



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

August 29, 2016

Sandra C. Gray  
President  
Asbury University  
One Macklem Drive  
Wilmore, KY 40390

Dear President Gray:

I write to respond to your January 7, 2015, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested a religious exemption for Asbury University (University) of Wilmore, Kentucky, 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.

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 letter explains that the University "is a small, private evangelical Christian school" that was "established in the Wesleyan-Holiness tradition." You explain that "[a]ll members of the institution's controlling body, the board of trustees, must adhere to and believe in the fundamental doctrines of the religion" and that "all members of the administration, including the president of the university, any vice president, and the provost must adhere to the religious beliefs on which the institution was founded." According to your letter, the University's "charter and articles of incorporation provide that if at any time the president of the institution, or any of its teachers, should teach any doctrine contrary to the fundamental doctrines of the Holy Scriptures, the institution shall revert to the National Holiness Association."

Your letter requests an exemption from the provisions of Title IX to the extent that they are interpreted to "prohibit differential treatment on the basis of gender identity, sexual orientation, premarital sex/premarital pregnancy, and abortion." In support of this request, you cite to "biblical mandates" that explain that "[c]ertain behaviors are expressly prohibited . . . and are therefore unacceptable at Asbury." According to your letter, these prohibited behaviors include "adultery, homosexual behavior, premarital sexual intimacy . . . [and] elective abortion." You

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explain that “[e]ngaging in any of the prohibited behaviors listed here is almost certain to result in immediate dismissal from the university.” In addition, you explain that the University adheres to the belief that “humans are beings created, in the image of God, male and female” and that the University “could not support or encourage an individual’s expression of a gender other than that person’s birth sex” or “recognize or support campus groups whose aim . . . is to promote a vision of human sexuality that is contrary to [the University’s] understanding of biblical teaching.”

You state that, for these reasons, the University is requesting an exemption from the following regulatory provisions to the extent they are interpreted “prohibit differential treatment on the basis of gender identity, sexual orientation, premarital sex/premarital pregnancy, and abortion:”

- 34 C.F.R. § 106.21 (governing admission);
- 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. § 106.40 (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. § 106.59 (governing employment advertising); 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 gender identity, sexual orientation, premarital sex/premarital pregnancy, and 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 identified in your request, OCR is obligated to identify a controlling organization to contact 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,

A handwritten signature in black ink, appearing to read 'CEL', with a long horizontal flourish extending to the right.

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

cc: Leila G. O'Carra, Wyatt, Tarrant, & Combs, LP