

June 6, 2017

Candice Jackson, Acting Assistant Secretary for Civil Rights  
U.S. Department of Education  
Office for Civil Rights  
400 Maryland Avenue SW  
Washington, D.C. 20202-1100

Re: Application for Recognition of Exemption from Certain Title IX Regulations

Dear Acting Assistant Secretary Jackson:

As the chief executive officer of Columbia International University (“CIU”), I am the “highest ranking official of the institution,” 34 C.F.R. § 106.12(b), and with this letter I am applying for recognition by the Office for Civil Rights of the Department of Education (“ED OCR”) that CIU is exempt from compliance with certain Title IX regulations under the religious exemption provided in 20 U.S.C. § 1681(a)(3)<sup>1</sup> and 34 C.F.R. § 106.12.<sup>2</sup> The specific regulations for which we request exemption are the following:

- 1) 34 C.F.R. § 106.21 (admission)
- 2) 34 C.F.R. § 106.22 (preference in admission)
- 3) 34 C.F.R. § 106.23 (recruitment)
- 4) 34 C.F.R. § 106.31 (education programs or activities)
- 5) 34 C.F.R. § 106.32 (housing)
- 6) 34 C.F.R. § 106.33 (comparable facilities)
- 7) 34 C.F.R. § 106.34 (access to classes and schools)
- 8) 34 C.F.R. § 106.36 (counseling)
- 9) 34 C.F.R. § 106.37 (financial assistance)
- 10) 34 C.F.R. § 106.38 (employment assistance to students)
- 11) 34 C.F.R. § 106.39 (health and insurance benefits and services)
- 12) 34 C.F.R. § 106.40 (marital or parental status)
- 13) 34 C.F.R. § 106.41 (athletics)
- 14) 34 C.F.R. § 106.43 (standards for measuring skill or progress in physical education classes)
- 15) 34 C.F.R. § 106.51-61 (relating to employment)

<sup>1</sup> “Educational institutions of religious organizations with contrary religious tenets: this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization.”

<sup>2</sup> “This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.”

### **Background of Columbia International University**

CIU is a Christian evangelical university founded in 1923 and located in Columbia, South Carolina. The name of the institution has evolved from “Southern Bible Institute” to “Columbia Bible College and Columbia Biblical Seminary” to “Columbia International University” in 1994. Over the course of its 92-year history the University has added graduate programs, including a Christian evangelical seminary, and an accredited, private, elementary and secondary school which operates under the name Ben Lippen School.

A copy of the University’s Statement of Faith, which is also codified as the Doctrinal Standard within CIU’s Constitution, is included with this letter as Item 1. All University employees are required to affirm the Statement of Faith annually, and all prospective students are required to affirm it at the time they apply for admission.

CIU is committed to the promotion of the Christian evangelical faith both locally and internationally. The purpose statement of CIU is “to educate people from a biblical worldview to impact the nations with the message of Christ.”<sup>3</sup> Currently, alumni of the University are working in approximately 150 countries around the world with this goal in mind. As president of CIU since 2008, I affirm its dedication to its historic mission, which lies at the center of its core values, educational goals, employment criteria and development, student admissions and instruction, codes of conduct, and areas of instruction.

### **Christian Purpose and Leadership**

Dedication to and promotion of the Christian evangelical faith in its educational programs has always been at the heart of the University. Article II of CIU’s Constitution states: “The purpose of this Corporation is to train Christian men and women for Christian service and for doing general Bible teaching and evangelistic work.”<sup>4</sup> This is further delineated in Article I of the By-Laws, which states: “Columbia International University seeks to serve Christ and His Church by inspiring, developing, and equipping people for lifelong pursuit of God and servant leadership in His global cause.”<sup>5</sup>

CIU is governed by and controlled by its Board of Trustees, all of whom must demonstrate a personal belief in the Christian evangelical faith of the University, as dictated by its Constitution and By-Laws, which are included as Item 2. Specifically, Article III, Section 2 of the By-Laws states:

A. Members of the Board must be dedicated Christians who evidence deep spirituality and active involvement in the work of Christ. They must be in agreement with the purpose of the Corporation and demonstrate active interest in it...

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<sup>3</sup> See <http://www.ciu.edu/about-ciu/faith-purpose-values/purpose>.

<sup>4</sup> See Item 2, CIU Constitution Article II.

<sup>5</sup> See Item 2, CIU Bylaws Article 1.

B. A member must terminate such membership when no longer able to serve in complete loyalty to the purpose, goals, standards and policies of the Corporation as expressed in the Constitution, By-Laws, and Statement of Faith.

All CIU faculty and staff are also required to demonstrate a personal belief in the Christian evangelical faith of the University, as dictated in Article V, Section 1 of the By-Laws which states:

A. Each administrator and faculty member must demonstrate full commitment to the Lordship of Christ, the inerrancy and authority of Scripture, and the mandate to world evangelism, including an understanding and demonstration of the official statement on “The Victorious Christian Life...”

