (employment assistance to students)
- 34 C.F.R. § 106.39 (health and insurance benefits and services)
- 34 C.F.R. § 106.40 (marital or parental status)
- 34 C.F.R. § 106.41 (athletics)
- 34 C.F.R. § 106.43 (standards for measuring skill or progress in physical education classes)
- 34 C.F.R. § 106.51-61 (relating to employment)

⁹ *Id.*

Letter to Catherine Lhamon
July 08, 2015
Page 4 of 4

Thank you in advance for your consideration. I look forward to hearing from you soon. If you require anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Myers", is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

Robert M. Myers
President, Toccoa Falls College



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

July 31, 2015

Robert M. Myers
President
Toccoa Falls College
P.O. Box 800777
107 Kincaid Drive
Toccoa Falls, GA 30598

Dear President Myers:

I write to respond to your July 8, 2015, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for Toccoa Falls College (College) of Toccoa Falls, Georgia from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.

The implementing regulation at 34 C.F.R. § 106.12 provides that Title IX does not apply to an educational institution controlled by a religious organization to the extent that application of Title IX would be inconsistent with the institution's religious tenets. Therefore, such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law or regulation that conflict with those tenets.

Your request explains that the College is an affiliate college of the Christian and Missionary Alliance (C&MA) and, as such, "adheres doctrinally to the beliefs of the denomination." According to your letter, the College requires all members of the College community, including students and faculty, to adhere to its policy on the Faith Community and Mission of the College (Policy). The Policy, which was included with your letter, explains that the College "has adopted the statement of faith set forth in the C&MA Manual." According to the Policy, the College's representatives are "expected to (i) model these [C&MA's] biblical beliefs and standards for others, (ii) perform all of their responsibilities as a service to God and (iii) comply with the following obligations: . . . affirm their agreement with the C&MA's statement of faith and other biblical beliefs[. . .] endeavor to conduct themselves in a manner that affirms biblical standards of conduct in accordance with theirs and the C&MA's biblical beliefs . . . [, and] be ready, willing, and able to lead or contribute to distinctly Christian activities such as worship or prayer services." The Policy further provides that the College may dismiss a representative from his or her position if the representative does not comply with these obligations.

Your exemption request states that the Policy provides that "God created human beings, male

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and female . . . As such, students are not to adopt a gender identity different from the one gifted them by their Creator. This gendered ordering of creation is to be accepted, honored, and reflected in sexual intimacy.” Your request explains that “compliance with Title IX, as interpreted by ED OCR to reach transgender ‘discrimination,’ would be inconsistent with the religious tenets of Toccoa Falls College.”

Your request also points to a recent EEOC determination letter in which “the EEOC has begun openly declaring that the ban on ‘sex’ discrimination in Title VII of the Civil Rights Act of 1964 also forbids discrimination on the basis of ‘sexual orientation.’” You explain that if Title IX were “interpreted by ED OCR to reach sexual orientation ‘discrimination,’ [compliance] would also be inconsistent with the religious tenets of Toccoa Falls College.”

Your exemption request also states that the College’s policies provide for the sanctity of human life. According to your letter, the policies state that the College “subscribes to the biblical belief that all life is sacred from conception to death . . . The college accordingly believes that no procedures should be performed for the primary objective of terminating a pregnancy . . . except in rarest circumstances where other biblical, moral principles prevail, such as where it is medically impossible to save the life of both the mother and the child. The college’s beliefs further prohibit paying for or otherwise facilitating such procedures.”

You state that, for these reasons, the College is requesting an exemption from the following regulatory provisions “to the extent they are interpreted to reach gender identity or sexual orientation discrimination, and to the extent they restrict the College’s freedom to apply and enforce its beliefs and policy regarding human life:”

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.22 (governing preferences in admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31(governing education programs or activities);
- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities such as restrooms and locker rooms);
- 34 C.F.R. § 106.34 (governing access to classes and schools);
- 34 C.F.R. § 106.36 (governing counseling and use of appraisal and counseling materials);
- 34 C.F.R. § 106.37 (governing financial assistance);
- 34 C.F.R. § 106.38 (governing employment assistance to students);
- 34 C.F.R. § 106.39 (governing health and insurance benefits and services);
- 34 C.F.R. § 106.40 (governing different rules based on marital or parental status of students);
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.43 (governing standards for measuring skill or progress in physical education classes); and
- 34 C.F.R. §§ 106.51-61 (governing employment).

Robert M. Myers – page 3

The College is exempt from these provisions to the extent that they prohibit discrimination on the basis of gender identity or sexual orientation, or restrict the College's freedom to apply and enforce its beliefs and policy regarding human life and compliance would conflict with the controlling organization's religious tenets.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education

July 22, 1976

Director of the Office for Civil Rights
U. S. Department of Health, Education & Welfare
Washington, D. C. 20201

Dear Sir:

Pursuant to Section 86.12 (b) of "Title IX of the Education Amendments of 1972 Prohibiting Sex Discrimination in Education," this letter is to advise you that Union University of Jackson, Tennessee, is an educational institution which is owned by the Tennessee Baptist Convention, that we do not receive federal financial grants, but our students do participate in federally financed student aid programs, and that the following portions of the above mentioned regulations are not consistent with the religious tenets of such organization:

1. Sexual immorality, whether on the part of a man or woman, is contrary to the tenets of Southern Baptists. In so far as these regulations require Union University to treat the pregnancy, childbirth, false pregnancy or termination of pregnancy of an unmarried woman as a mere temporary disability, such regulations conflict with the tenets of Southern Baptists. Such regulations pertaining to unmarried women, whether students or prospective students, or employees, or prospective employees are inconsistent with the policies of the University and Southern Baptists, and this institution requests exemption on this basis. These inconsistent regulations include Sec. 86.21(c); 86.39; 86.40; 86.51 (b) (6); 86.57 (a)(1), (b), (c); 86.60(a).
2. Southern Baptists do not ordinarily practice the ordination of women to serve as pastors of local churches. The college requests that it be exempt from the regulations of equal number

Director of the Office for Civil Rights

July 22, 1976

Page 2

of male and female students selecting church-related vocations and receiving equal scholarship assistance for these church-related vocations. Sections 86.37(a)(b); 86.51; 86.53; and 86.55(a) of such regulations are inconsistent with this Southern Baptist tenet.

Union University has tried to comply with other parts of the Title IX regulations and will have on record the results of our study, evidence of our modifications of policies and practices, and the proper grievance procedures for complainants.

Respectfully submitted,

Robert E. Craig
President

eg



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

SEP 3 1985

Dr. Robert E. Craig
President
Union University
Jackson, Tennessee 38305

Dear President Craig:

The Office for Civil Rights of the Department of Education (OCR/ED) has reviewed your response to our letter of March 25, 1985, requesting clarification of your request for a religious exemption from Title IX of the Education Amendments of 1972.

