Lutheran Brethren Seminary

1036 Alcott Ave W
Fergus Falls, MN 56537

Embracing the Word—Reaching the World

February 8, 2018

Candice Jackson, Acting Assistant Secretary
U.S. Department of Education, Office of Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue SW
Washington, DC 20202-1100

Re: Acknowledgement of Title IX Religious Exemption

Dear Ms Jackson:

I hereby request, under 20 USC §1681(a)(3) and 34 CFR §106.12, that the Department of Education's Office for Civil Rights (the "Department") acknowledge that the Lutheran Brethren Seminary, of the Church of the Lutheran Brethren of America (the "Seminary") is exempt from Title IX of the Education Amendments of 1972 and their accompanying regulations, to the extent that they are or may be interpreted to curtail the Seminary's freedom to act in accordance with its religious convictions. I am President of the Seminary. As its highest ranking official, I am qualified to seek the Department's acknowledgement. (34 CFR §106.12(b).

The Seminary is an institution of theological higher education and is a department of the Church of the Lutheran Brethren of America, a Minnesota not-for-profit corporation.[1] It is located in Fergus Falls, MN. The 1903 Synodical Convention authorized the founding of The Lutheran Bible School, predecessor to the Seminary.[2] The Seminary's primary mission is to train and equip pastors, missionaries, and Christian lay workers for ministry in the Church of the Lutheran Brethren and other church bodies.[3]

The Board of Lutheran Brethren Seminary is composed of nine members, three of whom are members of the Theological Council not on the Seminary staff and one of whom is a representative of the Church of the Lutheran Brethren of Canada. Members subsequent to the initial Board are selected by the Board of Lutheran Brethren Seminary

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[1] (CLB Articles of Incorporation attached)
[2] History of Lutheran Brethren Seminary, *available at:* http://www.lbs.edu/history-of-lbs
[3] Mission Statement, *available at:* http://www.lbs.edu/mission/

from a slate of nominees provided by the Council of Directors for four-year terms and can serve a maximum of three consecutive terms. The Board is responsible to oversee the administration of the Seminary ministry.[4]

Jesus said, "All authority in heaven and on earth has been given to me. Therefore, go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to obey everything I have commanded you. And surely I am with you always, to the very end of the age." (Matthew 28:18-20). It is the purpose of the Seminary to serve the church and world by living in and preparing others to live in the Gospel of Jesus Christ and His call to participate in His mission of grace to bless all nations. The Seminary prepares people to enter the diverse cultural contexts of the world through particular ministries as Christ's servants shaped by His words and wounds, speaking His gospel in word and deed. The Seminary approaches its ministry in dependence on the Triune God who speaks truth through His inspired scriptures.[5]

The Seminary is committed to the concept that we are spiritual, mental, emotional, social, and physical beings. Therefore, the educational process must include the development of each of these dimensions. The educational process is not limited to the classroom, but includes the entire range of interactions within the student's environment. The Bible holds a primary and central place in the curriculum. It is recognized that the Bible is God's special revelation and that it is the source and norm for the institution's Statement of Faith. The Seminary also reserves the right to pursue its search for truth through diligent study of humanity and other elements of God's creation that constitute general revelation. The pursuit of truth, in the context suggested above, should be approached with vigor and reverence. The basis of our teaching and learning is that the source of our truth about God and His relationship with humanity is located in the Scriptures.[6]

The Seminary understands the Bible to be the infallible, inerrant Word of God. The Seminary affirms that its Doctrinal Statement of Faith provides the most adequate and comprehensive expression of the system of doctrine taught in the Bible.[7] The Seminary submits itself to the Bible and to these historic expressions of its doctrine and seeks to express positions that are in accord with those standards.

