



May 12, 2016

OFFICE OF THE PRESIDENT

Assistant Secretary Catherine Lhamon  
U.S. Department of Education  
Office of Civil Rights  
400 Maryland Ave., SW  
Washington, D.C. 20202-1100

RE: Application for Exemption from Certain Title IX Regulations

Dear Assistant Secretary Lhamon:

As the highest-ranking official of Asbury Theological Seminary's ("Asbury" or "Seminary") administration, I am submitting this application for recognition by the United States Department of Education's Office of Civil Rights ("OCR") that the Seminary is exempt from compliance with certain Title IX regulations pursuant to 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12. I have served as President of Asbury Theological Seminary since July 2009. In addition to being President, I am an ordained United Methodist minister and have pastored congregations in Georgia and in several of the largest churches in New England. I received my M.Div. from Gordon-Conwell Theological Seminary, my Th.M. from Princeton Theological Seminary, and my Ph.D. from the University of Edinburgh in Scotland. As such, I am familiar with the Biblical and Wesleyan theology and traditions on which the Seminary is founded and am qualified to present the religious tenets and beliefs of the Seminary, which are reflected in the policies and practices at issue in this letter.

By letter dated May 17, 1985, OCR has already recognized the Seminary as an institution controlled by Wesleyan interpretation of the Scriptures and granted the Seminary exemption from 34 CFR §106.21(c), 34 CFR §106.40, and 34 CFR §106.57 to the extent those provisions pertain to issues of pregnancy outside the confines of marriage. Copies of OCR's May 17, 1985 letter and the Seminary's precipitating request of June 2, 1977 are enclosed as Exhibit A. To the extent not already granted by OCR's May 17, 1985 letter, the Seminary now seeks recognition of its claim to exemption from the following regulations as more specifically explained below:

- 34 CFR §106.21(a) and (b)(1)(iii): Regarding prohibitions on the basis of sex in admissions
- 34 CFR §106.21(c): Regarding prohibitions based on marital, family, or parental status in admissions
- 34 CFR §106.31(b)(4): Regarding different rules of behavior, sanctions, or other treatment

- 34 CFR §106.32: Regarding housing
- 34 CFR §106.33: Regarding restrooms and locker rooms
- 34 CFR §106.40: Regarding marital, family, or parental status of students, including as related to pregnancy
- 34 CFR §106.41: Regarding intramural athletics
- 34 CFR §§106.51(a), (b)(2), (b)(6), (b)(7), (b)(9), and (b)(10): Regarding discrimination in employment, including leaves for pregnancy, childbirth, and termination of pregnancy, based on sex, and in regard to gender identity issues
- 34 CFR §106.57: Regarding marital, family, or parental status of employees, including as related to pregnancy

#### **I. Standard of review**

The criteria for determining whether the Seminary is entitled to Title IX's religious exemption are set out in 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12. Based on those provisions, an educational institution may claim exemption from provisions of Title IX if (a) it is controlled by a religious organization, and (b) it adheres to religious tenets that are inconsistent with provisions of Title IX. OCR has opined that an institution normally will be considered to have met the first of these criteria if one or more of the following conditions are true:

- a. 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
- b. 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
- c. Its charter and catalog, or other official publication, contains 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.

See OCR's website at <http://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/rel-exempt-pr.html> (last visited May 9, 2016).



In evaluating whether a school qualifies for exemption from federal law on religious grounds, courts have admonished the government not to unduly scrutinize or second-guess whether that school is "religious enough," but rather, to focus on how the school holds itself out to the general public. See *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C.C. 2002). Indeed, "[i]t is well established...that [the government] should refrain from trolling through a person's or institution's religious beliefs." *Id.* at 1341-1342. Accordingly, "The Supreme Court repeatedly and in many different contexts has warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim." *Id.* at 1343 (internal brackets and quotations marks omitted). This admonition "is equally applicable to the agencies whose actions [the courts] review." *Id.*

Pursuant to OCR's May 17, 1985 letter (Exhibit A), it is already well-established that the Seminary satisfies the "controlled by a religious organization" criterion of 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12. Regardless, as explained below, the Seminary plainly is 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."<sup>1</sup> And as set out in this letter and its exhibits, the Seminary's adherence to key religious tenets is equally apparent. In short, the Seminary plainly satisfies Title IX's requirements for exemption from the regulations listed above to the extent those regulations are inconsistent with the religious tenets discussed below. Exhibits supporting the Seminary's claim are enclosed.

