

OFFICE OF THE PRESIDENT

March 10, 2016

Ms. Catherine Lhamon
Assistant Secretary for Civil Rights
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: Missouri Baptist University Request for Religious Exemption

Dear Assistant Secretary Lhamon:

This letter is to supplement and restate the request of Missouri Baptist University for an exemption from compliance with certain Title IX regulations as authorized by 20 U.S.C. §1681(a)(3) and 34 C.F.R. Section 106.12.¹ The particular regulations for which exemption is requested are, as follows:

- 34 CFR §106.31(a)(b) – education programs or activities, regarding prohibitions on the basis of sex, including different rules of behavior, sanctions, or other treatment
- 34 CFR §106.21(a)(b) – admissions; regarding prohibitions on the basis of sex
- 34 CFR §106.21(c) – admissions; regarding prohibitions based on marital and parental status
- 34 CFR §106.57 – pregnancy; regarding marital or parental status of employees
- 34 CFR §106.40 – pregnancy; regarding marital or parental status of students
- 34 CFR §§106.51(a) and 106.51(b)(6)(7) – regarding discrimination in employment in leaves for pregnancy, childbirth, termination of pregnancy, and benefits based on sex, including in regard to gender identity issues
- 34 CFR §106.32 – regarding housing
- 34 CFR §106.33 – regarding restrooms and locker rooms
- 34 CFR §106.41 – regarding athletics

I am the President of Missouri Baptist University, its highest ranking officer. I am also a licensed Baptist minister, and currently am a member and serve as a deacon of Kirkwood Baptist Church in Kirkwood, Missouri. As President of Missouri Baptist University and a licensed Baptist minister, I am uniquely qualified to speak to the tenets of the Baptist denomination and Missouri Baptist churches pertaining to the matters addressed in this letter and the religious tenets held by the University which are reflected in its policies and practices.

¹ Also see letter of Seth Galanter, Principal Deputy Assistant Secretary, dated January 4, 2016.

Missouri Baptist University is a private, evangelical Christian University located in St. Louis, Missouri. The University has as its mission the offering of programs of study leading to professional certificates, undergraduate degrees, and graduate degrees in an environment where academic excellence is emphasized and a Biblically based Christian perspective is maintained. The University seeks to prepare students who are motivated by ideals of service for effective performance in careers, including Christian ministry, which are appropriate to its Christian commitment. As stated in the University's Mission and Values,² we at Missouri Baptist University are serious and intentional about our Christian faith.

Section 901(a)(3) of Title IX, 20 U.S.C. §1681(a)(3), and the Department of Education's implementing regulation at 34 C.F.R. §106.12 provide that Title IX and its regulations do not apply to an educational institution controlled by a religious organization to the extent that application of Title IX would not be consistent with the controlling organization's religious tenets.³ An education institutional will normally be considered to be controlled by a religious organization under Title IX if one or more of the following conditions prevail:

(1) It is a school or department of divinity defined as an institution or a department or a 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

(2) 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

(3) Its charter and catalog, or other official publication, contains an 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 organization or an organ thereof.

Missouri Baptist University submits that it qualifies for a religious exemption on each of the above bases. First, Missouri Baptist University, through its Christian Ministry faculty, offers major and minor programs of study in the disciplines of Christian Ministry, Ministry and Leadership, and Religion. Missouri Baptist University also offers scholarships to students studying for the Christian ministry. These programs of study, which include, by way of example, such required courses as Biblical Hermeneutics, Worship History and Leadership, Discipleship and Evangelism, Foundations of Christian Theology, Man and Sin, Redemption and Reconciliation, Introduction to Church Planting, Church Administration, Basics of Biblical Counseling, Expository Biblical Ministry and Christian Ministry Internship, are designed to

² A copy of the University's Mission and Values, also available online, is enclosed with this letter.

³ The term "organization" is not itself defined by regulation. Google defines "organization" as an "organized body of people with a particular purpose." The definition includes more formal corporate entities, but it also includes unincorporated associations, such as churches and church members who call themselves "Baptists," who hold to certain commonly shared views of the Bible and the Christian faith.

prepare students for work in Christian ministry as pastors, chaplains, missionaries and evangelists, as worship leaders in churches, for work in Christian not for profit organizations, teaching in Christian schools and for additional theological training in graduate schools and seminaries.

Although Missouri Baptist University also offers degrees in secular major and minors like business, psychology, English, political science and many others, its programs in Christian Ministry, Ministry and Leadership and Religion offer courses of study from an evangelical Christian perspective that only a private Christian institution can provide. A copy of the University's Course Catalog can be accessed online at the following link: <https://www.mobap.edu/about-mbu/publications/undergraduate-catalog/>. Regardless of major, full-time students are required to attend chapel, and must take and pass Old Testament History and New Testament History in order to graduate from the University. Given these academic offerings and requirements, uniquely tailored to the education of students to prepare them to become ministers of the Christian religion or other Christian vocations, including the teaching of theology, Missouri Baptist University fulfills the first condition of the exemption.

