



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

MAR 21 1989

Dr. Daniel H. Smith  
President  
Emmaus Bible College  
2570 Asbury Road  
Dubuque, Iowa 52001-3096

Dear President Smith:

The Office for Civil Rights (OCR) of the Department of Education has reviewed your request for religious exemption from certain sections of the regulation implementing Title IX of the Education Amendments of 1972. Emmaus Bible College (College) submitted letters on August 25, October 20, and December 16, 1988, and February 17, 1989, to support this request.

In your letters, you describe certain policies practiced at the College as being consistent with the tenets of the religious organization that controls the institution. These policies would violate certain sections of the regulation implementing Title IX (copy enclosed) absent a religious exemption. You have supplied information in your letters establishing that the College is controlled by a religious organization and that tenets followed by this organization conflict with specific sections of the Title IX regulation. Accordingly, I am granting the College an exemption to those sections of the Title IX regulation appropriate to your request letters. Emmaus Bible College is hereby exempted from the requirements of the following sections: 34 C.F.R. §§ 106.21(c), 106.39, 106.40, 106.51, 106.53, 106.57, and 106.60. This exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by the College. The basis for our decision to grant this exemption is discussed in further detail below.

The letters and materials you submitted indicate that the College is associated with the Plymouth Brethren and was incorporated as a Christian institution of higher education in 1947. The College is controlled by a Board of Trustees, which maintains the religious tradition, standards, and beliefs of the College. In addition, the trustees and officers of the Corporation, and the faculty, administration, staff, and students of the College are all required to espouse a personal belief in the religious tenets of the Christian faith. The charter of the Corporation, and the catalogs and other official publications of the College, contain explicit statements that the College is committed to the doctrines of the Christian religion. The incorporation of the College as a Christian institution and the requirement that staff and students espouse a personal belief in the Christian faith adequately establishes that the College is controlled by a religious organization as is required for exemption under 34 C.F.R. § 106.12 of the Title IX regulation.

Your request letters state that the College adheres to biblical tenets in matters of faith and practice and cite several passages from the Bible as tenets followed by the College. You indicate that, in accordance with biblical tenets, the College does not hire or retain employees, or admit or

retain students who have violated biblical tenets regarding abortion, sexual morality, language, and attire. In addition, the College reserves certain employment positions on the basis of sex when such positions are charged with maintaining the College's religious tenets. Based on these practices, Emmaus Bible College has requested, and is granted by this letter, exemption to 34 C.F.R. §§ 106.40 (marital or parental status of students), 106.51 (employment), 106.53 (recruitment of employees), 106.57 (marital or parental status of employees), and 106.60 (pre-employment inquiries). This exemption is limited to the extent that these sections conflict with the religious tenets followed by the College.

According to your letter of December 16, 1988, one factor the College uses to determine admissions is compliance with "Biblical morals concerning sex and marriage." The College, as a private institution of undergraduate higher education, is exempt under 34 C.F.R. § 106.15(d) from Subpart C of the Title IX regulation, which prohibits discrimination on the basis of sex in admissions and recruitment. The exemption at § 106.15(d), however, does not apply to the graduate programs offered by the College. Based on the College's admissions policy, in accordance with its religious tenets, Emmaus Bible College is granted exemption to 34 C.F.R. § 106.21(c), regarding marital or parental status of applicants for admission. This exemption is limited to the extent that this section conflicts with the religious tenets followed by the College.

In your letter of December 16, 1988, you state that the College provides medical insurance which complies with 34 C.F.R. § 106.39, but reserves the right to "adjudicate . . . matters of moral behavior," including abortion. To the extent that this section of the Title IX regulation requires the provision of benefits or services that may conflict with specific religious tenets of the College, Emmaus Bible College is granted exemption to 34 C.F.R. § 106.39 (student health and insurance benefits and services).

In your letter dated August 25, 1988, you state that the College assists students in locating employment outside the College and does not question employers' exercise of "gender-based preferences." The College claims exemption to 34 C.F.R. § 106.37, which concerns financial assistance to students. The practice you describe is more appropriately addressed by 34 C.F.R. § 106.38, regarding employment assistance to students, rather than 34 C.F.R. § 106.37. The College has not demonstrated a conflict, however, between this section and the College's religious tenets. If you believe an exemption is necessary, please contact the Kansas City Regional Office to clarify the conflict between application of this section and the College's religious tenets.

Your letter of October 20, 1988, indicates that the College claims an exemption concerning access to course offerings "only with respect to physical education courses which involve physical contact sports and activities." The relevant section of the regulation, 34 C.F.R. § 106.34, prohibits a recipient from offering courses separately on the basis of sex. Section 106.34(c) permits the separation of students by sex "within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact" (emphasis added). If you believe a religious exemption to § 106.34 is necessary, please contact the Kansas City Regional Office to clarify the conflict between application of this section and a specific religious tenet of the College.

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Your statements in your letter of August 25, 1988, regarding 34 C.F.R. §§ 106.32 and 106.33 (relating to housing and facilities) are correct. The College may offer separate housing and locker room facilities on the basis of sex where such housing and facilities are comparable. Based on your letters, a religious exemption appears unnecessary.

This letter should not be construed to grant exemption from any section of the Title IX regulation not specifically granted. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption herein granted. Also, in the unlikely event that a complaint alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets.

I hope this letter fully responds to your request. If you have any questions, please do not hesitate to contact the Kansas City Regional Office for Civil Rights. The address is:

Ms. Judith E. Banks  
Regional Civil Rights Director  
Office for Civil Rights, Region VII  
Department of Education  
P.O. Box 901381, 07-6010  
10220 N. Executive Hills Blvd., 8th Floor  
Kansas City, Missouri 64190-1381.

Sincerely,



LeGree S. Daniels  
Assistant Secretary  
for Civil Rights

Enclosure

cc: Judith E. Banks, Regional Civil Rights Director, Region VII