## **II. The Seminary is both an educational institution and a religious organization within the scope of 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12**

The Seminary assumes that most schools claiming religious exemption from provisions of Title IX are controlled by a "separate-but-related" religious organization such as a particular church denomination like the Roman Catholic or Free Methodist Church. The Seminary has the somewhat unique distinction of being both an educational institution *and* an established religious organization founded on and governed by principles of Wesleyan theology and related doctrine that reaches back to the Seminary's inception nearly 100 years ago. See Exhibit B: Articles of Incorporation at page 3, Section 4(F) ("The corporation having been organized as a religious *and* educational one..."). Stated another way, as OCR recognized in its letter of May 17, 1985, the Seminary is an educational institution controlled by the Wesleyan interpretation of the Scriptures. See Exhibit A. And of course the Seminary is a school dedicated to preparing students for Christian ministry as contemplated by OCR. Thus, and as explained in further detail below, the Seminary clearly falls within the first of Title IX's two criteria for exemption.

Asbury Theological Seminary was founded by Henry Clay Morrison in 1923, originally as a graduate school for Asbury College (now Asbury University). When founded, the Seminary's purpose was "to prepare and send forth a well-trained, sanctified, Spirit-filled, evangelistic ministry" in order to spread scriptural holiness around the world. The Seminary

<sup>1</sup> As demonstrated in this letter, the Seminary also satisfies the other possible grounds recognized by OCR for finding that an institution is sufficiently controlled by a religious organization within the meaning of 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12.



continues to carry out this mission today, providing holistic ministerial preparation as an interdenominational institution still rooted in Wesleyan theological tradition.

As years passed, the Seminary grew. Former president Dr. David McKenna (1982-1994) visualized the Seminary as the leading world center for theological education. Today, ATS enrolls nearly 1600 students. Seminary alumni serve around the world in nearly 90 countries, all 50 states and the District of Columbia, and nearly every time zone across the globe. The Seminary's major objective remains "to help facilitate the preparation of men and women called by God to Christian ministry." See Exhibit C: Excerpts from 2015-2016 Academic Catalog at page 17. Even though it has grown into a leading interdenominational seminary, Asbury maintains core religious principles and tenets of its own consistent with the Biblical and Wesleyan pillars on which it was founded.

The religious doctrine and principles on which Asbury was founded permeate its governance, operations, and instruction. The premise of education at the Seminary is reflected in the "Educational Assumptions" of its Academic Catalog, which state:

Asbury Theological Seminary, founded upon and committed to a vital evangelical Christian faith, finds its roots in the Wesleyan-Arminian theological tradition which is summarized in the Articles of Incorporation and in the statement of faith. The trustees, officers of administration and faculty members are committed to a style of education in which this faith will permeate *all* the work and instruction of the Seminary. The theological, ethical and social commitments of the Seminary provide the foundation for its instruction and life.

Exhibit C at page 16 (emphasis added). Regarding this Wesleyan-Arminian theological tradition, the Seminary's Articles of Incorporation, which were first filed in 1931, demonstrate that from the beginning the Seminary sought to "emphasize in its teaching the divine inspiration and infallibility of the Holy Scriptures" such that "the instruction of this Seminary [would] fully recognize the fallen estate of mankind" and "the necessity of individual regeneration." Exhibit B at page 2, Section 4(D). The Seminary further established that its instruction would "conform fully to the Wesleyan interpretation of the Scripture" such that "the instructors in this institution [would] guard with jealous care against any sort of teaching in sympathy with modern liberalism." *Id.* Accordingly, it was established early on that the Seminary's religious principles would govern all who serve under its banner:

No person shall be elected to the Board of Trustees, or to any official position...nor shall any person be employed as an instructor or assistant instructor, in its corps of teachers who is not in full sympathy with the Wesleyan interpretation of the Scriptures on Entire Sanctification, and who does in humble faith trust in Christ for full deliverance from all sin.

*Id.* at pages 2-3, Section 4(E).