In your letters you describe several policies practiced at Union University as consistent with the tenets of the religious organization that controls the institution. These policies would violate certain sections of the regulation implementing Title IX absent a religious exemption. You have supplied information that establishes that the institution is controlled by a religious organization and that tenets followed by this organization conflict with specific sections of the Title IX regulation. Therefore, I am granting Union University an exemption to those sections of the Title IX regulation appropriate to your request letters. The exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by the institution. Union University is hereby exempted from the requirements of the following sections of the Title IX regulation: 34 C.F.R. §§ 106.21(c); 106.37(a) and (b); 106.39; 106.40; 106.51(b)(6); 106.57(a)(1), (b), and (c); and 106.60(a). The basis for our decision to grant this exemption is discussed in further detail below.

Your letters indicate that Union University is owned and operated by the Tennessee Baptist Convention, which is affiliated with the Southern Baptist Convention. The Tennessee Baptist Convention elects all 48 of the trustees who set policies and employ personnel. Additionally, the Tennessee Baptist Convention "furnishes a great percentage of [the university's] financial support." This relationship between the Tennessee Baptist Convention and Union University adequately establishes that Union University is controlled by a religious organization as is required for consideration for exemption under § 106.12 of the Title IX regulation.

Page 2 - Dr. Robert E. Craig

In your letters you indicate that the University considers sexual immorality as contrary to the tenets of Southern Baptists and "insist[s] upon high levels of moral conduct. Sexual activities outside of marriage are deemed contrary to Baptist interpretation of Biblical standards." Based on these principles, Union University has requested and is granted by this letter, exemption to: 34 C.F.R. § 106.21(c) (marital or parental status of applicants for admission); § 106.39 (health and insurance benefits and services to students); § 106.40 (marital or parental status of students); § 106.51(b)(6) (leaves of absence for pregnancy and related conditions and child care); § 106.57(a)(1), (b) and (c) (marital and parental status of employees, including pregnancy); and § 106.60(a) (pre-employment inquiries as to marital status).

Your letter indicates that since Union University does not ordinarily practice the ordination of women, it does not permit an equal number of male and female students to select church-related vocations or receive equal scholarship assistance for these church-related vocations. Based on this principle, Union University has requested and is granted by this letter, exemption to 34 C.F.R. § 106.37(a) and (b) (financial assistance for students).

You also requested exemption to § 106.51 (employment, general), § 106.53 (recruitment for employment) and § 106.55 (job classification and structure) based on your tenets and practices regarding morality and the award of financial assistance to students selecting church-related vocations. Sections 106.51(b)(6), 106.57(a)(1), (b) and (c) and 106.37(a) and (b), to which Union University is granted exemption by this letter, more appropriately address the practices you have described in your letters than do §§ 106.53, 106.55 or all of § 106.51. Therefore, based upon the information in your letters, an exemption to §§ 106.53, 106.55 and all of § 106.51 is not necessary.


This letter should not be construed to grant exemption from any section of the Title IX regulation not specifically mentioned. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption herein granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

Page 3 - Dr. Robert E. Craig

I hope this letter responds fully to your request. I regret the inordinate delay in responding to your original request. If you have any questions, please do not hesitate to contact the Atlanta Regional Office for Civil Rights. The address is:

William H. Thomas
Regional Civil Rights Director
Office for Civil Rights, Region IV
Department of Education
101 Marietta Street, N.W., 27th Floor
Atlanta, Georgia 30323

Sincerely,


Harry M. Singleton
Assistant Secretary
for Civil Rights

cc: William H. Thomas, Regional Civil Rights Director, Region IV



January 19, 2015

Ms. Catherine E. Lhaman
Assistant Secretary for Civil Rights
United States Department of Education
400 Maryland Ave. S.W.
Washington, DC 20202-1100

Re: Claim of Title IX Religious Tenet Exemption

Dear Ms. Lhaman,

I am President of Union University. As such, I am the highest ranking official of this institution. I submit the following statement in order to claim on behalf of the University the religious tenet exemption from Title IX of the Education Amendments of 1972 which is provided for in 20 U.S.C. 1681, and which is the subject of 34 C.F.R. 106.12.

Union University is a Southern Baptist institution of higher education. It is a Tennessee nonprofit corporation whose principal office address is 1050 Union University Drive, Jackson, Tennessee 38305.

Union University is controlled by a religious organization. That organization is the Tennessee Baptist Convention. This Convention is a Southern Baptist general body whose constituency is the cooperating Southern Baptist churches of Tennessee. It is an "association of churches" in the terminology of the Internal Revenue Code. By Covenant Agreement with the Convention, the University "affirm(s) that the trustees of Union University are elected by and responsible to the Tennessee Baptist Convention." The University's Bylaws (2.1.1. Control and Management) declare: "The Charter vests the control of the affairs of Union University in its Board of Trustees, which consists of not fewer than eighteen nor more than thirty-six in number, elected by the Tennessee Baptist Convention." I enclose the University's Bylaws.

The Convention's authority over the University constitutes control by the Convention which is more than sufficient to cause the institution to be exempt from Title VII of the Civil Rights Act of 1964's general prohibition against religious discrimination in employment under 42 U.S.C. 2000e-2, §703(e)(2), as an educational institution "which is in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association or society." (See, for example, the decision of the United States Circuit Court of Appeals, Eleventh Circuit, regarding our sister Southern Baptist university in *Killinger v. Samford University*, 113 F. 3d 196 (1997).

OFFICE of the PRESIDENT

JACKSON, TENNESSEE 38305-3697 731.661.5180 fax 731.661.5444 www.uu.edu

Ms. Catherine E. Lhaman
January 19, 2015
Page 2

This request for exemption is from provisions of Title IX to the extent application of those provisions would not be consistent with the Convention's religious tenets regarding marriage, sex outside of marriage, sexual orientation, gender identity (including but not limited to transgendered status), pregnancy, and abortion.

I identify those provisions to be:

Admissions:

34 C.F.R. § 106.21 including but not limited to (b)(iii) (governing differential treatment on the basis of sex in admissions); and (c) (governing admissions prohibition on the basis of marital or parental status).

