



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

Sep 24, 1985

24 370

Dr. Gerson D. Cohen
Chancellor
The Jewish Theological Seminary
of America
3080 Broadway
New York, New York 10027

Dear Chancellor Cohen:

The Office for Civil Rights of the Department of Education (OCR/ED) recently requested additional information regarding The Jewish Theological Seminary of America's (Seminary) request for a religious exemption from Title IX of the Education Amendments of 1972.

We have reviewed your original exemption request and the information provided by Ann H. Appelbaum, Counsel and Assistant Secretary, in a letter dated September 12, 1985, in which certain policies practiced at the Seminary are described as 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. The Seminary has provided information that establishes that the institution is controlled by a religious organization and that practices based on tenets followed by this organization conflict with specific sections of the Title IX regulation. Therefore, I am granting the Seminary an exemption to those sections of the Title IX regulation appropriate to the request. The exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by the institution. The Jewish Theological Seminary of America is hereby exempted from the requirements of the following sections of the Title IX regulation: 34 C.F.R. §§ 106.21, 106.22, 106.23, 106.36, 106.37, 106.38, 106.51 and 106.53. The basis for our decision to grant this exemption is discussed in further detail below.

You indicated in your original letter that the Seminary follows religious tenets of Conservative Judaism. The Seminary offers programs leading to the ordination of rabbis and cantors. This relationship between Conservative Judaism and the Seminary adequately establishes that The Jewish Theological Seminary of America is controlled by a religious organization as is required for consideration for exemption under § 106.12 of the Title IX regulation.

In Ms. Appelbaum's September 12 letter, she stated that it is a specific religious tenet of Conservative Judaism that "cantors be men[.]" and requested an "exemption from admission requirements to the Cantor's Institute, Sections 106.21, 106.22, 106.23, 106.31, 106.34, and 106.36[.]" Based on these practices, the Seminary is granted by this letter exemption to: 34 C.F.R. § 106.21 (admission), § 106.22 (preference in admission) and § 106.23 (recruitment of students) regarding admission to the Cantor's Institute. The exemption granted herein to §§ 106.21, 106.22 and 106.23 precludes the necessity for an exemption to § 106.31 (education programs and activities) and § 106.34 (access to course offerings).

The Seminary also requests exemption from § 106.36 (counseling and use of appraisal and counseling materials) because only men are admitted to the Cantor's Institute; § 106.37, "to the extent that the Seminary solicits financial aid for its Cantorial school and the monies being solicited are used for assistance to students in the Cantor's Institute;" and § 106.38, "to the extent that Cantorial placements are open only to men[.]"

Where an institution limits admission to students of one sex, exemption to Subpart C (§§ 106.21, 106.22, 106.23) usually precludes the necessity for an exemption to sections of Subpart D. However, because only a portion of its program is offered on the basis of sex, to the extent that the Seminary may administer counseling, financial assistance and employment assistance programs at the Seminary level, rather than within the Cantor's Institute, The Jewish Theological Seminary of America is granted by this letter exemption to: § 106.36 (counseling), § 106.37 (financial assistance), and § 106.38 (employment assistance to students) for students in the Cantor's Institute.

The Seminary also requested exemption to "Section 106.51, to the extent that certain positions in the Cantor's Institute must be taught by an ordained cantor." Based on this practice, the Seminary is granted by this letter, exemption to: § 106.51 (employment) and § 106.53 (recruitment of employees) for those specific positions in the Cantor's Institute that must be taught by cantors.

This letter should not be construed to grant exemption from any section of the Title IX regulation not specifically mentioned. 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 complainant 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. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

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I hope this letter responds fully to your request. I regret the inordinate delay in responding to your original request. If you have any questions, please do not hesitate to contact the New York Regional Office for Civil Rights. The address is:

Stanley Seidenfeld
Acting Regional Civil Rights Director
Office for Civil Rights, Region II
Department of Education
26 Federal Plaza, Room 33-130
New York, New York 10278

Sincerely,


Harry M. Singleton
Assistant Secretary
for Civil Rights

Enclosure

cc: Stanley Seidenfeld, Acting Regional Civil Rights Director, Region II