The Seminary's religious principles are carried over from the Articles of Incorporation into the Seminary's Bylaws, which require that all members of the Seminary community (faculty, staff, students, and trustees) commit to life consistent with the Seminary's religious beliefs:

We will be faithful to the Mission, Statement of Faith, Ethos, and Code of Institutional Ethics and Values of Asbury Theological Seminary. We are committed to ethical, moral, and spiritual integrity in all matters, and honesty in all reporting. We will uphold all self-imposed standards of morality, decency, and propriety in all relationships within the seminary community and the world.

*See Exhibit D: Excerpts from Bylaws at page 5. Accordingly, any person elected as a Trustee; appointed as President, Vice President, Provost or Dean; or appointed as faculty is required to "subscribe to and embrace fully the Statement of Faith, the Statement of Mission, the Statement of Ethos, and the Code of Institutional Ethics and Values of the Seminary." See Exhibit D at pages 8, 16, 18; Exhibit E: Excerpts from Board Handbook at page 58. Even visiting and adjunct faculty are expected at minimum to honor the Seminary's religious principles in the course of their work for the Seminary:*

Visiting and Adjunct Faculty shall normally subscribe to and embrace fully the Statement of Faith, the Statement of Mission, the Statement of Ethos, and the Code of Institutional Ethics and Values of the Seminary. On a case-by-case basis, and with the approval of the Provost and the Academic Affairs Team of the Board of Trustees, Visiting and/or Adjunct Faculty may be appointed who are unable to subscribe to and embrace fully the Statement of Faith, the Statement of Mission, the Statement of Ethos, and the Code of Institutional Ethics and Values of the Seminary, but who, for the purposes of their Visiting and/or Adjunct Faculty appointments, are willing to support them.

Exhibit D at page 18.

As for students, the Seminary's Academic Catalog is equally clear: "The applicant must demonstrate compatibility with the seminary's statements of faith and educational mission, and commitment to observe the seminary's ethos statement." Exhibit C at page 28.

The Seminary takes this commitment to its religious foundation very seriously. As discussed below, there are consequences for faculty, students, and staff who choose not to conduct themselves in a way that comports with the Seminary's religious tenets and principles. The same is true for officials who oversee the Seminary's daily operations. As the Seminary's Bylaws explain, "[a] member of the Administration may be removed from office by disciplinary action of the Board of Trustees, because of moral delinquency...doctrinal deviation, or other good and sufficient reason." Exhibit D at page 17.



The religious doctrine and principles on which Asbury was founded are also at the heart of its standing policies, as they have been since the Seminary's early days. The Seminary's first academic bulletin outlined its core theological beliefs as follows:

Asbury Theological Seminary regards it fundamental to maintain in all its teachings the doctrines of the faith which have come down to us from the Apostles and the Fathers, the faith that has been tested through the ages, the faith that gave birth to the Reformation and that in the latter days brought on the great Evangelical Revival in the days of John Wesley. All our teaching will range around the Bible as an inspired book.

The Seminary's commitment to these principles was recognized by the public early on. In June of 1929, the Pentecostal Herald observed: "There is only one Theological School on the American Continent today granting the Bachelor of Divinity degree...in which there is taught in all departments of the school, the historic tenets of Wesleyan theology." Today, the Seminary remains "committed to historic Christian faith in the Wesleyan tradition," "committed to historic orthodoxy," and "called to highlight the distinctive contributions of the Wesleyan/Arminian tradition." As such, the Seminary has resolved that it will "resist attempts to downgrade our programs and scholarship and, instead, we will extend effective pastoral leadership and Wesleyan scholarship around the world." *See Exhibit F: Defining Values.*

The Seminary's religious tenets and principles are not merely historical. The Seminary holds core religious tenets that are codified in five (5) core statements that together establish and direct the Seminary's theological orientation: the Mission Statement, Statement of Faith, Ethos Statement, Defining Values, and the Institutional Ethics and Values found in the Seminary's Bylaws. Collectively, these core statements draw upon and affirm the Seminary's commitment to both the Holy Bible and Wesleyan theology. This commitment is an ongoing one, as the Board of Trustees demonstrated by formal resolution adopted in January 2011. Citing concern that "many seminaries which were founded on principles of historic Christian orthodoxy have drifted away from those secure moorings" and declaring that in contrast the Seminary "seeks to maintain our commitment to historic Christian orthodoxy for the coming generations," the Seminary's Board of Trustees formally resolved that all trustees, administrators, faculty, and staff at the director level or above will be asked to annually reaffirm, individually and collectively, their commitment to the Seminary's Statement of Faith, Mission Statement, and Ethos Statement. *See Exhibit E at page 128.*