Recruitment:

34 C.F.R. § 106.23 (governing nondiscriminatory recruitment).

Education Programs or Activities:

34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions), and (b)(7) (otherwise limiting any person in the enjoyment of any right, etc);

34 C.F.R. § 106.32 (governing housing);

34 C.F.R. § 106.33 (governing comparable facilities such as restrooms and locker rooms);

34 C.F.R. § 106.40 (governing different rules based on marital or parental status of students); and

34 C.F.R. § 106.41 (governing athletics);

Employment:

34 C.F.R. § 106.51 (governing employment);

34 C.F.R. § 106.52 (employment criteria);

34 C.F.R. § 106.53 (recruitment);

34 C.F.R. § 106.57 (governing the consideration of marital or parental status in employment decisions);
and

34 C.F.R. § 106.60 (governing pre-employment inquiries).

Union University's purpose is stated as follows:

Union University provides Christ-centered education that promotes excellence and character development in service to Church and society.

The University's mission statement includes the following:

A cohering core value of our guiding vision is a call to faith, a call to be Christ centered in all that we are and in all that we do. We will seek to build a Christian liberal arts based community where men and women can be introduced to an understanding and appreciation of God, His creation and grace, and to humanity's place of privilege and responsibility in this world. We will

Ms. Catherine E. Lhaman
January 19, 2015
Page 3

seek to establish all aspects of life and learning on the Word of God, leading to a firm commitment to Christ and His Kingdom. To be a Christ-centered institution calls for us to establish the priority of worship and service in the Christian life while seeking to develop a generation of students who can be agents of reconciliation to a factious church in a hurting and broken world. This commitment calls for all faculty and staff to integrate Christian faith in all learning and doing, based on the supposition that all truth is God's truth and that there is no contradiction between God's truth made known to us in Holy Scripture and that which is revealed to us through creation and natural revelation.

The University's statement of faith declares first:

The Scriptures. The Scriptures of the Old and New Testament were given by inspiration of God, and are the only sufficient, certain and authoritative rule of all saving knowledge, faith, and obedience.

Southern Baptist religious tenets have been described most extensively and most recently in *The Baptist Faith and Message 2000*, a statement of faith affirmed by messengers constituting the Tennessee Baptist Convention. That statement is attached.

In regard to marriage, sex outside of marriage, sexual orientation, gender identity, pregnancy and abortion, the following statements are illustrative:

Marriage is the uniting of one man and one woman in covenant commitment for a lifetime. It is God's unique gift to reveal the union between Christ and His church and to provide for the man and the woman in marriage the framework for intimate companionship, the channel of sexual expression according to biblical standards, and the means for procreation of the human race. . . . Children, from the moment of conception, are a blessing and heritage from the Lord. XVIII The Family, *The Baptist Faith and Message 2000*.

Man is the special creation of God, made in His image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God's creation. III Man, *The Baptist Faith and Message 2000*. (The Southern Baptist Convention elaborated on this tenet most recently in 2014 by the adoption of a resolution "On Transgender Identity." It is attached.)

Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual immorality, including adultery, homosexuality, and pornography. . . . We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death." XV The Christian and the Social Order, *The Baptist Faith and Message 2000*.

Ms. Catherine E. Lhaman
January 19, 2015
Page 4

The University's policies are rooted in these religious tenets. Application of a regulation would not be consistent with these tenets if the regulation prohibited the institution from following its policies, that is, if the regulation prohibited the University:

From engaging in recruiting and admissions under a policy which called for the consideration of an applicant for admission's sexual orientation, gender identity (including but not limited to transgendered status), marital status, past and present practices regarding marriage, sex outside marriage, pregnancy, and abortion (these considerations collectively referred to hereafter as "student and employee characteristics"), and prohibited the institution from treating that person differently as a result of that consideration;

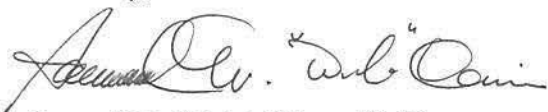
From subjecting students to rules of behavior, sanctions, or other treatment because of these student characteristics. Examples would be the institution's rules regarding eligibility for employment of the student by the institution; the assignment of housing, restrooms and locker rooms, and restrictions to athletic activities by birth sex; rules prohibiting homosexual conduct including but not limited to a prohibition of a student's engaging in sex with a person of his or her birth sex; prohibition of sex outside of marriage between a man and a woman; sanctions as the result of pregnancy and abortion; and

From making all employment decisions, including but not limited to selection criteria and pre-employment inquiries, recruitment, the decision to employ, retention decisions, and decisions regarding sanctions, in a manner which takes into consideration these employee characteristics.

Thus, this claim for exemption includes exemption from these specified regulations to the extent the regulation would require the institution to treat marriage, sex outside of marriage, homosexuality, gender identity, pregnancy and abortion in a manner that is inconsistent with the religious tenets of the Convention.

I trust this letter is sufficient, but if you have any questions, please let me know. Thank you for your attention to this matter.

Sincerely,



Samuel W. "Dub" Oliver, Ph.D.
President

Enclosures: Union University *Board Guidelines and Policies* containing Bylaws
The Baptist Faith and Message 2000
The 2014 Southern Baptist Convention Resolution "On Transgender Identity"



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

March 24, 2015

Samuel W. Oliver, Ph.D.
President
Union University
1050 Union University Drive
Jackson, Tennessee 38305-3697

Dear President Oliver:

The purpose of this letter is to respond to your January 19, 2015, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, for Union University (University) of Jackson, Tennessee. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.

The implementing regulation at 34 C.F.R. § 106.12 provides that Title IX does not apply to an educational institution controlled by a religious organization to the extent that application of Title IX would be inconsistent with the controlling organization's religious tenets. Therefore, such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law and/or regulation that conflict with those tenets.

Your request explained that the University "is controlled by a religious organization. That organization is the Tennessee Baptist Convention." Your letter states that "the trustees of Union University are elected by and responsible to the Tennessee Baptist Convention." Your letter also references the University's Bylaws (2.1.1. Control and Management) which state "[t]he Charter vests the control of the affairs of Union University in its Board of Trustees, which consists of not fewer than eighteen nor more than thirty-six in number, elected by the Tennessee Baptist Convention."

Your letter requests a religious exemption "from provisions of Title IX to the extent application of those provisions would not be consistent with the Convention's religious tenets regarding marriage, sex outside of marriage, sexual orientation, gender identity (including but not limited to transgendered status), pregnancy, and abortion." In support of this request, you cite to The Baptist Faith and Message 2000, the most recent statement of faith affirmed by the Tennessee Baptist Convention. According to your letter, that statement of faith explains that the tenets of the Convention are that marriage is between one man and one woman and serves as the means for procreation, that God made man in male and female form, and that the "gift of gender is thus part of the goodness of God's creation." You further cite the Convention's belief that one should "speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death."

You explain that it would not be consistent with the Convention's religious tenets for the University to comply with Title IX to the extent that it prohibits the College from "engaging in recruiting and admissions under a policy which called for the consideration of an applicant for admission's sexual orientation, gender identity (including but not limited to transgendered status), marital status, past and

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100
www.ed.gov

Samuel W. Oliver – page 2

present practices regarding marriage, sex outside marriage, pregnancy and abortion; . . . from subjecting students to rules of behavior, sanctions, or other treatment because of these student characteristics[; or from] making all employment decisions. . . in a manner which takes into consideration these employee characteristics.”

