

DEPARTMENT OF HEALTH AND HUMAN SERVICES

MAY 19, 1983

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Dr. William S. Barker  
President  
Covenant Theological Seminary  
12330 Conway Road  
St. Louis, Missouri 63141

Dear President Barker:

This is in response to your letter of February 23, 1983 to Mr. Harry M. Singleton, Assistant Secretary for Civil Rights, in which you requested the Department of Education to exempt Covenant Theological Seminary (CTS) from certain provisions of Title IX of the Education Amendments of 1972. The Title IX regulation prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.

Your letter advises that Covenant Theological Seminary is a religious institution and is the official seminary of the Presbyterian Church in America. Because of its religious beliefs, the Presbyterian Church in America does not recognize the ordination of women and therefore women are excluded from courses of study that are designed for the profession of the ordained ministry and are also excluded from faculty positions that require professional training and experience in the ordained ministry. As you know, Section 106.12 of the Title IX regulation specifically exempts an institution from complying with any provision of the regulation which is in conflict with the religious tenets of the church controlling the institution.

Based on the information which you have provided, it is our understanding that CTS follows the regulation which implements Title IX, except to the extent that particular requirements of the regulation conflict with the tenets of the Presbyterian Church in America. Specifically, the Constitution of the Presbyterian Church in America states in part:

The ordinary and perpetual classes of office in the Church are Elders and Deacons. Within the class of Elder are the two orders of Teaching Elders (ministers) and Ruling Elders . . . . In accord with Scripture, these offices are open to men only.

CTS has requested exemption from Sections 106.9; 106.21; 106.23(a); 106.31; 106.36; 106.37(a)&(b); 106.38(a); 106.51; 106.53; 106.55; 106.59; and 106.60 of the Title IX regulation.

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In those instances where evenhanded treatment of employees and students on the basis of sex is in conflict with the religious tenets of your controlling organization, as described below, CTS is granted a limited exemption from the following specific regulatory provisions of Title IX of the Education Amendments of 1972: §§ 106.9; 106.21; 106.23; 106.31; 106.36; 106.37(a)&(b); 106.55; 106.60. We do not believe a conflict with § 106.38(a); 106.51; 106.53; and 106.59 has been demonstrated and therefore, no exemption is needed with respect to these sections of the regulations. Each of these sections is discussed below.

Section 106.9 Dissemination of Policy: The intent of this requirement is to provide notice that the recipient institution "does not discriminate on the basis of sex in the education programs or activities which it operates, and that it is required by Title IX . . . not to discriminate in such a manner." (emphasis added) Absent a religious exemption the regulation requires evenhanded treatment of both sexes in the operation of its programs and activities. On the basis of CTS's claim to a religious exemption which has been accepted, in part, by this Office, to the extent that the requirements of the regulation conflict with the tenets of the Presbyterian Church in America as noted above, the regulation does not require CTS to disseminate a policy that is in conflict with the religious tenets of the church controlling the institution.

However, it is our understanding that CTS operates other education programs and provides employment in positions in which women may participate without conflicting with church tenets. The requirements of Title IX continue to apply to these programs and positions and we understand that CTS follows the regulation in those situations. Therefore, CTS should modify the notice required under this section of the regulation to note the areas of specific exemptions as stated above.

Section 106.21 Admission: The intent of this section of the regulation is to prohibit the exclusion of students, on the basis of sex, from education programs for which they are qualified. However, section 106.12 specifically states that the regulation does not apply to the extent that its application "would not be consistent with the religious tenets of such organization." Therefore, you are granted a limited exemption to this provision. Restricting to men admission to CTS courses of study designed to prepare students for ordination to the ministry will not be considered discriminatory under Title IX.

Section 106.23(a) Recruitment: The discussion of 106.21 above and the limited exemption granted apply also to this part relative to recruitment. The exclusion of women from your recruitment efforts in connection with those courses of study designed specifically for the preparation of students for the ordained ministry will not be considered discriminatory under Title IX.

Section 106.31 Educational Programs and Activities: The discussion of 106.21 and 106.23(a) above and the limited exemption granted apply also to this part relative to those courses of study designed to prepare students for ordination to the ministry and derivative activities specifically related to ordination to the ministry.