Second, Missouri Baptist University meets the requirement for religious exemption in that it requires its faculty to espouse a personal belief in Christianity, the religion of the organization by which it claims to be controlled, that is, the association of persons and churches in Missouri called Baptists. In this regard, the Bylaws⁴ of the University provide, in Article VI, that:

“All faculty members shall be actively committed to individual Christian faith and conduct, openly accepting Jesus Christ as Lord and Savior and the New Testament as their rule of faith and conduct.”

This belief requirement is also implemented in the University's hiring policies and practices, as evidenced by Policy 2.001, “Spiritual Qualities Sought in Full-Time Faculty and Professional Staff Members.” By its terms the policy is intended to “guide those who conduct searches for new faculty and staff and to inform prospective and current employees about University expectations in this vital area.” The policy provides that:

“Any person recommended as a continuing full-time faculty and/or professional staff member at Missouri Baptist University should be one who:

1. Is actively committed to individual Christian faith and conduct, openly accepting Jesus as Lord and Savior and the New Testament as their rule of faith and conduct;
2. Has demonstrated faithfulness in worship and in service through a church;
3. Exemplifies a Christian lifestyle;
4. Is aware of and can teach or perform professionally in harmony with the doctrines and principles commonly held by Baptists including but not limited to the necessity of uncoerced faith grounded in the freedom of conscience, the right to

⁴ A copy of the University's Bylaws is enclosed with this letter.

- worship God, practice faith in liberty, and receive equal treatment in all phases of church and leadership; and
5. Understands and believes in the concept of Christian education and will undergird the primary purpose of Missouri Baptist University by teaching and working from a Biblically based Christian perspective.”

Each faculty member is required to provide a written “statement of faith” at the time he or she is hired by the University. That is, each faculty member seeking a position with the University is required to tell us how they came to a saving faith in Christ and what they believe about the essential doctrines of the Christian faith. This is requested in order that the University can be assured that each faculty member is a committed Christian and is able to articulate each of the above principles, as well as being able to articulate and defend the Christian faith to students when called upon to do so.

Clearly, the University’s Bylaws and foregoing policy require that its faculty and professional staff be actively committed to and espouse a personal belief in the Christian faith that Missouri Baptists adhere to. As President of the University, I can attest that the hiring of faculty and professional staff is always done with these requirements in mind, and is consistently followed. On this basis Missouri Baptist University also meets the second condition for the religious exemption.

Third, the University is governed by and controlled by its Board of Trustees, seventy-five percent (75%) of whom must be members of Baptist Churches located in Missouri, as dictated by the University’s Articles of Incorporation.⁵ The Trustees govern the University under the directives of Article II, Paragraph 5 of the Articles, which provide:

“The purpose of this corporation is to establish and maintain in perpetuity a college to educate students in the liberal arts tradition from a Christian perspective, emphasizing excellence in academic performance and dedicated to the highest standards of honesty, integrity, diligence, and service in the various fields of human endeavor and Christian commitment.”

The requirement that at least 75% of the Board of Trustees be members of Baptist churches in Missouri results in members of churches of the Baptist denomination having a super-majority in the direction, operation and control of the University.⁶

In addition, as a consequence of the University’s Baptist heritage, mission and values, Missouri Baptist University receives a significant amount of financial support from the Baptist community, including such Baptist organizations as the Baptist General Convention of Missouri and Cooperative Baptist Fellowship, from numerous Missouri Baptist churches which participate in scholarships with the University by matching funds provided to students who are members of those churches, and through the payment of tuition paid by students and families who attend

⁵ A copy of the University’s Articles of Incorporation is included with this letter.

⁶ The Articles of Incorporation were amended and restated on August 23, 2001, among other reasons, to eliminate appointment of the board of trustees by the Missouri Baptist Convention as a result of concerns that assets of the University might be subjected to claims of third parties on theories of ascending and/or descending liability attributable to its relationship to the Missouri Baptist Convention.

Baptist churches located in Missouri and other Christian donors who support Missouri Baptist University, where a Biblically based Christian perspective is stressed in all areas of campus life. Taken together with the University's Charter and Bylaws, the University's Mission and Values, and other explicit statements and pronouncements that the University is fully committed to the Christian faith and to a Biblically-based Christian perspective in all things, this fulfills the requirement that the University be controlled by a "religious organization or an organ thereof or is committed to the doctrines of a particular religion." Thus, in the University's view, Missouri Baptist University meets all three of the conditions required for an educational institution to be considered controlled by a "religious organization" under the Department's Title IX regulations.

