



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

January 10, 2017

Judah Fuld  
Bouland & Brush, LLC  
201 North Charles Street  
Suite 2400  
Baltimore, MD 21201

Dear Mr. Fuld:

Thank you for your email to the U.S. Department of Education's Office for Civil Rights (OCR) asking about the impact of withdrawing an educational institution's previously granted religious exemption from Title IX of the Education Amendments of 1972.

As you know, OCR enforces Title IX and its implementing regulation at 34 C.F.R. Part 106, which prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance. Although OCR refrains from offering opinions about specific facts without first conducting an investigation, OCR can provide information on how Title IX applies generally in this context.

Title IX explicitly provides that it "shall not apply to an educational institution which is controlled by a religious organization" to the extent that "application of [Title IX] would not be consistent with the religious tenets of such organization."<sup>1</sup> Since 1975, the Department's Title IX regulations have offered a process by which an educational institution can inform OCR that it is claiming such an exemption.<sup>2</sup> That provision instructs that "an educational institution which wishes to claim [an] exemption . . . shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of" Title IX that conflict with the tenets of the controlling religious organization.

A 1989 memorandum available on OCR's website explains that an institution's exempt status is not dependent upon its submission of a written statement to OCR.<sup>3</sup> An institution's written request to OCR for an exemption is a request for assurance that OCR acknowledges the institution's exemption from application of certain sections of the regulation in certain circumstances. It can also serve as notification to interested members of the public, including applicants, students, staff, and alumni, that the institution has invoked its statutory right not to comply with certain regulatory requirements as applied to certain circumstances due to a conflict

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<sup>1</sup> 20 U.S.C. § 1681(a)(3).

<sup>2</sup> 34 C.F.R. § 106.12(b).

<sup>3</sup> Memorandum from Acting Assistant Secretary William L. Smith to OCR Senior Staff re "Title IX Religious Exemption Procedures and Instructions for Investigating Complaints at Institutions with Religious Exemptions" (Oct. 11, 1989) at 1, [www.ed.gov/ocr/docs/smith-memo-19891011.pdf](http://www.ed.gov/ocr/docs/smith-memo-19891011.pdf).

with the controlling religious organization's religious tenets. From a practical standpoint, however, if an individual files an OCR complaint against a school alleging the violation of a particular regulation, the school may claim it is exempt under 20 U.S.C. § 1681(a)(3) even if it had never sought OCR acknowledgment of the exemption in the past. Likewise, a complainant may seek to challenge any previously-acknowledged exemption that bars a complainant's complaint; OCR's letters to institutions acknowledging their exemptions describe the steps OCR will take in response to such a challenge.

Your email asks whether an institution that sought and obtained an exemption under the process outlined in 34 C.F.R. § 106.12(b), but then "withdraws its exempt status," will be considered to have waived or forfeited its "future ability to claim an exemption." To be clear, the exemptions sought from and acknowledged by OCR are based on the application of particular regulations to an institution; an institution is exempt from application of those Title IX regulations that are not consistent with the religious tenets of the controlling religious organization, but continues to be governed by the remainder of them. If an institution had previously sought an exemption from the application of a particular regulation based on its controlling organization's religious tenets, and later disclaimed that exemption, but then requests an exemption from the same application of the same regulation (either in a new letter or in response to a complaint), OCR would ask the institution to provide an explanation for the apparent inconsistent representations (such as a change in circumstance) and might need to contact the controlling organization to verify the explanation.

I hope this information is helpful and thank you for contacting OCR. You can find additional information about religious exemptions from Title IX, including a copy of each exemption request and response letter, on OCR's website.<sup>4</sup>

Sincerely,



Seth M. Galanter

Principal Deputy Assistant Secretary

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<sup>4</sup> [www.ed.gov/ocr/frontpage/pro-students/rel-exempt-pr.html](http://www.ed.gov/ocr/frontpage/pro-students/rel-exempt-pr.html)