Therefore, consistent with these standards, the Seminary affirms the Church of the Lutheran Brethren Statement on Human Sexuality.[8] That Statement provides in pertinent part as follows:

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[4] CLB Constitution, Article III E (3)), *available at* http://www.clba.org/about/
[5] The Mission, Institutional Calling, LBS Catalog 2017-18, p. 13, *available at* http://www.lbs.edu
[6] Academic Philosophy, LBS Catalog 2017-18, p. 16, *available at* http://www.lbs.edu
[7] Statement of Faith, *available at* http://www.lbs.edu/what-we-believe/
[8] Statement on Sexuality, *available at* http://www.clba.org/wp-content/uploads/2015/08/Statement_on_Sexuality.pdf

1. We affirm that standards of sexual morality must be consistent with Biblical principles. We deny that unscriptural standards may be accepted by the church simply because they have been accepted by society.
2. We affirm that God made human beings male and female. There are, therefore, differences between the two sexes that are God given and must be valued and protected. We deny that all distinctions between the sexes must be erased.
3. We affirm that God established marriage between man and woman. The Bible sanctions only heterosexual marriage. We deny that God intended sexual intimacy between members of the same sex.
4. We affirm that Biblical morality restricts legitimate sexual activity to heterosexual marriage. Any extramarital sexual practice, whether homosexual or heterosexual, is outside of the limits of Biblical morality, and is sinful. We deny that sexual activity outside of marriage is morally neutral.
5. We affirm that environment and experience influence a person's sexual orientation. We also affirm that physical makeup, such as hormone imbalance, may influence sexual attraction so that a person may have an attraction to those of the same sex. We deny that such attraction makes homosexual activity a defensible practice that exempts such a person from responsibility before God.
6. We affirm that one of the basic reasons for God's creation of human beings as male and female is to propagate the human race and to provide a caring home for the nurture of children. We deny the assertions that the traditional Biblical concept of the home is passing, outmoded, and outdated.
7. We affirm that true love seeks the well-being of the person loved. When sex is the expression of married love, it seeks the mutual fulfillment and joy of both partners. We deny that the chief purpose of sexual activity is self-gratification.
8. We affirm that the following Scriptures condemn homosexuality: Genesis 19:1-15; Leviticus 18:22-25; Leviticus 20:13; Romans 1:24-28; 1 Corinthians 6:9-10; 1 Timothy 1:9-10. We deny the validity of interpretations which seek to circumvent the plain meaning of these texts. For example: that the sin of Sodom was inhospitality rather than sodomy; that the sin spoken of in Romans 1:18-32 was homosexual activity of people who were naturally heterosexual rather than naturally homosexual; that the nature being referred to in Romans 1:18-32 is the nature of each individual, rather than nature the way God created it. We also deny the validity of interpretations which suggest that Biblical examples of love and friendship such as those between Jesus and the disciples, David and Jonathan, Ruth and Naomi, were homosexual.
9. We affirm that though homosexual activity is sinful, God's grace extends to forgive the sinner and cover all sin when it is acknowledged as sin, and when such a person repents and by faith receives God's forgiveness. We deny that homosexual activity is an "unforgivable sin."
10. We affirm that God's grace and forgiveness can bring about true deliverance from homosexual orientation and behavior. Whether or not a person retains a homosexual orientation, God's grace is sufficient to enable people to experience daily victory over homosexual behavior. We deny that homosexual orientation must be lived out apart from any hope.

11. We affirm that the church shall minister with concern and compassion to those who have been infected with the disease AIDS. Though many of those suffering from AIDS have contracted the disease through immoral and illegal activity (homosexual practice, heterosexual promiscuity, and illicit drug usage), they are loved by God and need the gospel of Jesus Christ. We deny that the church can be Biblically responsible if passive concerning their plight.
12. We affirm that ordination and pulpit fellowship in the Church of the Lutheran Brethren shall be limited to those who accept this statement on sexuality, and whose lifestyle confirms this statement. We deny that homosexual pastors have the best orientation to minister to other homosexuals.

Approved by the CLB
Annual Convention - June, 1990
REV

The Seminary will make institutional decisions regarding student admission and retention, housing, employment hiring and retention and other related matters in light of this Statement.

Your Department has issued a "Dear Colleague" letter jointly with the Department of Justice (DOJ), which states that Title IX's prohibition on sex discrimination "encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status". That is, a school "must not treat a transgender student differently from the way it treats other students of the same gender identity."

The Department's letter indicated that a school must use pronouns and names that reflect a transgender student's gender identity, and permit the student the full access, based upon gender identity, to sex-segregated activities and facilities, including locker rooms, restrooms, showers, housing (including overnight accommodations), and athletic teams". Your Department previously issued guidance on "gender identity" as part of "sex discrimination" under the statute.[9]

Moreover, the resolution agreement between Arcadia Unified School District (and the DOJ) requires that school district to permit transgender students to use the restroom, locker room and living accommodations of their choice and to participate in athletic programs as a member of the sex to which they believe they belong.[10] It is thus reasonable to suppose that OCR believes that Title IX requires such responses.

