



Office of the President

November 3, 2017

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

via certified mail, return receipt requested

Re: Exemption Request and Notice of Dallas Theological Seminary relating to
Title IX regulations pursuant to 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12.

Dear Ms. Jackson:

As the highest-ranking official of Dallas Theological Seminary ("DTS" or "Seminary"), I am submitting this application for recognition by the United States Department of Education's Office of Civil Rights ("OCR") that DTS 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 DTS since May of 2001. In addition to being President, I am an ordained minister of the Gospel and have served in various other positions in the DTS administration for more than 30 years, including Professor of Bible Exposition, Vice-President of Academic Affairs and Dean of the Faculty, and Provost. I received my M.Div. and Th.M. from Western Conservative Baptist Seminary of Portland, Oregon and my Ph.D. from DTS. As such, I am familiar with the Biblical and Christian 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 and are available at our website: www.dts.edu.

Previously on May 27, 1977, DTS through a letter from its President, John Walvoord, had submitted a letter requesting exemption from the Title IX relating to admission of females to the Seminary since the primary mission of the Seminary at that time was to train men for the ministry. In a follow up letter dated July 25, 1985, the Seminary notified the OCR of its rescission of that request letter due to the fact that the Seminary had become coeducational. Shortly thereafter (exact date is undetermined), the Acting Director of the OCR acknowledged in a letter to Dr. John Walvoord the receipt of the letter from him and that the OCR had closed the exemption request letter from DTS. A copy of the said letters are attached hereto as *Exhibit A*.

Thus, apparently the OCR previously recognized the Seminary as an institution controlled by Evangelical Christian interpretation of the Scriptures and granted the Seminary exemption from 34 CFR §106.21(c)(previously known as 45 C.F.R. 86.12(a)) to the extent those provisions pertain to issues of admission of females in an institution that taught men only.

DALLAS THEOLOGICAL SEMINARY

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Dallas Theological Seminary hereby requests confirmation of its religious exemption, specifically, from the following provisions of Title IX as the same are or may be in conflict with the sincerely held religious beliefs of DTS. They are:

- 34 CFR §106.21(a) and (b)(1)(iii): Regarding prohibitions on the basis of sex in admissions including treating students differently; and prohibitions relating marital or parental status.
- 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: Housing.
- 34 CFR §106.33: Comparable facilities regarding toilets (restrooms).
- 34 CFR §106.40: Regarding marital, family, or parental status of students, including as related to pregnancy.
- 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(a): Regarding marital, family, or parental status.
- Any other provisions of 34 CFR §106 which may be interpreted by the OCR to have application to DTS contrary to its religious beliefs as mentioned below.

When applied to Title IX's prohibition on "sex discrimination," the above provisions "would not be consistent with the religious tenets" of DTS and, therefore, "conflict with a specific tenet of the religious organization." 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(b). Specifically, the above provisions are or may be contrary to the religious teachings and beliefs of DTS in relation to the following: the Seminary's religious tenets and beliefs on issues of admission of women to certain degree programs related to teaching and training pastors to be elders or senior pastors in a church (although all degree programs are open to both sexes, with the only difference being that women are not trained for a church position of elder or senior pastor. This distinction is based on DTS' scriptural interpretation and religious beliefs about the role of women in senior leadership in the church); marriage between one man by birth and one woman by birth which does not

include same sex marriage; gender (including transgender and gender change and those with gender issues); sexuality (including sexual conduct or sexual acts outside of the covenant of marriage); and, the sanctity of human life from the time of conception to the time of death.

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/listiocr/frontpage/pro-students/rel-exempt-pr.html>.

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.*

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."¹ 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.

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 Church or Southern Baptist Convention. 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 Evangelical Christian theology and related doctrine in a non-denominational belief system that reaches back to the Seminary's inception more than 90 years ago. *See* Articles of Incorporation at page 1, wherein it states that "The corporation having been organized as a religious *and* educational one..."² Stated another way, the Seminary is an educational institution controlled by the non-denominational Evangelical Christian interpretation of the Scriptures. The Seminary is a school dedicated to preparing students for Christian ministry as by equipping them as Godly servant leaders 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.

Dallas Theological Seminary was founded in 1924, as a post-graduate seminary. DTS' Mission is: "to glorify God by equipping godly servant-leaders for the proclamation of His Word and the building up of the body of Christ worldwide." In other words, we want to help men and women fulfill the Great Commission and the Great Commandment, or more simply: *Teach Truth. Love Well.*" When founded, the Seminary's purpose was to prepare, equip, and send forth well-

¹ As demonstrated herein, 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.