Regarding the Seminary's commitment to the Bible, the Seminary's Statement of Faith affirms its belief in "the divine inspiration, truthfulness and authority of both the Old and New Testaments, the only written Word of God, without error in all it affirms." *See Exhibit G: Statement of Faith.* Accordingly, the Seminary's Statement of Faith recognizes Scripture as "the only infallible rule of faith and practice" that "constitutes the final authority for faith and life." *See Exhibit G; see also Exhibit C at page 17.*



Seminary policy also affirms the institutional importance of Wesleyan theology and tradition in several respects. As noted in its Academic Catalog, “[t]he Seminary is committed to a Wesleyan-Arminian theological position” and is “founded upon and committed to a vital evangelical Christian faith” that “finds its roots in the Wesleyan-Arminian theological tradition.” Exhibit C at page 16. As such, the Seminary’s trustees, officers of administration and faculty members “are committed to a style of education in which this faith will permeate all the work and instruction of the Seminary.” *Id.* Accordingly, the Seminary seeks to maintain a community that “provides resources for scholarly leadership in the Wesleyan-Arminian tradition” and “nurtures men and women called of God for parish ministry and other forms of servant leadership in the experience and practice of personal and social holiness as defined by Scripture and Wesleyan theology.” See Exhibit C at page 16; see also Exhibit H: Mission Statement.

As President of the Seminary, I have consistently affirmed these principles and challenged the Seminary community to hold fast to them amidst challenging times. In my 2009 Convocation address, I noted that “global vindication of Wesleyan Theological impulses is deep in our DNA.” In 2010, I implored the modern Church to “embrace and become practitioners of what I call missional holiness....understanding the Holy Spirit’s primary role as inwardly sanctifying us from sin—the eradication of that sinful orientation and living a life of dedicated purity.” I further implored that we “must embody for the world what it means to be a holy people.” I also suggested that “[i]f we as a Church can’t model holiness, then we ought to change our name, because holiness is central to the DNA of who we are.” Moreover, I reminded our Seminary community that “[w]e still believe in a post-conversion experience with the Holy Spirit that re-orient[s] our affections away from sin and toward holiness.”

In my 2011 Convocation address, I advocated against succumbing to the increasingly popular temptation to accept a diluted version of Christian theology, instead calling the Seminary to live by a higher standard:

Who has lost sight more of the depth of human sin, the certainty of God’s judgment and the call to repentance and transformation at the feet of a crucified savior than today’s populist, evangelical churches?

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I’ve been among those who have pointed out the theological weakness captured by such phrases of Protestant liberalism as, “Open hearts, open minds, open doors,” or “open, progressive and inclusive.”

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We are quite adept at measuring where people are culturally, but we are at best careless in any sustained theological reflection about where they *should be* culturally.

More recently, in my 2014 address, I spoke in depth about the four “deep foundations” upon which the Wesleyan Movement is built. In doing so, I again affirmed the need for a steadfast commitment to the Seminary’s Christian and Wesleyan roots:

We have no remit to remake Christianity into our own liking; or to reinvent the faith “once for all delivered to the saints” ... We don’t reinvent the gospel, we faithfully pass it down! We stand in a grand tradition which has stood through the ages, marked by Apostles and martyrs and faithful witnesses of which we have the privilege of joining ... Today much of the church is not holy and there is no more important legacy we can leave the contemporary church than to fully embody holiness.

The Seminary’s commitment to its religious tenets and heritage thus remain steadfast as ever as it trains men and women for Christian ministry.

### **III. The Seminary’s religious tenets are inconsistent with several provisions of Title IX as interpreted by OCR**

The religious principles and beliefs discussed above are not merely broad, aspirational, or intangible ideals. Relevant to this letter, the Seminary is governed and guided by several specific religious tenets that are inconsistent with Title IX as interpreted by OCR. In April 2011, OCR issued guidelines on Title IX that indicated OCR would interpret Title IX’s protections against sex discrimination as extending to persons who claim gay, lesbian, bisexual, or transgender status. While Asbury generally embraces the protections and responsibilities of Title IX, OCR’s interpretation of Title IX is inconsistent with the Seminary’s religious tenets as drawn from Scripture, the Seminary’s Wesleyan roots, and the Seminary’s own theological orientation statements.