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[9] U.S. Department of Education, Questions and Answers on Title IX and Sexual Violence, *available at* http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf at 5 (:Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation.")

[10] Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, *available at* http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf

It is also reasonable to presume that your office interprets Title IX to impose gender identity nondiscrimination obligations upon covered institutions in the employment context. To the extent these suppositions are correct, it appears as though compliance with title IX, as interpreted by the Department to reach transgender discrimination, would be inconsistent with the religious tenets of the Seminary.

Finally, on October 6, 2017, The Attorney General issued memoranda to the heads of all executive departments and agencies summarizing principles of religious liberty and providing interpretive guidance of federal-law protections for religious liberty.[11] Numerous of these enumerated principles apply directly to your response to this request.

For these reasons, I request, under 20 USC §1681(a)(3) and 34 CFR §106.12 that the Department acknowledge that the Seminary is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to curtail the Seminary's freedom to respond to transgender individuals in accordance with its theologically-grounded convictions.

Additionally, as stated above in the Statement on Human Sexuality, the Seminary, consistent with its understanding of the Holy Scriptures and doctrinal standards, affirms the following regarding sexual conduct: we uphold the sanctity of marriage as God-ordained, a special union between a biological man and a biological woman, within which sexual relations are honored and affirmed by God. We have the conviction that all sexual unions outside of marriage as thus defined are sinful. In dealing with sexual sins outside of marriage, we must be attentive to Scripture and therefore consistent in applying our policies to both heterosexual and homosexual situations.

The Seminary, in service to the Church, welcomes those of professed Christian faith who experience same-sex attraction. However, it also affirms that sexual activities with members of the same sex are sinful and are not to be condoned as acceptable expressions of one's sexuality. As you are aware, the EEOC as begun declaring that the ban on sex discrimination in Title VII of the Civil Rights Act of 1964 also forbids discrimination based on sexual orientation.[12]

It is conceivable that the Department could interpret Title IX of the Education Amendments of 1972 in the same way. To the extent that these suppositions are correct, it appears as though compliance with Title IX, if interpreted by the Department to reach sexual orientation discrimination, would also be inconsistent with the theological commitment of the Seminary. The Seminary, therefore, also seeks exemption on this basis out of an abundance of caution.

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[11] https://www.justice.gov/opa/press-release/file/1001886/download ; https://www.justice.gov/opa/press-release/file/1001891/download

[12] *See* http://www.eeoc.gov/decisions/012130380.pdf

Lastly, the Seminary, as a department of the Church of the Lutheran Brethren, affirms and adheres to the following Statement on the Sanctity of Human Life:

> We believe that all human life is sacred and created by God in His image. Human life is of inestimable worth in all its dimensions, including pre-born babies, the aged, the physically or mentally challenged, and every other stage or condition from conception through natural death. We are therefore called to defend, protect, and value all human life.[13]

The Seminary accordingly requests that your office acknowledge that it is exempt from Title IX and the following implementing regulations (to the extent they are interpreted to reach gender identity or sexual orientation discrimination and to the extent they restrict the Seminary's freedom to apply and enforce the Statement on the Sanctity of Human Life):

34 CFR §106.21 (admission)
34 CFR §106.22 (preference in admission)
34 CFR §106.23 (recruitment)
34 CFR §106.31 (education programs or activities)
34 CFR §106.32 (housing)
34 CFR §106.33 (comparable facilities)
34 CFR §106.34 (access to classes and schools)
34 CFR §106.36 (counseling)
34 CFR §106.37 (financial assistance)
34 CFR §106.38 (employment assistance to students)
34 CFR §106.39 (health and insurance benefits and services)
34 CFR §106.40 (marital or parental status)
34 CFR §106.41 (athletics)
34 CFR §106.43 (standards for measuring skill or progress in physical education classes)
34 CFR §106.51-61 (relating to employment)

Thank you in advance for your assistance in this matter. I look forward to hearing from you soon. If you require anything further, please do not hesitate to contact me.

Yours sincerely,

David Veum, DMin
President, Lutheran Brethren Seminary

[13] CLBA Position Paper on Abortion, http://www.clba.org/wp-content/uploads/2015/07/Abortion.pdf