



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

OCT 14 1976

Clifton L. Ganus, Jr.
President
Harding College
Searcy, Arkansas 72143

Dear Dr. Ganus:

Secretary Mathews has asked that I respond to your letter of July 21 in which you requested that the Department exempt Harding College, the Harding Graduate School of Religion, and Harding Academy of Searcy (kindergarten through twelfth grade) from certain provisions of Title IX of the Education Amendments of 1972. Your letter states that Harding College is a Christian institution, supported and operated by members of the Church of Christ.

As you know, Section 86.12 of the 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. The section requires an institution seeking an exemption to identify the specific provisions of the law or regulation thought to be inconsistent with the tenets of the controlling religious organization. We conceive of our responsibilities under this section principally as assuring that the institutions: (1) have a full understanding of the provisions from which they believe themselves exempt, (2) are qualified to apply for the exemption, and (3) are as specific as possible in the articulation of the inconsistency. In instances such as yours, we must also know if all of the exemptions sought would apply to all three of the institutions or units mentioned in your letter, or whether particular exemption requests pertain only to one or two of the three units.

We will treat each of the areas for which you seek an exemption separately below. However, in light of your request, we would ask that you execute and return to us as quickly as possible, if you have not already done so, HEW Form 639, Assurance of Compliance with Title IX (copy enclosed), indicating therein that you are claiming a religious exemption under 45 CFR 86.12(b). Your letter of July 21, plus any further information you care to

submit in response to this letter, will be treated as the statement required by the Assurance identifying the specific provisions of the Title IX regulation that conflict with your religious tenets.

Harding College is requesting an exemption from Section 86.34 of the regulation on the ground that your religious tenets require certain classes to be open to men only because women are not allowed to preach. Accordingly, you are exempt from that portion of Section 86.34 which prohibits discrimination in access to courses with respect to classes connected with preparing men for the ministry.

You further state that your religious convictions oppose coeducational swimming. To the extent that mixed swimming constitutes a violation of a specific tenet of your religion, you are also exempt from the requirement that swimming classes in the physical education program be coeducational.

As set forth in your letter, your "religious convictions are opposed to compromising positions and situations that are immodest," and your letter states, therefore, that your gymnastics and weight lifting classes have separate sections for men and women. Because of your religious convictions in this regard, you are exempt from the requirement that gymnastics and weight lifting classes be coeducational. Since, however, your objection only applies to whether activities of this nature are conducted on a coeducational basis, we must emphasize that the selection of sports and physical education activities may not render training for girls or women more limited than that for boys or men.

X With regard to your request to be exempt from Section 86.32 of the regulation which prohibits the application of different rules and regulations for housing on the basis of sex, it should be pointed out that, under Title IX, separate housing on the basis of sex is permitted. Furthermore, Title IX does not prohibit an institution from establishing housing rules or policies as long as they are equitably applied and enforced for both men and women students. For example, nothing would prohibit an institution from establishing a policy or rule allowing the residents of each dormitory to determine their own

curfew or security rules, and an institution could, of course, establish a policy removing all curfews or setting a uniform curfew for all dormitory residents. Your letter indicated that, while you believe "that the Biblical teaching on the roles of men and women necessitates [y]our being more protective of [y]our women students," you are, nevertheless, "in the process of modifying [y]our regulations to avoid any unnecessary discrimination." Therefore, it appears that you are taking steps to comply with the regulation, and we would appreciate your furnishing us with a description of your current policies and the modifications you are considering, and telling us the date by which these modifications will be completed.

X The provision of the Title IX regulation concerning intramural and intercollegiate athletics requires that an educational institution receiving Federal financial assistance ensure that its overall athletic programs provide equal athletic opportunities for male and female students. You are to be commended for what appears from your letter to be a fine intramural athletic program for all your students. With respect to intercollegiate or interscholastic athletics, however, we are not clear as to the extent or nature of the exemption you seek. Your letter indicates that because of the dress of those who participate on teams from other institutions, you are seeking "exemption on religious grounds from all women's sports which ...[you] deem to bring to [y]our campus improper and suggestive attire." You also state that you have traditionally "forbidden bands, athletes and other groups from other institutions to come to the campus if they are accompanied by young ladies who are dressed in indecent uniforms, such as twirlers, majorettes, etc."

Title IX does not dictate the sports or levels of competition which are offered by a particular school. Rather, it requires that, whatever the offerings, they provide an equal opportunity for participation in the same types of athletic activity for male and female students. From the description in your letter, it appears that a religious exemption in the area of intercollegiate and interscholastic athletics is not necessary because Title IX does not prohibit you from setting standards of dress and conduct for your teams and making them conditions to be met by other teams seeking to compete with you. It should, of course, be remembered that any standards of dress must be even-handed as to men and women.

You have explained in your fourth exemption request that there is an intricate relationship between the tenets of the Church of Christ and the several social and service clubs sponsored at your institution. Accordingly, the membership practices of the Timothy Club and JOY are exempt from Title IX coverage.

You also indicate that your rules of student conduct currently preclude all smoking by women and that you are phasing out smoking for men. Your letter does not indicate when this phase out will be completed, but you should keep in mind that the regulation requires it to be completed as quickly as possible. Since Title IX permits institutions to set their own rules of conduct, so long as they are the same for both male and female students, your actions in this area appear to comply with Title IX and no exemption would seem necessary.

Your fifth point addressed student financial aid. Your letter states that the bulk of the scholarship funds available to your students is designated to be given to "ministerial students and ...those who are majoring in Bible," the students in both of which categories must, according to your religious tenets, be men. You seek an exemption from the regulatory requirement (Section 86.37) that financial aid be awarded in a manner which is, as a whole, nondiscriminatory. Because of the connection between the purpose of the designated financial aid described in your letter and the training of ministers, your financial aid program is exempt as to those funds. Any student aid not designated for ministerial or Bible students, however, must be administered in compliance with Section 86.37 of the regulation.

Your last point asserts that your religious tenets strongly oppose extra-marital sexual relationships and homosexuality. Section 86.40 refers, for the most part, to situations in which a student would be discriminated against on the basis of sex in admissions or treatment because the student either is or is not married, or because the student is or is not a parent. Title IX does not preclude institutions from imposing standards of morality so long as those standards apply equally to members of both sexes. Rules, regulations, and practices which do not differ on the basis of sex and are applied

in a manner which results in equitable treatment of both sexes are in compliance with Title IX. We should, perhaps, note in this connection that Title IX does not address the question of homosexuality--it prohibits discrimination based on sex, not actions based upon sexual preference.

We hope that these comments will be of assistance to you and that you will promptly submit both an executed Form 639, if not previously submitted, and the additional information requested in this letter so that we can dispose of your outstanding requests for exemption. Should you have questions, or wish to discuss this matter further, please do not hesitate to contact me or Mr. Albert T. Hamlin on my staff. Mr. Hamlin's number is (202)245-6546.

Sincerely,

Martin H. Gerry
Director
Office for Civil Rights

Enclosure