The Bible teaches that human life is sacred. God wonderfully and immutably creates each person as male or female. These two distinct genders together reflect the image and nature of God. Genesis 1:26-27. The Bible also demonstrates that the term “marriage” has only one meaning: the uniting of one man and one woman in a single, exclusive union, as delineated in Scripture. Genesis 2:18-25. God intends sexual intimacy to occur only between a man and a woman who are married to each other. 1 Corinthians 6:18; 7:2-5; Hebrews 13:4. Any form of sexual immorality is sinful and offensive to God. Matthew 15:18-20; 1 Corinthians 6:9-10.

John Wesley’s own study of Scripture demonstrates similar conclusions, first in Wesley’s view of the nature of sin and then more specifically in his analysis of Scripture on the topic at hand. Wesley affirmed that mere abstention from outward acts does not constitute true purity of the heart. Moreover, Wesley distinguished between conscious, willful sin and involuntary transgressions. “The first kind of sin is a ‘voluntary transgression of a known law.’ The second kind of sin is ‘an involuntary transgression of a divine law, known or unknown.’ Both kinds of sin, of course, need Christ’s atoning blood.” Kenneth Cain Kinghorn, *John Wesley on Christian Beliefs: The Standard Sermons in Modern English* (Volume 1, Sermons 1-20), Nashville: Abingdon Press, 2002, page 139.



In studying Chapter 6 of Paul's First Epistle to the Corinthians, Wesley examined verses 9-11 of that chapter, which provide in part, "[n]either the sexually immoral nor idolaters nor adulterers nor men who have sex with men...will inherit the kingdom of God. And that is what some of you were. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ by the Spirit of our God." Considering these verses, Wesley observed the sinful nature of non-heterosexual behavior and the need to guard against it:

Idolatry is here placed between fornication and adultery, because they generally accompanied it. Nor the effeminate—Who live in an easy, indolent way; taking up no cross, enduring no hardship. But how is this these good-natured, harmless people are ranked with idolaters and sodomites! We may learn hence, that we are never secure from the greatest sins, till we guard against those which are thought the least; nor, indeed, till we think no sin is little, since every one is a step toward hell.

See Wesley's Notes on St. Paul's First Epistle to the Corinthians, available online at <http://wesley.nnu.edu/john-wesley/john-wesleys-notes-on-the-bible/notes-on-st-pauls-first-epistle-to-the-corinthians/#Chapter+VI> (last visited April 12, 2016). Likewise, in studying verse 7 of the Epistle to Jude, Wesley observed Scripture's warning to guard against "unnatural lusts" such as the "sexual immorality and perversion" of Sodom and Gomorrah, which Scripture shows to have involved homosexual behavior. See Genesis 19:1-7; Wesley's Notes on the General Epistle of St. Jude, available online at <http://wesley.nnu.edu/john-wesley/john-wesleys-notes-on-the-bible/notes-on-the-general-epistle-of-st-jude/> (last visited April 12, 2016). And of course, Wesley's staunch opposition to the practice of slavery that was prevalent in his time demonstrates his own belief in the sanctity of all human life.

Consistent with these foundational teachings, the Seminary's Statement of Faith affirms its belief that "the fullness of salvation consists of the restoration of the image of God and our life in communion with God and others." In turn, the Seminary's Ethos Statement affirms its commitment to several related principles, including:

- We believe God wonderfully and immutably creates each person as either male or female. Together these two distinct sexes reflect the creative nature and image of God.
- We affirm celibacy as a valuable and honorable practice related to holy living. We honor and esteem the fidelity of deep holy friendships as being in the image of God.
- We affirm marriage as sanctioned by God, which joins one man and one woman in a single, exclusive union for life, as delineated in Scripture, and provides the sole context for sexual intimacy, helping to ensure the blessings of that relationship as God intended.