You state that, for these reasons, The University is requesting an exemption from the following regulatory provisions “to the extent the regulation would require the institution to treat marriage, sex outside of marriage, homosexuality, gender identity, pregnancy and abortion in a manner that is inconsistent with the religious tenets of the Convention:”

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions);
- 34 C.F.R. § 106.31(b)(7) (governing the limitation of rights, privileges, advantages, or opportunities);
- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities such as restrooms and locker rooms);
- 34 C.F.R. § 106.40 (governing different rules based on marital or parental status of students);
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.51 (governing employment);
- 34 C.F.R. § 106.52 (governing employment criteria);
- 34 C.F.R. § 106.53 (governing recruitment of employees);
- 34 C.F.R. § 106.57 (governing the consideration of marital or parental status in employment decisions);
- 34 C.F.R. § 106.60 (governing pre-employment inquiries).

The University is exempt from these provisions to the extent that they prohibit discrimination on the basis of marriage status, sex outside of marriage, sexual orientation, gender identity, pregnancy, or abortion and compliance would conflict with the controlling organization’s religious tenets.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education

statement unsigned

ASSURANCE OF COMPLIANCE WITH TITLE IX OF THE
EDUCATION AMENDMENTS OF 1972 AND THE
REGULATION ISSUED BY THE DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE IN
IMPLEMENTATION THEREOF

[PLEASE READ EXPLANATION OF HEW FORM 639 BEFORE COMPLETING THIS DOCUMENT]

Pursuant to 45 C.F.R. §86.4, YORK COLLEGE
(insert name of Applicant or Recipient)

(hereinafter the "Applicant") gives this assurance in consideration of and for the purpose of obtaining Federal education grants, loans, contracts (except contracts of insurance or guaranty), property, discounts, or other Federal financial assistance to education programs or activities from the Department of Health, Education, and Welfare (hereinafter the "Department"), including payments or other assistance hereafter received pursuant to applications approved prior to the date of this assurance.

ARTICLE I—TYPE OF INSTITUTION SUBMITTING ASSURANCE

The Applicant is (check the following boxes where applicable):

- A state education agency.
- A local education agency.
- A publicly controlled educational institution or organization.
- A privately controlled educational institution or organization.
- A person, organization, group or other entity not primarily engaged in education. If this box is checked, insert primary purpose or activity of Applicant in the space provided below:

Claiming a religious exemption under 45 C.F.R. §86.12(b). (If religious exemption is claimed, attach statement by highest ranking official of Applicant identifying the specific provisions of 45 C.F.R. Part 86 which conflict with a specific religious tenet of the controlling religious organization.)

The Applicant offers one or more of the following programs or activities (check where applicable):

- Pre-school
- Kindergarten
- Elementary or Secondary
- Graduate
- Other (such as special programs for the handicapped even if provided on the pre-school, elementary or secondary level). If this box is checked, give brief description below:
- Undergraduate (including junior and community colleges)
- Vocational or Technical
- Professional

HEW—639 (7/76)

ARTICLE II—PERIOD OF ASSURANCE

This assurance shall obligate the Applicant for the period during which Federal financial assistance is extended to it by the Department.

ARTICLE III—TERMS AND CONDITIONS

The Applicant hereby agrees that it will:

1. Comply, to the extent applicable to it, with Title IX of the Education Amendments of 1972 (P.L. 92-318), as amended, 20 U.S.C. §1681, 1682, 1683, and 1685 hereinafter, "Title IX"), and all applicable requirements imposed by or pursuant to the Department's regulation issued pursuant to Title IX, 45 C.F.R. Part 86 (hereinafter, "Part 86"), to the end that, in accordance with Title IX and Part 86, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any education program or activity for which the Applicant receives or benefits from Federal financial assistance from the Department. (This assurance does not apply to sections 904 (proscribing denial of admission to course of study on the basis of blindness) and 906 (amending other laws) of Title IX, 20 U.S.C. 1684 and 1686.)

2. Require any person, organization, group or other entity to which it subgrants or with which it contracts, subcontracts or otherwise arranges to provide services or benefits or to assist it in the conduct of any program covered by this assurance, or with which it contracts or otherwise arranges for the use of any facility covered by this assurance, to comply fully with Title IX and Part 86 and to submit to the Department an assurance satisfactory to the Director, Office for Civil Rights (hereinafter, the "Director"), to that effect.

3. Make no transfer or other conveyance of title to any real or personal property which was purchased or improved with the aid of Federal financial assistance covered by this assurance, and which is to continue to be used for an education program or activity and where the Federal share of the fair market value of such property has not been refunded or otherwise properly accounted for to the Federal government, without securing from the transferee an assurance of compliance with Title IX and Part 86 satisfactory to the Director and submitting such assurance to the Department.

4. Submit a revised assurance within 30 days after any information contained in this assurance becomes inaccurate.

5. If the Applicant is a state education agency, submit reports in a manner prescribed by the Director under 45 C.F.R. §80.6(b) as to the compliance with Title IX and Part 86 of local education agencies or other education programs or activities within its jurisdiction.

ARTICLE IV—DESIGNATION OF RESPONSIBLE EMPLOYEE AND ADOPTION OF GRIEVANCE PROCEDURES

(Check the appropriate box.)

[X] Pursuant to 45 C.F.R. §86.8, the Applicant has adopted grievance procedures and designated the following employee to coordinate its efforts to comply with Part 86 and has notified all of its students and employees of these grievance procedures and the following name, address, and telephone number of the designated employee:

Dr. Mabrey L. Miller (name of employee)
York College, York, NE 68467 (office address)
402-362-4441 (telephone number)

[] The Applicant is not presently receiving Federal financial assistance subject to Part 86 and, consequently, has not designated a responsible employee or adopted grievance procedures pursuant to 45 C.F.R. §86.8 but will do so immediately upon award of such assistance and will immediately notify the Director, its students and employees of the name, office address, and telephone number of the employee so designated.

ARTICLE V—SELF-EVALUATION

(Check the appropriate box.)

[] The Applicant has completed a self-evaluation as required by 45 C.F.R. §86.3(c) and has not found it necessary to modify any of its policies and practices or to take any remedial steps to come into compliance with Part 86.

[X] The Applicant has completed a self-evaluation as required by 45 C.F.R. §86.3(c) and has ceased to carry out any policies and practices which do not or may not meet the requirements of Part 86 and is taking any necessary remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to such policies and practices.