C. Administrators and faculty members must sign a statement annually, affirming full acceptance and agreement with the Statement of Faith, the ministry goals of the Corporation, and the objectives of the division in which they serve. Employees shall terminate when no longer completely loyal to the Statement of Faith, standards, policies and official objectives of the Corporation.

The CIU President is also specifically required to demonstrate a personal belief in the Christian evangelical faith of the University, as dictated in Article IV, Section 1 of the By-Laws, which states:

A. The President must demonstrate full understanding of the official statement on the “Victorious Christian Life” and experience the life described therein.

B. The President must demonstrate a clear understanding and commitment to the Statement of Faith and the purpose and distinctives of the Corporation. Among these are: the emphasis on training in the English Bible; the standards, provision, and responsibility for Spirit-filled living; world evangelization; and the educational philosophy of Columbia International University.

### **Foundation of Sincerely Held Religious Beliefs Regarding Interpersonal Relationships and Sexual Relations**

CIU believes the Bible to be the true and reliable word of God and attempts to follow biblical principles in its policies and practices relating to students and employees. CIU further believes that the Bible teaches that God created two sexes, male and female; that marriage is between one man and one woman; and that sexual relations outside of such a marriage, including extramarital or homosexual sexual activity, are sinful. A copy of CIU’s policy on Same-Sex Attraction and Homosexual Behavior is attached as Item 3. The Employee Handbook states “CIU seeks to uphold

the biblical teaching regarding the sanctity and permanence of marriage. CIU believes that biblical marriage is limited to a covenant relationship between a man and a woman (Rom. 1:21-27; 1 Cor. 6:9-20).<sup>6</sup> Marital fidelity and harmony are expected of all employees” (p. 28).

In addition, the CIU Student Handbook states as follows regarding human sexuality:

The Bible is clear in its teaching that God created man in His own image, and in this creation He created male and female (Gen. 1:27; Mt. 19:4). His design from the very beginning was that a man and a woman would be joined together and become one flesh (Gen. 2:24). This expression of marriage is affirmed throughout Scripture and leaves no room for same-sex unions nor sexual expressions of intimacy between those of the same sex. Therefore, we hold that marriage is between one man and one woman. The idea that those of the same sex can marry is contrary to Scripture and unacceptable. Based on this, CIU prohibits any form of homosexual behavior, as well as any public expression of support for such behavior or same-sex marriage.<sup>7</sup>

CIU also emphasizes the principles of the Christian evangelical faith in its community standards of behavior. Employees are required to abide by the “Standards of Conduct and Corrective Action” found in the Employee Handbook (pp. 23-33), which is attached as Item 4. Students are governed by the CIU Student Handbook’s section relating to “Rights and Responsibilities Expressed in Community Life” (pp. 16-21), which is included with the Handbook excerpts attached as Item 5. CIU has sought to incorporate its understanding of the moral and ethical standards of the Christian evangelical faith into these community standards.

Students are required to attend chapel regularly, and undergraduate students are required to complete 30 credit hours in biblical and theological studies in order to graduate. Among other things, the standards set forth in Items 4 and 5 require employees and students to refrain from drinking alcohol, using tobacco, gambling and using profanity. These standards also require faculty and students to agree to a standard of sexual behavior which prohibits use of pornography as well as pre-marital, extra-marital, and homosexual activity. CIU may impose sanctions for behavior contrary to these standards, including expulsion or termination of employment.

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 also forbids discrimination on the basis of sexual orientation.<sup>8</sup> It is conceivable that the Department of Education’s Office for Civil Rights, especially in a future administration, 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

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<sup>6</sup> See Item 4, Standards of Conduct and Corrective Action from the CIU Employee Handbook (p. 28).

<sup>7</sup> See Item 5, Excerpts from CIU Student Handbook (2015-16 Edition, pp. 19-20).

<sup>8</sup> See <http://www.eeoc.gov/decisions/0120133080.pdf>.

the theological commitment of CIU. CIU, therefore, seeks exemption on this basis out of an abundance of caution.

Therefore, CIU is requesting that the OCR recognize an exemption from regulations identified at the beginning of this letter so that CIU may apply different rules of behavior, sanctions or other treatment in matters involving interpersonal relationships and sexual relations.

### **Sincerely Held Religious Beliefs Regarding Gender Identity**

CIU also believes, based on biological and Biblical principles, that a person's sex is the biological sex determined at the time of his or her conception and birth and that a person cannot change his or her birth sex. (*See, e.g.*, Gen. 1:27; Gen. 2:18-25; Mt. 19:4.) A requirement that an individual be treated in keeping with his or her self-identified gender, rather than his or her birth sex, would be inconsistent with CIU's religious beliefs and its understanding of the Christian evangelical faith.