- We affirm God's design for holy living, and believe that Scripture clearly prohibits certain acts, including but not limited to drinking alcohol to excess, using pornography, stealing, speaking or writing profanely or slanderously, acting dishonestly, cheating, engaging in occult practice, and engaging in sexual relations outside the bonds of marriage (including but not limited to premarital sex, adultery, and same-sex sexual behavior). Such actions have devastating personal, social, and global effects, especially upon society's most vulnerable members.
- Based on a Biblical view of creation, fall, and redemption, our goal is to come alongside as a loving community anyone who is experiencing gender identity discordant with their birth sex. We do not affirm theologically the adoption of a psychological identity discordant with one's birth sex as a result of the tension between one's biological sex and one's experience of gender. Similarly, we do not affirm attempts to change one's given biological birth sex via medical intervention in favor of the identity of the opposite sex or of an indeterminate identity.
- In witness to society, we commit ourselves to these guiding principles, and we disavow advocating, supporting, or condoning behavior contrary to this Ethos.

*See Exhibit I: Ethos Statement.* In short, by faith the Seminary holds fast to the belief that human life as created by God is sacred, that there is one design for sexual intimacy, and one design for marriage.

These are not merely philosophical ideals. They are just a few of the religious tenets that dictate the Seminary's theological orientation and in turn, permeate every facet of the Seminary's work. Indeed, virtually every aspect of education, employment, and other programs and activities at the Seminary requires adherence to the tenets on human life, gender, and sexuality listed above through express incorporation of and/or citation to the Ethos Statement, the Statement of Faith, and other core theological orientation statements in which such tenets are found. As explained in the text of the Ethos Statement itself, the Seminary has committed that it "will make institutional decisions in light of this policy."

For example, as previously noted, these tenets form the basis for key expectations and requirements in Seminary governance, including the qualifications and conduct of both trustees and administrators. The same holds true for Seminary faculty. Adherence to the Ethos Statement and Statement of Faith are significant criteria in evaluating whether one is qualified to join and serve in the Seminary faculty's ranks. In general, the Seminary expects "theological and moral formation as a Wesleyan Christian" from its faculty. *See Exhibit J: Excerpts from 2015-2016 Faculty Handbook at pages 33-35.* Accordingly, "[t]he baseline for all members of the faculty is commitment to theological and moral formation as a Wesleyan Christian" such that the faculty member is expected to "fully embrace" the Ethos Statement, Statement of Faith, and



the Collegial Covenant of Faculty Responsibility, and demonstrate “commitment to continued growth in grace toward wholeness in the image of Jesus Christ.” *Id.* at page 49.

Similarly, “[v]isiting and adjunct faculty shall normally subscribe to and embrace fully the ‘Statement of Faith’ and ‘Ethos Statement’ of the Seminary,” or at the very least must affirm that they “are willing to support them.” Exhibit J at page 153. Even Seminary librarians (also known as “faculty associates”) are “expected to support the ‘Faith Statement’ of the Seminary and to embrace its ‘Ethos Statement.’” *Id.* at page 43. Faculty search committees thus review credentials of prospective candidates “to certify that the prospective candidate fulfills accreditation requirements and has demonstrated in writing commitment to the Seminary’s Faith Statement, Ethos Statement, and Faculty Covenant.” *Id.* at page 63.

Adherence to the Seminary’s religious tenets is relevant not only to the question of whether someone is qualified to join the faculty ranks, but also whether they are eligible to *remain* in the faculty and, ultimately, obtain tenure where applicable. The Seminary’s Faculty Handbook warns, “[d]iscipline of faculty membership may result from verifiable violation of the Seminary ‘Statement of Faith,’ ‘Ethos Statement,’ and any [of] the policies set forth in the ‘Collegial Covenant of Faculty Responsibility.’” The aforementioned Collegial Covenant of Faculty Responsibility provides in part that faculty will be “faithful members of the Asbury community” by “[l]iving in faithful witness to the statement of mission, the statement of ethos, and this collegial covenant of faculty accountability, *both on and off campus, in our public and in our private lives.*” Exhibit J at page 10. And the granting of tenure assumes in relevant part “that the faculty person has demonstrated that he or she embodies the ethos and general positions of the Seminary.” *Id.* at page 56. Ultimately, it is my responsibility as president to ensure “that the process for selecting faculty and tenure maintains the mission and ethos of the Seminary.” Exhibit E at page 93.