[] The Applicant has not completed the self-evaluation required by 45 C.F.R. §86.3(c) but expects to have it completed by (insert date)

[] The Applicant is not required to conduct a self-evaluation under 45 C.F.R. §86.3(c) since it did not receive any Federal financial assistance to which Part 86 applies prior to July 21, 1976.

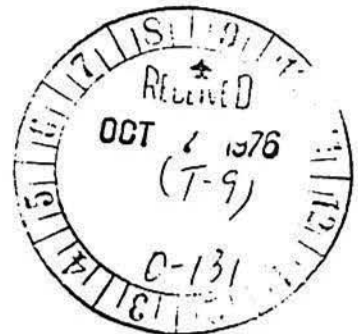
Date: September 29, 1976

York College (Insert name of Applicant)
By Dale R. Larsen (This document must be signed by an official legally authorized to contractually bind the Applicant.)
President (Insert title of authorized official.)

REQUEST FOR EXEMPTIONS FROM
TITLE IX

YORK COLLEGE
YORK, NEBRASKA

September 29, 1976



RELIGIOUS COMMITMENT

York College is controlled and operated by members of churches of Christ. These churches believe the Bible to be the only inspired revelation from God, and that it is God's complete and perfect revelation to human beings. The College claims an exemption from the requirements of Title IX of the Education Amendments of 1972 on a limited number of points on which it understands the requirements of Title IX and the teaching and requirements of the Bible to be in conflict. These points relate to (1) the role of women and men in the church; (2) differences in the nature and appearance of men and women; (3) modesty; (4) sexual morality; and (5) marriage, divorce, and remarriage.

In the first college catalog printed, 1956-57, by the current sponsoring religious group, the philosophy of the College was explained by giving the following quotation from the late Dr. William L. Phelps of Columbia University:

Everyone who has a thorough knowledge of the Bible may be called educated, and no other learning or culture, no matter how exclusive or elegant, among Europeans or Americans, can take its place. Western civilization is founded upon the Bible. Our ideas, our wisdom, our philosophy, our literature, our art and ideals come more from the Bible than from all other books put together...I thoroughly believe in a university education for both men and women; but I believe a knowledge of the Bible without a college education is more valuable than a college course without the Bible.

The intent of equal opportunity for education for both men and women was present from the beginning of the College. The College continues to be committed to equal educational and employment opportunities for men and women.

York College has made a diligent effort to request an exemption from the Title IX regulations in each of those areas in which it appears there is a conflict. However, York College reserves the right to reexamine the effects of Title IX on the institution and to request other exemptions should there prove to be any conflict.

SPECIFIC EXEMPTIONS REQUESTED

Access to Course Offerings

Department of Christian Education

In the Division of Bible and Related Subjects there are two courses designed for men. They are Christian Education 102 (Song Directing) and Christian Education 123 (Homiletics). These courses are designed for the men who will be preachers and leaders in the public worship of the church. It is one of our religious tenets that women should not serve in leadership roles in public worship (I Corinthians 14:34, I Timothy 2:11-12). Therefore, it is not planned that women should enroll in Christian Education 102 (Song Directing) or Christian Education 123 (Homiletics). An exemption is requested in these courses.

Department of Physical Education

In the Department of Physical Education, the majority of the courses are taught on a coeducational basis. Swimming courses and PE 201 (Conditioning Exercises) are separated by sex because we believe in high standards of modesty in apparel (I Timothy 2:9). An exemption is requested in this area.

Leadership in Religious Activities

It is one of our religious tenets that women should not serve in leadership roles in religious worship where men are present (I Corinthians 14:34, I Timothy 2:11,12). Therefore, women are not invited to take leadership roles during periods of worship. An exemption is requested in the area of worship activities such as worship in assembly and campus devotionals.

Campus Organizations

It is one of our tenets that women should not serve as preachers (I Corinthians 14:34, I Timothy 2:11,12). Therefore, we request the exemptive right to form clubs such as a preacher's club or women's training class which would be directed toward teaching the Biblical function of people of that sex.

Athletics

Differences in athletic attire for men and women are based upon a dress code in keeping with our philosophy of modesty (I Corinthians 11:14, I Timothy 2:9).

York College has an intramural program designed to meet the needs of both women and men, which we feel is open to people of each sex in a very balanced way. The intercollegiate area may be more of a problem. An attempt to meet the interests of students with a limited budget is complicated by an inability to control the dress code of visiting teams. The College requests an exemption in this area in order that the Board of the College and its administrative officers may be free to review the results of the intercollegiate program and a possible need for curtailment because of a violation of our fundamental belief in the teaching of the Bible as it relates to modesty.

Rules and Policies

Student regulations at York College involve a dress code in keeping with our philosophy of modesty. An exemption is requested in this area. The differences in rules concerning appearance are based on Biblical principles of modesty (I Corinthians 11:14, I Timothy 2:9).

Employment

Bible Teachers

York College requests an exemption in the hiring of faculty members to teach in the Department of Bible. It is one of our religious tenets that women should not publicly teach Bible classes which include adult males (I Timothy 2:11,12).

Employment Applications

York College requests an exemption in the request for information concerning marriage status in job applications. It is one of our religious tenets that Christian persons should not divorce their mates except for the cause of adultery (Matthew 19:6-9).

Employment Assistance

York College staff members do not recommend females for preaching positions because it is one of our tenets that women should not serve as preachers (I Corinthians 14:34, I Timothy 2:11,12).

Scholarships

Money is willed and donated with the specific statement that it be used for scholarships for ministerial students. An exemption is requested in the administration of scholarship funds for preacher students. It is one of our tenets that women should not serve as preachers (I Corinthians 14:34, I Timothy 2:11,12).



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

AUG 1 1985

Dr. Gary R. Bartholomew
President
York College
York, Nebraska 68467

Dear Dr. Bartholomew:

The Office for Civil Rights of the Department of Education (OCR/ED) is in the process of clearing a backlog of requests for religious exemption from the regulation implementing Title IX of the Education Amendments of 1972, 34 C.F.R. Part 106 (formerly 45 C.F.R. Part 86). Our records indicate that York College (College) filed such a request, but there is no record that OCR adequately acknowledged this request.

We have recently reviewed the request filed by former President Larsen (copy enclosed) in which he described several policies practiced at the College as consistent with the tenets of the religious organization that controls the institution. These policies would violate certain sections of the regulation implementing Title IX (copy enclosed) absent a religious exemption. Former President Larsen supplied information in his request letter that establishes that the institution is controlled by a religious organization and that tenets followed by this organization conflict with specific sections of the Title IX regulation. Therefore, I am granting York College an exemption to those sections of the Title IX regulation appropriate to the College's request. The exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by the institution. The College is hereby exempted from the requirements of the following sections of the Title IX regulation: 34 C.F.R. §§ 106.31(a), 106.34, 106.37(a), 106.38, 106.41, 106.51, 106.53, 106.55(a) and 106.60(a). The basis for our decision to grant this exemption is discussed in further detail below.