In the Baptist tradition and polity, the evangelical Christian doctrines and tenets which Baptist churches and institutions follow is not established or enunciated by a hierarchical or ecclesiastical body. However, Baptists commonly agree upon certain religious tenets that reflect an evangelical Christian understanding and view of the Scriptures that is shared in common with the University. Among these tenets is that the Bible is the true and reliable word of God, and that we as Christians ought to live our daily lives in a way that is representative of and consistent with Biblical truths. Consequently, the University has sought to apply Biblical truths in its policies and practices, and to its faculty, students and employees.

These tenets are consistently applied throughout campus life. Students and employees are required to conduct themselves in accordance with Christian tenets both on and off campus. As stated in the Student Handbook,⁷ "personal misconduct either on or off the campus by anyone connected with the University detracts from the Christian witness the University strives to present to the world and hinders full accomplishment of the University program." These principles are also modeled in the University's standards for student conduct. Most forms of dancing are prohibited. Students are required to dress modestly, consistent with the standards that "set Missouri Baptist University apart as a distinctively Christian institution." In addition, students are prohibited from drinking, smoking, and using tobacco and illegal drugs.

The University also believes, and so states in the Student Handbook, that sexual intercourse and other forms of intensely personal sexual behavior are understood to be derived from a setting solely within the context of marriage—that is, between males and females—and as an expression of their love under the Lordship of Jesus Christ. Thus, cohabitation, engaging in pre-marital or extra-marital sexual relations, and homosexual activity is viewed as inconsistent with the Bible and University tenets. The Student Handbook and, for employees, the Personnel Handbook each contain provisions regarding expected Christian behavioral standards. The University may impose sanctions for behavior which is not in keeping with these standards, including dismissal from the University or termination of employment.

Among the specific tenets of the University and Missouri Baptist churches that conflict with the Department's recent interpretations of Title IX are that God created two sexes, male and female; that marriage is between one man and one woman; and that extramarital sex, premarital sex, and the practice of homosexuality are sinful behaviors, and therefore prohibited. (Genesis 2:27; Exodus 22:16-17; Deuteronomy 22:23-28; Leviticus 20:10-16.) On these bases the

⁷ The Student Handbook can be found online at the following link: <https://www.mobap.edu/about-mbu/publications/student-handbook/>.

University regards homosexuality, bisexuality and transgendered identity and desire as inconsistent with the truth of Scripture and in conflict with Christian behavior, even though it may be in conflict with changing societal opinions and/or OCR's interpretation of Title IX.⁸

In keeping with the religious tenets of the University and Baptist denomination which prohibit cohabitation, and the University's religious principles and practices upholding that prohibition, students residing at Missouri Baptist University are separated on the basis of sex in regard to housing, living arrangements, restrooms, and locker rooms. The University has male-only and female-only residence halls, with rules in place which regulate access to residence halls and housing by members of the opposite sex. To the extent Title IX regulations would require the University to allow males and females to reside in the same housing, to visit within the housing of the opposite sex without restrictions, to allow an unmarried male and female to live together, or to allow a person with gender identity issues to be treated as a member of the sex which they have assigned to themselves in regard to the above categories, such behavior would be against the religious tenets of the University and the commonly held tenets of the Baptist churches in Missouri, as it is cohabitation and considered a sin.

The tenets of the University and Baptist denomination also prohibit homosexual activity, and adhere to the requirement of heterosexuality. The University has deeply-held religious beliefs, based upon Biblical principles and commonly held views of Baptist churches and denominations, which do not allow for any sexuality, other than heterosexuality. The University also believes, based upon Biblical principles, that a person cannot change their birth gender. Based upon its religious beliefs, it is the University's position that a person who self-identifies as the opposite sex cannot reside with individuals who are of the sex with which that person identifies. This is true whether or not the person has undergone surgery or hormonal treatment to assume the physical characteristics of the opposite sex. Such a living arrangement would be deemed to be cohabitation, and under the religious tenets of the Baptist denomination and the University's Christian religious principles and practices, it would be sinful behavior.

Similarly, a person who self-identifies as the opposite sex, but who has expressed an attraction to members of their birth sex, would not be permitted to engage in dating or sexual activity with a person of their birth sex, because this behavior is considered to be homosexual in nature. Based upon these religious beliefs, the University is requesting that the Office for Civil Rights recognize an exemption for the University from 34 CFR 106.31(b)(4), so that the University may apply different rules of behavior, sanctions, or other treatment in matters involving gender identity issues.