The same expectations hold true for Seminary staff. As noted in its Personnel Policy Manual, the Seminary “is committed to conducting its business affairs in a socially responsible and ethical manner, consistent with its educational, research and service missions and with the Seminary ethos.” See Exhibit K: Excerpts from Personnel Policy Manual at Policy No. 416. More specifically, “[e]mployees must abide by the Seminary’s Ethos Statement,” including the provisions therefrom discussed above. *Id.* at Policy No. 010. Thus, “[a]ctivities or behavior contrary to the Asbury Theological Seminary Ethos Statement” are a breach of the Seminary’s “Standards of Conduct” for staff that may result in discipline or corrective action up to and including removal. *Id.* at Policy No. 416.

Students are likewise held to and impacted by the Seminary’s religious tenets in virtually every respect, including the Seminary’s assessment of whether a student is qualified to be admitted, remain enrolled, and ultimately, receive his or her degree:

The Seminary, however, does reserve the right to make admission, employment and degree conferral decisions on the basis of those principles and beliefs set forth in the ethos statement and statement of faith. *Each student, as a condition of entering the Seminary, represents that he or she has read and understands the ethos*

*statement, statement of educational mission, and statement of faith and further understands that remaining a student of the Seminary or having a degree conferred by the Seminary is dependent upon compliance with the ethos statement and statement of faith.”*

Exhibit C at page 16 (emphasis added). The Seminary’s religious tenets extend to student housing requirements and expectations, as well. Indeed, all students commit to following the Ethos Statement as a fundamental condition of participation in the Seminary’s programs and services in general. As the Seminary’s Student Handbook explains, the Seminary “community has a rule of life called our Ethos,” and students “in violation of the Seminary’s Ethos Statement or Seminary regulations may be subject to sanctions and/ or required to participate in a restoration plan.” See Exhibit L: Excerpts from 2015-2016 Student Handbook at page 35.

Even the ability of third parties to access/use Seminary facilities depends in part on their willingness to do so in a manner that is consistent with the Seminary’s religious tenets. The Seminary’s Campus Access and Facility Use Policy addresses these expectations at length:

Asbury Theological Seminary’s facilities were provided through God’s benevolence and by the sacrificial generosity of the Seminary community. The Seminary desires that its facilities be used for the fellowship of the Body of Christ and always to God’s glory. Although the facilities are not generally open to the public, we make our facilities available to approved other persons and groups as a witness to our faith, in a spirit of Christian charity, and as a means of demonstrating the Gospel of Jesus Christ in practice.

*However, facility use will not be permitted to persons or groups holding, advancing, or advocating beliefs, or advancing, advocating, or engaging in practices that conflict with the Seminary’s faith or moral teachings, which are summarized in, among other places, the Seminary’s Ethos Statement. Nor may facilities be used for activities that contradict, or are deemed by the Board of Directors as inconsistent with, or contrary to the Seminary’s faith or moral teachings.* The Board of Directors, or its official designee, is the final decision-maker on whether a person or group is allowed to use the Seminary facilities.

This restricted facility use policy is necessary for two important reasons. First, the Seminary may not in good conscience materially cooperate in activities or beliefs that are contrary to its faith. Allowing its facilities to be used for purposes that contradict the Seminary’s beliefs would be material cooperation with that activity, and would be a grave violation of the Seminary’s faith and religious practice. See 2 Corinthians 6:14; 1 Thessalonians 5:22.



Second, it is very important to the Seminary that it presents a consistent message to the community, which the Seminary staff and students, and their families, conscientiously maintain as part of their witness to the Gospel of Jesus Christ. To allow facilities to be used by groups or persons who express beliefs or engage in practices contrary to the Seminary's faith would have a severe negative impact on the message that the Seminary strives to promote. It could also cause confusion and scandal to the Seminary families and the community because they may reasonably perceive that by allowing use of our facilities, the Seminary is in agreement with the beliefs or practices of the persons or groups using its facilities.

Therefore, in no event shall persons or groups who hold, advance, or advocate beliefs, or advance, advocate, or engage in practices that contradict the Seminary's faith use any Seminary facility. Nor may facilities be used in any way that contradicts the Seminary's faith. This policy applies to all the Seminary facilities, regardless of whether the facilities are used as a sanctuary, because the Seminary sees all of its property as holy and set apart to worship God. See Colossians 3:17.

