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18 October 2016

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

Re: Request for Religious Exemption from Certain Applications of Title IX

Dear Ms. Lhamon:

I hereby request, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, that the Department of Education's Office for Civil Rights acknowledge that Native American Christian Academy (NACA or the Academy) 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 Academy's freedom to act in accordance with its religious convictions. As the Executive Director of NACA, I am the highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

NACA, founded as Sun Valley Indian School, is a Christian boarding school for Native American students that emphasizes sports.¹ As a mission school, NACA exists "to educate and disciple students for Christ,"² and seeks to accomplish its mission as follows:

In a learning environment that is affirming, positive, disciplined and redemptive.

By Christian character being exemplified in the administrative, instructional, and supportive staff of the school.

With programs that are intentionally designed to work with Christian and non-Christian youth and their families.

By building in the students a high appreciation for the Church and its desire to minister to their felt needs, and helping them build for themselves a better life spiritually, emotionally, physically, and economically.

By having only qualified Christian instructors to provide the best opportunity for an education with an authentic Christian influence.

¹ See <http://nativeamericanchristianacademy.org/about-us/>.

² Native American Christian Academy Board Policy Manual, Mission Statement, p. 5.

By providing educational opportunities that will equip students to discover new alternatives to destructive lifestyles without denying the values of their culture.

By identifying students who are gifted for ministry, and who emerge as natural leaders in their groups, in order to nurture their responsiveness to God's call upon their lives for lifetime service.

By developing student leadership that is self-disciplined and can be directed toward reaching their peers for Christ, as well as being spiritually effective in their church.³

The Academy operates under the corporate name Native American Ministries, Inc., and is governed by a board of directors, which consists of "the District Superintendent of the Native American District of the Church of the Nazarene; two elders from the district; two lay persons from the district; the District Superintendent of the Arizona District of the Church of the Nazarene; and six born-again Christian members."⁴

The Academy relies on and requires all NACA board members and employees to affirm the following doctrines, as foundational to all that it does, including what is taught in its classes:

We believe in one God — God the Father, God the Son, and God the Holy Spirit.
John 1:1, John 10:30, John 10:37, 38

We believe that the Old and New Testament Scriptures were given by the inspiration of the Holy Spirit and contain all truth necessary to faith and Christian living. We believe the Holy Bible to be the only Word of God. II Timothy 3:16, II Peter 1:21

We believe man is sinful by nature and that regeneration by the Holy Spirit is essential and an absolute necessity for eternal life in Christ. Romans 3:19, 29; John 3:16-18; John 5:24; Ephesians 2:8-10; Titus 3:5, 6

We believe Jesus Christ died for the sins of the whole human race; that whosoever repents and believes on the Lord Jesus Christ is right in God's sight, renewed in heart and life, and saved from the power of sin. John 3:16

We believe believers are enabled to live a godly life through the indwelling presence of the Holy Spirit when they commit their lives fully to God and allow the Holy Spirit to be in control. Ephesians 5:18, Ephesians 4:30, I Corinthians 3:16, I Corinthians 6:19-20

³ NACA Board Policy Manual, Mission Statement, p. 5.

⁴ NACA Board Policy Manual, Bylaws of Native American Ministries, Inc., p. 9.

We believe that our Lord will return, the dead will be raised, and the final judgment will take place. John 5:28-29, Revelation 22:12 & 13⁵

The Board of Directors and NACA submit themselves to the Bible and to these historic expressions of its doctrine and seek to express positions that are in accord with those standards. Therefore, consistent with these theological standards, the Academy has developed a Statement on Marriage, Gender, and Sexuality. That statement provides in pertinent part as follows:

We believe God wonderfully and immutably creates each person as male or female. These two distinct, complementary sexes together reflect the image and nature of God (Genesis 1:26-27). Rejection of one's biological sex is a rejection of the image of God within that person.

We believe in order to preserve the function and integrity of Native American Christian Academy (NACA) as the local Body of Christ, and to provide a biblical role model to NACA members and the community, it is imperative all persons employed by NACA in any capacity, or who serve as volunteers, agree to and abide by this Statement on Marriage, Gender, and Sexuality (Matt 5:15; Phil 2:14-16; 1 Thess 5:22).

We believe God offers redemption and restoration to all who confess and forsake their sin, seeking His mercy and forgiveness through Jesus Christ (Acts 3:19-21; Romans 10:9-10; 1 Cor 6:9-11).

We believe every person must be afforded compassion, love, kindness, respect, and dignity (Mark 12:28-31; Luke 6:31). Hateful and harassing behavior or attitudes directed toward any individual are to be repudiated and are not in accord with Scripture nor the doctrines of Native American Christian Academy.⁶

The Academy has implemented policies in accordance with the above statement: NACA employees agree not to adopt a transgender identity,⁷ and NACA students agree to "the standards of only dressing in conformance with one's biological sex and using restrooms, changing facilities conforming to one's biological sex (Genesis 5:2; Mark 10:6; Matthew 19:4)."⁸

As you know, the Department of Education's Office for Civil Rights (OCR) has issued a "Dear Colleague" letter jointly with the Department of Justice, which states that Title IX's prohibition on sex discrimination "encompasses discrimination based on a student's gender

⁵ NACA Board Policy Manual, pp. 7, 26.