The letter from the College indicates that it is controlled by members of churches of Christ. The churches of Christ and the College practice certain tenets relating to: (1) the role of men and women in the church; (2) differences in the nature and appearance of men and women; (3) modesty; (4) sexual morality; and (5) marriage, divorce and remarriage. This relationship between the churches of Christ and the College adequately establishes that the College is controlled by a religious organization as is required for consideration for exemption under § 106.12 of the Title IX regulation.

Page 2 - Dr. Gary R. Bartholomew

The College's statement lists several practices applied to students and faculty related to moral behavior, modesty, and spiritual leadership. These practices sometimes result in a differentiation of roles of each sex. Thus:

1. The College limits certain courses and activities on the basis of sex. Specifically, the institution excludes women from Christian Education 102 (Song Directing) and Christian Education 123 (Homiletics); separates men and women in swimming courses; limits leadership roles during periods of worship to men; and requests the right to offer clubs such as preacher's club or women's training class for males and females respectively. The above practices are based on Biblical tenets that women should not serve as preachers or in leadership roles in public worship where men are present, and because the churches of Christ believe in high standards of modesty in apparel. Based on these principles and practices, the College has requested and is granted by this letter, exemption to § 106.31(a), education programs and activities, and § 106.34, access to course offerings.
2. The College administers scholarship funds for ministerial students which are intended for males only based on the tenet that women should not serve as preachers. Based on this principle, the College has requested and is granted by this letter, exemption to § 106.37(a), financial assistance.
3. The College does not recommend females for preaching positions because it is one of its tenets that women should not serve as preachers. Based on this principle, the College has requested and is granted by this letter, exemption to § 106.38, employment assistance to students.
4. The College maintains specific requirements regarding apparel for intercollegiate athletics teams based upon its philosophy and Biblical beliefs regarding modesty. Based on this principle, the College has requested and is granted by this letter, exemption to § 106.41, athletics, as it relates to the above-stated principle regarding athletic attire.
5. The College does not hire women to teach in the Department of the Bible. This is based on the religious tenet that women should not publicly teach Bible classes which include adult males. Based on this principle, the College has requested and is granted by this letter, exemption to §§ 106.51, 106.53 and 106.55(a), employment, recruitment for employment and job classification and structure.
6. The College follows the religious tenet that Christian persons should not divorce their mates except for the cause of adultery, and wishes to request the marital status of applicants for employment. Based on this principle, the College has requested and is granted by this letter, exemption to § 106.60(a), pre-employment inquiries of marital status.

Page 3 - Dr. Gary R. Bartholomew


The College also requested exemption for dress codes in keeping with the philosophy of modesty. Section 106.31(b)(5) regarding appearance codes was rescinded from the Title IX regulation in 1982. Thus, an exemption for appearance codes is unnecessary.

This letter should not be construed to grant exemption from any section of the Title IX regulation not specifically mentioned. In the event that OCR receives a complaint against the institution, we are obligated to determine initially whether the allegations fall within the exemption herein granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

I hope this letter responds fully to the College's request. I regret the inordinate delay in responding to the original request. If you have any questions, please do not hesitate to contact the Kansas City Regional Office for Civil Rights. The address is:

Jesse L. High
Regional Civil Rights Director
Office for Civil Rights, Region VII
Department of Education
324 East 11th Street, 24th Floor
Kansas City, Missouri 64106

Sincerely,


Harry M. Singleton
Assistant Secretary
for Civil Rights

Enclosures

cc: Jesse L. High, Regional Civil Rights Director, Region VII

Exemption	College or University (See Corresponding Number Chart)																											
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
34 C.F.R. § 106.21	*										*																	
34 C.F.R. § 106.22																												
34 C.F.R. § 106.23																												
34 C.F.R. § 106.31																				*				*				
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34 C.F.R. § 106.59																												
34 C.F.R. § 106.60			*								*																*	
34 C.F.R. § 106.61																												

* only exemption for specific subsection(s)

This chart is based on the good faith efforts to understand and chart the correspondence between institution and Department.

Retrieved from <https://www2.ed.gov/about/offices/list/ocr/correspondence/other.html>.

College or University (See Corresponding Number Chart)	
1	Azusa Pacific University
2	Clark's Summit (Baptist Bible College and Seminary of Pennsylvania)
3	Baylor University
4	Bob Jones University
5	Brigham Young University (ID & UT)
6	Cedarville University (College)
7	College of the Ozarks
8	Colorado Christian University
9	Dordt University
10	Eastern University
11	Fuller Theological Seminary
12	George Fox University
13	Indiana Wesleyan University
14	La Sierra University
15	Lee University
16	Liberty University
17	Lipscomb University
18	Messiah University
19	Moody Bible Institute
20	Nyack College
21	Oklahoma Baptist University
22	Regent University (School of Law)
23	Seattle Pacific University
24	Toccoa Falls College
25	Union University
26	Westmont College
27	York College

Regulation	
34 C.F.R. § 106.21	(governing admission)
34 C.F.R. § 106.22	(governing preference in admission)
34 C.F.R. § 106.23	(governing recruitment of students)
34 C.F.R. § 106.31	(governing education programs or activities)
34 C.F.R. § 106.32	(governing housing)
34 C.F.R. § 106.33	(governing comparable facilities)
34 C.F.R. § 106.34	(governing access to classes and schools)
34 C.F.R. § 106.35	(governing access to institutions of vocational education)
34 C.F.R. § 106.36	(governing counseling)
34 C.F.R. § 106.37	(governing financial assistance)
34 C.F.R. § 106.38	(governing employment assistance to students)
34 C.F.R. § 106.39	(governing health and insurance benefits and services)
34 C.F.R. § 106.40	(governing marital or parental status)
34 C.F.R. § 106.41	(governing athletics)
34 C.F.R. § 106.42	(governing textbooks and curricular material)
34 C.F.R. § 106.43	(governing standards in physical education classes)
34 C.F.R. § 106.51	(governing employment)
34 C.F.R. § 106.52	(governing employment, criteria)
34 C.F.R. § 106.53	(governing employment, recruitment)
34 C.F.R. § 106.54	(governing employment, compensation)
34 C.F.R. § 106.55	(governing employment, job classification and structure)
34 C.F.R. § 106.56	(governing employment, fringe benefits)
34 C.F.R. § 106.57	(governing employment, marital or parental status)
34 C.F.R. § 106.58	(governing employment, effect of law or other requirements)
34 C.F.R. § 106.59	(governing employment, advertising)
34 C.F.R. § 106.60	(governing pre-employment inquiries)
34 C.F.R. § 106.61	(governing employment, sex as occupational qualification)