*See Exhibit M: Campus Access and Facility Use Policy (emphasis added).*

The Seminary's religious tenets also apply to the use of technology and participation in its intramural sports programs. The Seminary's network usage policy prohibits "access to Internet sites containing sexually explicit material deemed...in any way inconsistent with the Asbury Theological Seminary Ethos..." Exhibit C at page 25. As for intramural athletics (basketball, racquetball, and volleyball for all students, faculty, staff, and spouses), Seminary policy is clear:

Asbury Theological Seminary intramurals exist to foster the development of Christian faith, character, and leadership.

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Participants are expected to behave in a Christlike manner towards teammates, opponents, fans, officials, and staff members. Those individuals who do not conduct themselves in this manner will not be allowed to participate.

*See Exhibit N: Intramural Participant Handbook.*

The practical impact of the tenets, principles, and policies discussed above are fairly self-evident, but to be clear: the Seminary's religious tenets and beliefs on issues of marriage,

gender, sexuality, and the sanctity of human life impact virtually every aspect of the Seminary's operations, programs, and services. Thus, by way of example:

- As a general rule, students are separated on the basis of sex in regard to housing, living arrangements, restrooms, and locker rooms. The Seminary has male-only and female-only residence facilities, with rules in place to regulate access by members of the opposite sex. To the extent Title IX regulations would require the Seminary to allow males and females to reside in the same housing (other than those legitimately residing in family units), to visit within housing of the opposite sex without restrictions, to allow an unmarried male and female to live together, or to allow a person with gender identity issues to be treated as a member of the sex to which they have assigned themselves in regard to the above categories, such behavior would be against the religious principles of the Seminary. This is true whether or not the person has undergone surgery or hormonal treatment to assume the physical characteristics of the opposite sex.
- The Seminary requires its students, faculty, and staff to adhere to heterosexual behavior. Thus, students, faculty, and staff must refrain from engaging in homosexual relationships. Similarly, a person who self-identifies as the opposite sex, but who has expressed an attraction to members of their birth sex, would not be permitted to engage in dating or sexual activity with a person of their birth sex, because such behavior would be considered homosexual in nature based upon the Seminary's religious beliefs.
- Employment of someone who identifies as being of the opposite gender from their birth sex, and who expresses that identification through behavior and/or dress would be against the Seminary's religious beliefs, on the same basis and reasons as set out above regarding gender identity issues. Employees are considered to be representatives of the Seminary and, as previously explained, are expected to model appropriate Christian behavior in keeping with the Seminary's Ethos Statement and other theological orientation statements. Thus, a male employee who announced himself to be female, or who adopted the appearance of a female, would not be modeling appropriate Christian behavior consistent with the Seminary's religious beliefs, nor would a female employee who announced herself to be male, or who adopted the appearance of a male.
- It is the Seminary's position, based upon its religious beliefs taken from Scripture and the Seminary's theological orientation statements, that a person cannot change his or her birth sex.



Although they may undergo surgery or hormone treatments to alter their physical characteristics, only the outward appearance is changed. Thus a student would not be permitted to live in Seminary housing inconsistent with his or her birth sex, or to use restrooms or locker rooms inconsistent with his or her birth sex. That person also would not be eligible for employment with the Seminary.

- The Seminary's religious beliefs also prohibit elective abortion, pre-marital sex, and extra-marital sex for students and employees alike.

In short, the Seminary's religious tenets and beliefs make it necessary for the Seminary to make decisions and take actions on the basis of sex, including gender identity and sexual orientation, in virtually every area of Seminary life, including employment, admissions, conduct, housing and living arrangements, restrooms, locker rooms, and intramural athletics. To the extent the regulations cited at the outset of this letter are interpreted as contrary thereto, the Seminary is entitled by law to exemption pursuant to 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12. To the extent not already covered by the exemptions granted by OCR in 1985, Asbury Theological Seminary requests that OCR grant this application for recognition of the same.

Respectfully submitted,

A handwritten signature in blue ink that reads "Timothy C. Tennent". The signature is fluid and cursive, with a large initial 'T'.

Timothy C. Tennent, Ph.D.  
President, Asbury Theological Seminary

Enclosures

cc: [OCR@ed.gov](mailto:OCR@ed.gov) (w/encl.)