Section 106.36 Counseling and Use of Appraisal and Counseling Materials: The intent of this provision is to require recipients to provide even-handed treatment to male and female students in its administration of counseling and guidance services, including the use of tests and other materials used in its appraisal and counseling of students and applicants for admission. Absent a religious exemption providing different counseling for male and female students is discriminatory under the Title IX regulation. You are granted a limited exemption to this provision. The application of different counseling criteria to female students will not be considered discriminatory to the extent that such counseling and guidance is related to those courses of study designed to prepare students for the ministry.

Sections 106.37(a)&(b) Financial Assistance: The regulation requires that recipients, in awarding financial assistance to its students, not discriminate on the basis of sex in the provision of amounts or types of assistance, limit eligibility, apply different criteria or discriminate in any other manner. Based on the limited exemption granted under section 106.21 (admission), you are also granted a limited exemption to this provision. Because only men are permitted to participate in certain courses of study, the awarding of financial aid to men only in connection with such programs will not be considered discriminatory to the extent that such financial aid is related to courses of study designed to prepare students for the ministry.

Section 106.38(a) Employment Assistance to Students: The intent of the employment provision is to prohibit recipients from discriminating against students, on the basis of sex, in covered employment opportunities on campus and in its efforts to assist students in finding outside employment. Because the religious tenets of your controlling organization forbid women to become ministers, female students do not and cannot obtain appropriate credentials for certain employment opportunities. To this extent, there is no conflict with Title IX in your continuing to provide employment assistance to male students with respect to those positions for which only men hold relevant qualifications; therefore no exemption is necessary.

Sections 106.51 Employment and 106.53 Recruitment: The discussion and reasoning of section 106.38 above apply to these parts. The intent of these provisions of the regulation is to prohibit recipients of Federal

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financial assistance from discriminating on the basis of sex in all aspects of their employment activities that are part of federally assisted education programs or activities, including recruitment and selection activities. The regulation does not require an institution to provide employment to or recruit employees regardless of appropriate qualifications for the position in question. Therefore, CTS recruitment and selection practices are not in conflict with Title IX with respect to Sections 106.51 and 106.53 to the extent that a position requires qualifications that only men possess, i.e., ordination to the ministry, and no exemption is necessary.

Section 106.55 Job Classification and Structure: This provision is intended to prohibit recipients of Federal financial assistance from establishing or maintaining job classifications, or structuring jobs on the basis of sex, unless sex is a bona fide occupational qualification for the position in question. You have advised us that because the primary purpose of CTS is the training of men for the ordained ministry the faculty is composed primarily of men who themselves have received such training. Absent a religious exemption such classifications are prohibited by the regulation. You are granted a limited exemption to this provision. To the extent that employment is contingent on ordination to the ministry, such classification of employment positions will not be considered discriminatory under Title IX.

Section 106.59 Advertising: The discussion of sections 106.38(a), 106.51, and 106.53 apply to this part. This provision requires recipients to eliminate from its advertisements of employment opportunities any indication of sexual preference, unless sex is a bona fide occupational qualification for the particular job in question. Since the occupational qualification concerned is ordination to the ministry in the Presbyterian Church of America, and only men possess this qualification, there does not appear to be a need to state that the position is restricted by sex in job advertisements. Therefore, we do not believe there is a conflict with the requirements of Title IX under this part, and no exemption is necessary.

Section 106.60 Pre-employment Inquiries: This section of the regulation is intended to prohibit pre-employment inquiries as to the marital status of applicants for employment in a covered program or activity. It is further intended to prohibit recipients from making pre-employment inquiries as to the sex of an applicant for employment, unless inquiries are made of both men and women, and the results are not used in a discriminatory manner. Absent a religious exemption, inquiries used to solicit information for the purpose of excluding members of a particular

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sex from certain positions of employment, are prohibited. You are granted a limited exemption to this provision. Such pre-employment inquiries will not be considered discriminatory under Title IX to the extent they are made for positions requiring ordination to the ministry for which women are unqualified based on the religious tenets of the Presbyterian Church in America.

Should you have questions, or wish to discuss any aspect of this letter further, please do not hesitate to contact me.

Sincerely,  
Antonio J. Califa

Antonio J. Califa  
Director for Litigation, Enforcement  
and Policy Service  
Office for Civil Rights

cc: Mr. Jesse L. High, Regional Director, Region VII

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