² Dallas Theological Seminary is accredited by the Southern Association of Colleges and Schools Commission on Colleges to award master's and doctoral degrees. Contact the Commission on Colleges at 1866 Southern Lane, Decatur, Georgia 30033-4097 or call 404-679-4500 for questions about the accreditation of Dallas Theological Seminary. Dallas Theological Seminary is also accredited by the Commission on Accrediting of the Association of Theological Schools in the United States and Canada, 10 Summit Park Drive, Pittsburgh, PA 15275 (412-788-6505).

trained, equipped Godly servant leaders in order to spread the Gospel of Jesus Christ around the world. The Seminary continues to carry out this mission today, providing complete ministerial preparation as a non-denominational and/or interdenominational institution rooted in the Evangelical Christian tradition with more than 70 denominations participating in the Seminary all of whom are adhering to a common faith, (i.e., Evangelical Christianity).

As years passed, the Seminary grew. Former president Dr. John Walvoord visualized the Seminary as one of the leading world centers for theological education. Today, DTS enrolls more than 2,400 students in eight different locations and online. More than 15,000 Seminary alumni serve around the world and in all 50 states and the District of Columbia. Even though it has grown into a leading interdenominational/non-denominational seminary, DTS maintains core religious principles and tenets of its own consistent with the Biblical and Evangelical pillars on which it was founded.

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. All students, staff, faculty, administration, and Board of Incorporate Members adhere to the seminary's Community Covenant as found here: <https://www.dts.edu/about/communitycovenant/>. The theological, ethical and social commitments of the Seminary provide the foundation for its instruction and life. All students (and staff) must adhere to essential doctrinal commitments. The Seminary faculty, board of incorporate members are all required to sign annually and adhere to the DTS Doctrinal Statement. All statements are recorded here: <https://www.dts.edu/about/doctrinalstatement/>

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. The religious doctrine and principles on which DTS were founded are also at the heart of its standing policies, as they have been since the Seminary's early days.

The Seminary holds core religious tenets that are recorded in its Bylaws and Statement of Faith. This commitment is an ongoing one, as the Board of Trustees has required 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.

The Seminary contains the entirety of the doctrinal statement in its Bylaws. This includes the Seminary's commitment to the Bible. The Seminary's Doctrinal Statement 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."

As President of the Seminary, I have consistently affirmed these principles and challenged the Seminary community to hold fast to them amidst challenging times. The

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

The Seminary's religious tenets are inconsistent with several provisions of Title IX as interpreted by the 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. Specifically, in April 2011, OCR issued guidelines on Title IX that indicated OCR would interpret Title IX's protections against "sex discrimination" to include "sexual orientation" and "gender identity" conduct at variance with the Seminary's longstanding religious tenets. While DTS 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 Evangelical roots, and the Seminary's own theological orientation and belief statements.

The Bible teaches that all human life is sacred. God wonderfully and immutably creates each person as male or female. These two distinct sexes 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 and further intended to be between one man (who was born as a man biologically) and one woman (who also was born as a woman biologically). 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 intimacy outside this Biblical marriage constitutes sexual immorality and is sinful and offensive to God. Matthew 15:18-20; 1 Corinthians 6:9-10.

Chapter 6 of Paul's First Epistle to the Corinthians, provides, 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." There is a need to guard against the sinful nature of non-heterosexual behavior in any of its forms as well as sinful heterosexual behavior outside of marriage.

Consistent with these canonical teachings, the Seminary's Statement of Faith affirms its belief that the need to live pure and chaste lives after salvation. The Seminary affirms its commitment to several related principles related to sexuality and the implementation of Title IX, 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.
- 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 conduct contrary to this Ethos

These are not merely philosophical ideals. They are religious tenets that dictate the Seminary's deeply held religious beliefs which, in turn, permeate every facet of the Seminary's work. Indeed, 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 Statement of Faith, and other core theological orientation statements in which such tenets are found.

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 Doctrinal Statement and Community Covenant is 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" from its faculty. Accordingly, the baseline for all members of the faculty is commitment to theological and moral formation according the Bible as an Evangelical Christian.

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

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Handbook warns that discipline of faculty membership may result from verifiable violations of the Seminary's Statement of Faith.

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 religious beliefs.

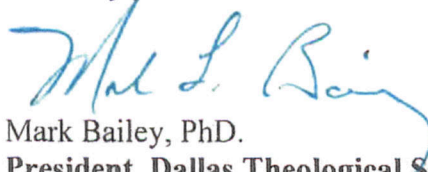
Students are likewise held to and impacted by the Seminary's religious tenets in virtually every respect, including the Seminary's assessment of whether a student is qualified to be admitted, remain enrolled, and ultimately, receive his or her degree.

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. *See Attachment A.*

In summary, 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, and restrooms. 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. Dallas Theological Seminary requests that OCR grant this application for recognition of the same.

Should you have any questions or need more information, please let me know. Thank you for your cooperation.

Sincerely yours.

A handwritten signature in blue ink that reads "Mark L. Bailey". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark Bailey, PhD.

President, Dallas Theological Seminary