An individual who identifies as being of the opposite sex from their birth gender also would not be permitted to play on the athletic teams of the sex which was opposite from their birth gender. Therefore, an exemption is also requested in reference to 34 CFR 106.41. A requirement that individuals be treated in keeping with their self-identified gender, rather than their birth gender, would be inconsistent with the tenets of the University and Missouri Baptist churches.

⁸ See *Southern Baptist Convention Resolution on Homosexuality*, Dallas, TX 1985; *Southern Baptist Convention Resolution on Same-Sex Marriage and Civil Rights Rhetoric*, New Orleans, LA 2012; and *Southern Baptist Convention Resolution on Transgender Identity*, Baltimore, MD 2014.

Employment of an individual who identifies as being of the opposite sex from their birth gender, and who expresses that identification through behavior and/or dress is against the religious beliefs of the University, on the same basis and for the same religious reasons as set forth above, regarding students with gender identity issues. Employees are considered to be representatives of the University, and are required to model appropriate Christian behavior. A male employee who announced himself to be female, or who adopted the appearance of a female, would not be modeling appropriate Christian behavior acceptable to the religious beliefs of the University, nor would a female employee who announced herself to be a male, or who adopted the appearance of a male.

It is the University's position, based upon its religious beliefs taken from Biblical principles and the commonly held views of the Baptist denomination of churches, that a person cannot change his or her birth sex. Although they may undergo surgery or hormone treatments to alter their physical characteristics, only the outward appearance is changed. Thus a student identifying as the opposite sex, rather than their birth sex, would not be permitted to live in University housing with individuals of the self-assigned sexual identity of that person, or to play on athletic teams, share restrooms, or use locker rooms with individuals of the self-assigned sexual identity of that person. That person also would not be eligible for employment with the University.

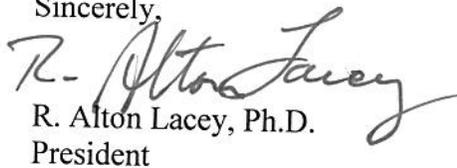
Based upon the Christian religious beliefs of the University and the tenets of the Baptist denomination, the University is requesting exemption on religious grounds from Title IX regulations §§106.32 (housing), 106.33 (restrooms and locker rooms) and 106.41 (regarding athletics), to allow the University religious freedom to discriminate on the basis of sex, including gender identity, and sexual orientation, in regard to housing and living arrangements, restrooms, locker rooms, and athletics, and from §106.31(b)(4), regarding different treatment and sanctions. In regard to employment and gender identity, the University is requesting exemption on religious grounds from §§106.51(a), which prohibits discrimination in employment and employment decisions on the basis of sex as including claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.

The University's Christian religious beliefs, which are based upon the Bible and the tenets of the Baptist denomination, also prohibit elective abortion, pre-marital sex, extra-marital sex, and homosexual behavior, for students and employees. Application of the OCR's interpretation of Title IX regulations §§106.21(b)(iii), 106.21(c), 106.40, 106.51(a), 106.51(b)(6), 106.57, 106.31(b)(4) and 106.32 to the University, might result in the University being required to retain pregnant unmarried employees or employees who elect to terminate their pregnancy, to admit pregnant unmarried students, to retain unmarried students who elect to terminate their pregnancy, to allow unmarried students of the opposite sex to live together, to retain pregnant, unmarried students and to allow them to live in University housing, and to allow homosexual students to live together, all of which the University cannot do, because it would be inconsistent with the religious beliefs, policies, and values of the University, and the religious tenets of the Baptist denomination.

Enforcement of the above regulations in respect to Missouri Baptist University would require that the University not discriminate in discipline, admissions, hiring, and employment decisions, in matters such as employment leaves for pregnancy, childbirth, and elective termination of pregnancy, or on the basis of pre-marital sex, unmarried pregnancy, extra-marital sex, or homosexual activity. As with the other regulations for which exemption is sought, requiring Missouri Baptist University to allow such situations to exist at the University would be inconsistent with the religious tenets of Missouri Baptists and the evangelical Christian religious beliefs, policies, and values adhered to and practiced by the University.⁹

Therefore, Missouri Baptist University is requesting an exemption from the specific Title IX regulations referenced in this letter, so that the University may discriminate on religious grounds in regard to its students and employees, in keeping with its religious beliefs and the tenets of Missouri Baptist churches, as set forth in this request. If you have any questions, or if additional information is required, please do not hesitate to contact me.

Sincerely,


R. Alton Lacey, Ph.D.
President

⁹ The Office for Civil Rights has previously granted a religious exemption to Missouri Baptist University from application of certain provisions of Title IX, dated April 19, 1996, a copy of which is enclosed with this letter.