The CIU Student Handbook states as follows regarding gender identity:

God created male and female when He created mankind. There is growing concern and discussion regarding gender identity. Some individuals believe they are trapped in a body of the opposite gender (i.e., a person with a male body feels that he is a female). Some people have had sex-change operations to deal with this disconnect. We believe that God's design in creation is clear and that seeking to change one's gender identity through surgery or any other means is prohibited, as well as any form of transgender expression, such as cross-dressing. Those associated with CIU should not publically advocate for any type of transgender expression.<sup>9</sup>

The CIU Student Handbook further provides:

Marriage is to be between one man and one woman. This relationship is in the form of a commitment to a lifetime covenant between husband and wife. This covenant is sacred, requiring fidelity in every area of the relationship. Anything less than this falls short of the biblical standard. Those who are married should align themselves with this high calling, thus honoring one's spouse and not defrauding others. Those who are single should maintain purity and not defraud others.

In keeping with the design of God and the commands of Scripture concerning sexual purity, students are required to maintain irreproachable behavior in sexual matters and to avoid situations that would unduly tempt them to compromise moral standards (Ex. 20:14; Mt. 5:27-32; 1 Cor. 6:9-20; Eph. 5:3; 1 Thes. 4:3-8; 1 Tim.

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<sup>9</sup> See Item 5, Excerpts from CIU Student Handbook (2015-16 Edition, pp. 19-20).

2:9-10; 5:1-2; 2 Tim. 2:22; Heb. 13:4). Couples should avoid being alone together in any place of residence or private area. Any sexual misconduct, including, but not limited to, adultery, homosexuality (including any same-sex physical expression of romantic affection), any form of premarital sex, indecent exposure, sexual harassment, use of sexually explicit materials for sexual gratification, and sexual abuse of children, is forbidden.<sup>10</sup>

Consistent with CIU's understanding of the principles and practices of the Christian evangelical faith, students are separated on the basis of sex in regard to housing, living arrangements, restrooms, and locker rooms. CIU has male-only and female-only residence halls, with rules which regulate access to them by members of the opposite sex. It also operates apartments and unrelated members of the opposite sex may not share an apartment. To the extent that Title IX regulations would require CIU to allow males and females to reside in the same housing, to visit within the 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 which they have assigned to themselves in regard to the above categories, compliance would be against CIU's religious principles.

CIU's sincerely held religious beliefs require that a person who self-identifies as a gender different from his or her birth sex must be subject to certain restrictions. Each person affiliated with CIU may access single-sex spaces based on his or her birth sex, not a self-assigned gender identity. This includes but is not limited to the following:

- Residing in single-sex residence halls;
- Participation on single-sex athletic teams;
- Use of single-sex restrooms and locker rooms; and
- Dating or sexual activity.

These restrictions must apply whether or not the person has undergone surgery or hormonal treatment to assume the physical characteristics of the opposite sex, which can change only a person's outward characteristics, not their sex with which they were created by God.

Employment of an individual who identifies as being of the opposite sex from their birth sex, and who expresses that identification through behavior and/or dress is against CIU's religious beliefs on the same basis and for the same religious reasons as set forth above regarding students with gender identity issues. Employees are considered to be representatives of CIU, and are required to model appropriate Christian behavior. A male employee who announced himself to be female, or who adopted the appearance of a female, would not be modeling appropriate Christian behavior acceptable to CIU's religious beliefs, nor would a female employee who announced herself to be a male, or who adopted the appearance of a male.

As you know, ED OCR has not issued regulations or guidance explaining how an educational institution's response to a transgender individual might violate Title IX and its accompanying

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<sup>10</sup> See Item 5, Excerpts from CIU Student Handbook (2015-16 Edition, p. 21).

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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.<sup>11</sup>

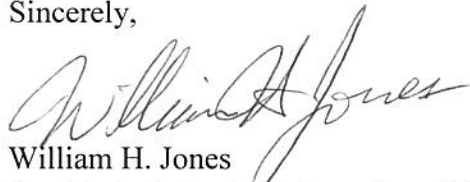
And as you also know, the resolution agreement<sup>12</sup> between the Arcadia Unified School District and ED OCR (and the Department of Justice) requires that school district to permit transgender students to use the restroom, locker room, and living accommodations of their choice, and to participate in athletic programs as a member of the sex to which they believe they belong.<sup>13</sup> 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 CIU.

### **Conclusion**

For the reasons set forth above, I 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 CIU is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to curtail CIU’s freedom to respond to transgender individuals in accordance with its theologically-grounded convictions. If you have any questions, or if additional information is required, please do not hesitate to contact me.

Sincerely,



William H. Jones  
President, Columbia International University

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<sup>11</sup> 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.”)

<sup>12</sup> 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.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

<sup>13</sup> *Id.*