Application of Religious Exemption	
gender identity	
abortion	
gender identity; sexual orientation; sex; abortion; suicide; euthanasia; extramarital sexual activity	
gender identity; sexual orientation; abortion	
gender identity; sexual orientation; abortion; marital status; pregnancy; extramarital sex	
unclear	
extramarital cohabitation, sex, and promiscuity; divorce; unbiblical marriage	
sex	
marital status	
extramarital sex; abortion; extramarital pregnancy	
extramarital sexual activity	
divorce; marital status; pregnancy	

Controlling Organizations by Institution

PLAINTIFF	UNIVERSITY	TITLE IX COMPLAINT	SUBMISSION DATE	EXEMPTION GRANTED	CONTROLLING ORGANIZATION *
Jonathan Jones	Azusa Pacific University	YES	7/27/21	NO	NO
Justin Tidwell-Davis	Baylor University	YES	7/27/21	YES	NO
Jake Picker	Baylor University	YES	7/27/21	YES	NO
Veronica Bonifacio Penales	Baylor University	YES	7/27/21	YES	NO
Elizabeth Hunter	Bob Jones University	YES	7/27/21	YES	NO
Chandler Horning	Brigham Young University - ID	YES	7/27/21	YES	YES
Ashtin Markowski	Brigham Young University - UT	YES	7/27/21	YES	YES
Brooke C.	Cedarville University (College)	YES	7/27/21	YES	NO
Gary Campbell	Clark's Summit (Baptist Bible)	YES	7/27/21	YES	NO
Saren Craig	College of the Ozarks	YES	7/27/21	YES	NO
Journey Mueller	Colorado Christian University	YES	8/2/21	YES	NO
Consolata Bryant	Covenant Christian Academy	NO	-	-	-
Devin Bryant	Covenant Christian Academy	NO	-	-	-
Lauren Hoekstra	Dordt University (College)	YES	7/27/21	YES	NO
Avery Bonestroo	Dordt University (College)	YES	7/27/21	YES	NO
Faith Millender	Eastern University	YES	7/27/21	NO	NO
Joanna Maxon	Fuller Theological Seminary	YES	7/27/21	NO	NO
Darren McDonald	Fuller Theological Seminary	YES	7/27/21	NO	NO
Nathan Brittsan	Fuller Theological Seminary	YES	7/27/21	NO	NO
Jaycen Montgomery	George Fox University	NO	-	YES	YES
Audrey Wojnarowisch	George Fox University	YES	7/27/21	YES	YES
Dantelle Powell	Grace University	-	-	-	-
Mortimer Halligan	Indiana Wesleyan University	YES	6/23/21	YES	YES
Louis James	Indiana Wesleyan University	YES	7/30/21	YES	YES
Cameron Martinez	La Sierra University	YES	7/27/21	NO	NO
Daniel Tidwell-Davis	Lee University (College)	YES	7/27/21	YES	NO
Lucas Wilson	Liberty University	YES	7/27/21	YES	NO
Mackenzie McCann	Liberty University	YES	7/27/21	YES	NO
Victoria Joy Bacon	Lipscomb University	YES	7/27/21	NO	NO
Rachel Held	Messiah University	YES	7/27/21	NO	NO
Megan Steffen	Moody Bible Institute	YES	7/27/21	NO	NO
Zayn Silva	Nyack College	NO	-	NO	NO

Tristan Campbell	Oklahoma Baptist University	YES	7/27/21	YES	YES
Jamie Lord;	Regent University (School of Law)	YES	7/27/21	NO	NO
Spencer J. Vigil	Seattle Pacific University	YES	7/27/21	NO	NO
Natalie Carter	Toccoa Falls College	YES	7/27/21	YES	NO
Alex Duron	Union University	YES	7/27/21	YES	YES
Scott McSwain	Union University	YES	7/27/21	YES	YES
Darren McDonald	Westmont College	YES	7/27/21	NO	NO
Hayden Brown	York College	YES	7/27/21	YES	YES
<p>* Based on an initial review of publicly available information, the colleges/universities deemed not to have a controlling religious organization appear to be independent institutions that are not owned by, and whose boards are not controlled by, a religious organization/church</p>					



Office of the President

Brigham Young University–Idaho • 200 Kimball Building • Rexburg, ID • 83460-1650

February 12, 2016

Ms. Catherine E. Lhamon
Assistant Secretary for Civil Rights
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100

Dear Ms. Lhamon:

RE: BRIGHAM YOUNG UNIVERSITY–IDAHO’S TITLE IX RELIGIOUS EXEMPTIONS

We are writing in response to the letter we received January 26, 2016, to affirm Brigham Young University–Idaho’s religious protections under Title IX of the Education Amendments of 1972 and the United States Constitution.¹

Title IX “is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.”² One exception is that private institutions of undergraduate higher education are exempt from Title IX with respect to admissions and recruitment.³ Another important exception is that Title IX “shall not apply to an educational institution which is controlled by a religious organization if the application . . . would not be consistent with the religious tenets of such organization.”⁴

BYU–Idaho shares and supports the goal of the Office for Civil Rights to eliminate sex discrimination. As a religious institution of higher education, BYU–Idaho also has a responsibility to teach the doctrine of its sponsoring institution, The Church of Jesus Christ of Latter-day Saints (the Church). The formally stated mission of BYU–Idaho is to “develop disciples of Jesus Christ who are leaders in their homes, the Church, and their communities.”⁵ The university does this by, among other things, “[b]uilding testimonies of the restored gospel of Jesus Christ,” “encouraging living its principles,” and “[p]roviding a quality education for students of diverse interests and abilities.”⁶ BYU–Idaho strives to create an environment in

¹ Letter from Emily Hazen, Equal Opportunity Specialist at OCR, to Clark G. Gilbert, President of BYU–Idaho (Jan. 26, 2016).

² 34 C.F.R. § 106.1 (2016).

³ 20 U.S.C. § 1681(a)(1) (2016); 34 C.F.R. § 106.15(d).

⁴ 20 U.S.C. § 1681(a)(3).

⁵ BYU–Idaho Mission Statement, available at <http://byui.edu/about/our-mission>.

⁶ *Id.*

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which the restored gospel of Jesus Christ guides every aspect of the educational experience. In these ways, the mission of BYU–Idaho is inextricably both spiritual and educational.⁷ Religious higher education institutions like BYU–Idaho contribute to the “diversity of institutions and educational missions [that] is one of the key strengths of American higher education.”⁸

BYU–Idaho was originally established in 1888, and for much of its existence was known as Ricks College. In 2001 Ricks College became a four-year undergraduate institution (as it had been many decades earlier) and was renamed Brigham Young University–Idaho. BYU–Idaho is sponsored and controlled by the Church. The Church has always been ultimately responsible for BYU–Idaho’s operation throughout its history. The governing board of the Church appoints the BYU–Idaho Board of Trustees, and the majority of the BYU–Idaho operating budget is derived directly from appropriations from the Church.