⁶ NACA Board Policy Manual, Statement on Marriage, Gender, and Sexuality, p. 8.

⁷ NACA Staff Handbook, Lifestyle Statement, p. 43.

⁸ NACA Honor Code, Parent/Student/Volunteer Agreement.

identity, including discrimination based on a student's transgender status."⁹ That is, a school "must not treat a transgender student differently from the way it treats other students of the same gender identity."¹⁰

OCR's letter indicated that a school must use pronouns and names that reflect a transgender student's gender identity, and permit the student full access, based upon gender identity, to sex-segregated activities and facilities, including locker rooms, restrooms, showers, housing (including overnight accommodations), and athletic teams.¹¹ And as you also know, OCR previously issued guidance on sexual violence prevention which incorporates discrimination based on "gender identity" as part of "sex discrimination" under the statute.¹²

Moreover, the resolution agreement¹³ between the Arcadia Unified School District and OCR (and the Department of Justice) 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.¹⁴ It is thus reasonable to suppose that OCR believes that Title IX requires such responses.

It is also reasonable to presume that your office interprets Title IX to impose gender identity non-discrimination 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 OCR to reach transgender discrimination, would be inconsistent with the religious tenets of NACA.

For that reason, I request, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, that OCR acknowledge that the Academy 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 Academy's freedom to respond to transgender individuals in accordance with its theologically-grounded convictions.

Additionally, consistent with the historic understanding of the Holy Scriptures and our doctrinal standards,¹⁵ NACA affirms the following regarding sexual conduct:

⁹ U.S. Department of Justice and U.S. Department of Education, Dear Colleague Letter on Transgender Students, *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

¹⁰ *Id.* at p. 2.

¹¹ *Id.*

¹² 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.")

¹³ 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>.

¹⁴ *Id.*

¹⁵ *See* Statement on Doctrine, pp. 1-2.

We believe the term “marriage” has only one meaning: the uniting of one man and one woman in a single, exclusive union, as delineated in Scripture (Gen. 2:18-25). We believe God intends sexual intimacy to occur only between a man and a woman who are married to each other (1 Corinthians 6:18; 7:2-5; Hebrews 13:4). We believe God commands no intimate sexual activity be engaged in outside of a marriage between a man and a woman.

We believe any form of sexual immorality (including adultery, fornication, homosexual behavior, bisexual conduct, bestiality, incest, and use of pornography) is sinful and offensive to God (Matthew 15:18-20; 1 Cor 6:9-10).¹⁶

The Academy, in service to the Church, welcomes those of professed Christian faith who experience same sex attraction. But, the Academy also, consistent with Church teaching, affirms that sexual-activities with members of the same sex cannot be condoned as acceptable expressions of one’s sexuality. As you are aware, the EEOC has 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.¹⁷

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

Lastly, consistent with a biblical interpretation of the value of life, NACA provides the following summary of its beliefs regarding the sanctity of human life:

Native American Christian Academy (NACA) holds that all human life is sacred and is God’s greatest blessing and, therefore, must be respected and protected from its conception to its completion. The taking of a human life through any means (including but not limited to abortion, homicide or suicide) is considered abhorrent and contrary to the school’s missional core. We, therefore, prohibit all members of the NACA community from promoting or participating in any act of, or related to, aborting a child whether such a child is prebirth or post-birth. NACA reserves the right to terminate any member of the faculty or staff and dismiss any student from the community for violating this basic understanding of human life. NACA understands in cases where a pregnancy may put at risk the very life of a mother, triage decisions must be made within the private context of the woman, her doctor, her pastor and her family.¹⁸

¹⁶ NACA Board Policy Manual, Statement on Marriage, Gender, and Sexuality, p. 8. *See also* NACA Staff Handbook, Lifestyle Statement, p. 43; NACA Honor Code, Parent/Student/Volunteer Agreement.

¹⁷ *See* <http://www.eeoc.gov/decisions/0120133080.pdf>.

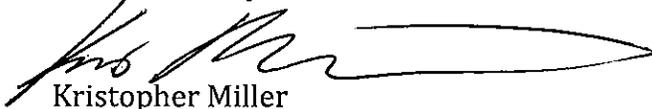
¹⁸ *See* Faculty/Staff Handbook, Statement on Human Life, p. 6.

NACA accordingly requests that your office acknowledge that the Academy 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 Academy's freedom to apply and enforce its Statement on Human Life):

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

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

Yours sincerely,



Kristopher Miller
Executive Director, Native American Christian Academy