



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

June 18, 2020

Dr. Walter Butler, President
Bethel University
325 Cherry Avenue
McKenzie, TN 38201

Dear President Butler:

I write in response to your January 16, 2020, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested assurance of a religious exemption for Bethel University (University) of McKenzie, Tennessee, 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 that is controlled by a religious organization to the extent that the application of Title IX would be inconsistent with the controlling organization's religious tenets. Therefore, such educational institutions may 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. An institution may be considered controlled by a religious organization if it is a school or department of divinity.

Your letter states that the University is a Cumberland Presbyterian Church institution of higher education that is controlled by a religious organization, the West Tennessee Synod of the Cumberland Presbyterian Church. You explain in your letter that the University was founded in 1842 as Bethel Seminary. The purpose of Bethel Seminary was to train pastors. In 1847, the State of Tennessee granted Bethel's charter, which made clear that "the West Tennessee Synod of the Cumberland Presbyterian Church did by resolution determine to establish an institution of learning within its ecclesiastical jurisdiction" and gave the Cumberland Presbyterian Church, ". . . full power to fill [Board of Trustees] vacancies." In 2009, the University adopted its current name, Bethel University. The Bylaws of the University state that the Board of Trustees shall consist of no fewer than ten (10) and no more than thirty (30) persons, the majority of whom must be active members of the Cumberland Presbyterian Church.¹ According to your letter, currently, the University is a "church affiliated school whose graduates who have served in the clergy, in the classroom as educators, and in other professions." Your letter and the University's bylaws state that the University maintains "a covenant relationship" with Cumberland Presbyterian Church and adheres to its founding Christian principles and Christian environment. Your letter further

¹ See Bylaws of Bethel University, Article IV, Section 1.

explains that the University's mission is "to create opportunities for members of the learning community to develop to their highest intellectual, spiritual, and social potential in a Christian environment," that the University strives "to glorify and enjoy the Lord in every aspect of life," and that the University requires mandatory attendance at weekly worship services for full-time traditional freshmen, sophomores, and juniors.²

Your letter claims exemption from certain provisions of Title IX and its implementing regulations to the extent that "application of those provisions would not be consistent with the Cumberland Presbyterian Church's tenets regarding sexual orientation and gender identity."

In support of this request, your letter cites Cumberland Presbyterian religious tenets as described in the August 2010 Edition of Confession of Faith and Government of the Cumberland Presbyterian Church ("Confession of Faith"), a statement of faith, and in the 1996 Statement on Homosexuality. The Confession of Faith states, in part, "...[t]he scriptures are the infallible rule of faith and practice, the authoritative guide for Christian living."³ In regard to sexual orientation and gender identity, the Confession of Faith states, in part, "Marriage is between a man and a woman for the mutual benefit of each, their children, and society. While marriage is subject to the appropriate civil law, it is primarily a covenant relationship under God. As such, it symbolizes the relationship of Jesus Christ and the church, and is that human relationship in which love and trust are best known."⁴ The 1996 Statement on Homosexuality states, in part, "Be it resolved that the General Assembly of the Cumberland Presbyterian Church go on record affirming that Biblical teaching makes it clear that the practice of homosexuality is a sin, yet with the understanding that while God loves the sinner, He hates the sin, and His grace is available to all, 'For God did not send His Son into the world to condemn the world, but to save the world through Him' John 3:17"⁵ Finally, your letter explained that the policies of the University are rooted in these religious tenets, and it would be inconsistent with these religious tenets to comply with certain portions of Title IX.

Your letter states that, for the above reasons, the University is claiming an exemption from the following regulatory provisions to the extent that those provisions are interpreted to prohibit discrimination based on gender identity or sexual orientation:

- 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);

² See also <https://www.bethelu.edu/student-life/christian-life/chapel>.

³ See Confession of Faith and Government of the Cumberland Presbyterian Churches, <http://www.cumberland.org/gao/confession/> at 1.05.

⁴ *Id.* at 6.17

⁵ See http://www.cumberland.org/qao/confession/GA_StatementHomosexuality.pdf

- 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).

OCR recognizes that the University is exempt from these provisions to the extent that application of these provisions would not be consistent with the religious tenets of the controlling organization. *See* 34 C.F.R. § 106.12.

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 recognized.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Kenneth L. Marcus", with a long horizontal flourish extending to the right.

Kenneth L. Marcus
Assistant Secretary for Civil Rights