The Church is a major international Christian religion, with a fully developed theology, a well-known history spanning nearly two centuries, and a worldwide membership presently numbering over fifteen million. Its members believe that the Church and its doctrine contain the fullness of the gospel of Jesus Christ, restored by direct revelation from God to Joseph Smith, who was called in 1820 as a prophet in the Biblical sense. The Church’s governing board comprises the First Presidency and the Quorum of the Twelve Apostles, all of whom are sustained by Church members as prophets, seers, and revelators. Members of the Church regard the Bible and the Book of Mormon (another testament of Jesus Christ) as holy scripture. The Church also accepts additional prophetic writings and the statements of current Church leaders as authoritative religious teaching. Central to the Church’s theology is the view that every human being is a son or daughter of God who may be saved through the Atonement of Jesus Christ by obedience to the laws and ordinances of His gospel.

BYU–Idaho affirms the dignity of all human beings. Consistent with the teachings of the Church, BYU–Idaho recognizes the inherent agency, or free will, of each person. All students who apply to and enroll at BYU–Idaho make a commitment to live the University Standards, including an Honor Code, that are based on doctrines and practices of the Church and reflect the “moral

⁷ As we have maintained for over forty years in our correspondence with the Department of Education and its predecessor, the Department of Health, Education, and Welfare, BYU–Idaho considers itself exempt from certain regulations and their related processes promulgated under Title IX by virtue of protections in the U.S. Constitution and federal statutes. *See Hall v. Lee Coll., Inc.*, 932 F. Supp. 1027, 1033 (E.D. Tenn. 1996) (“It may very well be that to claim the exemption found in the statute, an educational institution need do nothing more than just raise the exemption.”). However, in an effort to continue to cooperate with your office, I am sending this letter in my capacity as president of BYU–Idaho to you in your capacity as assistant secretary for Civil Rights at the Department of Education, as 34 C.F.R. § 106.12(b) anticipates.

⁸ 20 U.S.C. § 1011a(a)(2)(A).

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virtues encompassed in the gospel of Jesus Christ.”⁹ This commitment is acknowledged at the time of application and must be reaffirmed each year in order to continue enrollment. Students specifically agree to—among other things—live a chaste and virtuous life, respect others, and observe certain dress and grooming standards. BYU–Idaho has adopted dress and grooming standards that are different for men and women. The purpose of this distinction between genders is based on religious tenets about our divine nature as children of God, the eternal nature of our gender identity, and the purpose of our life on earth.

Members of the Church believe that “God created man in his own image, in the image of God created he him; male and female created he them.”¹⁰ Modern-day scripture reiterates the truth that God created all human beings in his own image and likeness, male and female.¹¹ In 1995, the Church’s First Presidency and Quorum of the Twelve Apostles issued “The Family: A Proclamation to the World,” which states: “ALL HUMAN BEINGS—male and female—are created in the image of God. Each is a beloved spirit son or daughter of heavenly parents, and, as such, each has a divine nature and destiny. Gender is an essential characteristic of individual premortal, mortal, and eternal identity and purpose.”¹² Therefore, as a religious tenet, gender is not simply socially determined but is an essential characteristic of each person’s eternal identity.

The Church has a history of encouraging all of its members, male and female, to obtain as much education as possible and to participate fully in the economic, political, and social life of their communities.¹³ BYU–Idaho strives to contribute to that effort by providing a broad undergraduate education and facilitating internship, employment, and service opportunities. However, in keeping with the Church’s teaching on gender, BYU–Idaho requires all students and employees to conduct their lives in harmony with the Church’s teachings and the University Standards.

The complaint against BYU–Idaho alleges discrimination on the basis of sex with respect to a transgender student.¹⁴ Although the letter we received does not specify which Title IX

⁹ BYU–Idaho University Standards 58 (2015-2016) (stating that “[s]tudents must be in good honor code standing to be admitted to, continue enrollment at, and graduate from BYU-Idaho”), available at <http://www.byui.edu/Documents/catalog/2015-2016/University%20Standards.pdf>.

¹⁰ Genesis 1:27; see also Matthew 19:4.

¹¹ Moses 2:27; Doctrine and Covenants 20:18.

¹² We sent a copy of The Family: A Proclamation to the World to your office in 1998. Letter from David A. Bednar, President of Ricks College, to Norma Cantú, Assistant Secretary for Civil Rights (Mar. 12, 1998).

¹³ This also reflects a religious tenet of the Church. See Doctrine and Covenants 88:77-80; 109:7.

¹⁴ The Department of Education’s position that Title IX’s definition of “sex” includes gender identity is not anywhere defined in statute or regulation. *Johnston v. Univ. of Pittsburgh of Commonwealth Sys. of Higher Educ.*, 97 F. Supp. 3d 657, 674 (W.D. Pa. 2015) (stating that “Title IX does not prohibit discrimination on the basis of transgender itself because transgender is not a protected characteristic under

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regulations may apply, it appears that all of the allegations relate to regulations regarding education programs or activities and housing. The Office for Civil Rights has already determined that BYU–Idaho is exempt from the application of 34 C.F.R. § 106.31 and § 106.32 to the extent they conflict with the Church’s religious tenets.¹⁵ The Department of Education’s recent guidance construing sex to mean, among other things, gender identity, does not affect BYU–Idaho’s already existing exemptions.

We appreciate your commitment to resolving complaints as promptly as possible. In a similar situation, the regional office closed a complaint for lack of jurisdiction.¹⁶ Based on the existing exemptions, and as required by the statutory text of Title IX, that same approach is appropriate here. If I or any members of BYU–Idaho’s administration can be of any assistance to you, or if you require additional information, please contact me.

Sincerely,



Dr. Clark G. Gilbert
President

the statute” and noting there is “no federal court case that has squarely decided this issue in the Title IX context”).

¹⁵ “Ricks College is hereby exempted from the requirements of the following sections of the Title IX regulation: . . . § 106.31, § 106.32.” Letter from Harry M. Singleton, Assistant Secretary for Civil Rights, to Dr. Bruce C. Hafen, President of Ricks College (June 24, 1985).

¹⁶ Letter from LeGree S. Daniels, Assistant Secretary for Civil Rights, to Dr. Joe J. Christensen, President of Ricks College (June 22, 1988) (recounting that the regional office had received a complaint and subsequently closed it for lack of jurisdiction).