September 6, 2018

Kenneth L. Marcus, Assistant Secretary for Civil Rights
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 Mr. Marcus:

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 Taylor University is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to curtail Taylor University’s freedom to act in accordance with its religious convictions. As President of Taylor University, I am the “highest ranking official of the institution,” 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

Background

Taylor University was founded in 1846 as a Christ-centered institution of higher education, emphasizing liberal arts. Within that ecclesiastical context, Taylor University exists to provide a holistic, multicultural approach to higher education grounded in the evangelical Christian tradition. At Taylor University, “all programs are shaped by a biblical, Christian worldview and the integration of faith, learning and living within a community of intentional Christian nurture and relationships.”

1 Taylor University Mission, Purpose, and Anchor Points ("Mission"), page 1; Taylor University Multicultural Philosophy.
2 Taylor University Mission, page 1.
Taylor University's mission, which is essentially unchanged since our founding in 1846, is to develop servant leaders marked with a passion to minister Christ's redemptive love and truth to a world in need. In carrying out this mission, the University is governed by a Board of Trustees whose members must be Christians who are "active church members with an evangelical commitment," who affirm the College's doctrinal statement and nondenominational character, and who are supportive of the traditional policies of the University. 3 The University's trustees, administration, faculty, and staff must affirm the following doctrines:

Taylor University is firmly committed to the lordship of Jesus Christ and evangelical Christianity. To assure the central place of Christian principles in the philosophy and life of the University, the trustees, administration, faculty, and staff believe that:

- There is one God, eternally existent in three persons—Father, Son, and Holy Spirit—the ultimate Creator and Sustainer of all things in heaven and on earth.

- The Holy Bible is the only inspired, authoritative written word of God, progressively revealing God's will for humankind.

- Jesus Christ is the living word of God who made known and carried out God's plan of redemption through His virgin birth, sinless life, atoning death, bodily resurrection, and ascension, and who will return in power and glory.

- The Holy Spirit is present in the life of the believer, testifying to the lordship of Christ and enabling the believer to live a godly life.

- Humankind, though uniquely created in God's image, rebelled and stands in need of redemption.

- God graciously extends salvation to anyone who comes to Christ by faith.

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3 Bylaws of Taylor University, Article V, Section 5.2, page 3.
The Church is the community of believers who express their unity in Christ by loving and serving Him, each other, and all people.  

I. Gender Identity

The Board of Trustees and the University submit themselves to the authority of the Bible and govern themselves by that authority and the foregoing historic expressions of biblical doctrine, and they seek to express positions that are in accord with those standards. Therefore, consistent with these standards, the University has developed and adopted a Statement on Human Sexuality and a Policy on Transgenderism/Transsexuality (enclosed as Appendix A). This statement provides in pertinent part as follows:

1. We affirm God's love and concern for all of humanity, including those brothers and sisters who experience discord between their biological sex and psychological gender, and who seek to resolve that perceived discord in ways that are in conflict with the principles outlined here. We commit ourselves to support individuals struggling with various sexual identity disorders toward the resolution of these disorders in alignment with their birth sex, and to engage with respect those who pursue alternate paths. We deeply regret hurt caused by Christian persons or institutions to men and women whose experience of their sexuality is atypical, and seek to be agents of healing and care for such individuals even as we uphold the standards articulated here.

2. In employment and in student life, we regard sex at birth as the identification of the given biological sex of each member of our constituency. We will not affirm as valid any alterations of one's biological birth sex whether based on experiential variation or medical intervention. Requests to affirm subsequent changes of any kind from one's sex at birth are considered to be a rejection of the biblical and theological understandings to which the institution is committed, and hence as grounds for removal from consideration for employment for an employment applicant, from consideration for enrollment for a student applicant, termination of employment for a current employee (faculty or staff), and/or termination of enrollment of a current student.

3. It is our goal to have this community be a respectful, loving and accepting community that engages with loving and confident respect those who embrace views of sexual identity discordant with ours, and in which those who experience

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4 Taylor University Bylaws, Article II, Statement of Faith, page 1.
gender identity struggles can grow and flourish. This is not, however, a directionless support; rather, we view growth in godliness to be directed toward alignment or reconciliation with one's biological birth sex as God's creational intent for those individuals. Taylor University will not support examples of cross-dressing or other expressions or actions that are deliberately discordant with birth sex and motivated by the need to resolve gender identity issues. We will deal with such matters within the appropriate pastoral and conduct processes of the University.

4. As a largely residential student community that values modesty and holiness, and that seeks to foster the holistic development of our students, we will make housing decisions and other related decisions of practical life in light of the sex at birth of all individuals who are members of this community. Thus we will not, for example, make housing decisions in accord with the psychological identity issues of the student, but rather in light of their sex at birth.

5. We will exercise prayerful discernment and make reasonable judgments about issues outside the explicit bounds of these specified policies based on our Statement of Faith, Life Together Covenant, Sanctity of Life, Statement on Human Sexuality, and the biblical and theological commitments articulated above and in the context of pastoral concern and prayer. The Taylor University Board of Trustees reserves the final responsibility for the interpretation of our Statement of Faith, our Life Together Covenant, our Sanctity of Life Statement and our Statement on Human Sexuality and of the biblical principles that underlie such documents.\(^5\)

As you know, under the previous Administration, the Department of Education’s Office for Civil Rights (OCR) 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 identity, including discrimination based on a student’s transgender status.”\(^6\) That is, a school “must not treat a transgender student differently from the way it treats other students of the same gender identity.”\(^7\)

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

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\(^5\) See Taylor University Policy on Transgenderism/Transsexuality, pages 3-4.


\(^7\) Id. at page 2.
identity, to sex-segregated activities and facilities, including locker rooms, restrooms, showers, housing (including overnight accommodations), and athletic teams. And as you also know, OCR previously issued guidance on sexual violence prevention that incorporates discrimination based on "gender identity" as part of "sex discrimination" under the statute.

Moreover, the resolution agreement 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. It is thus reasonable to suppose that OCR believed, at least at that time, that Title IX requires such responses.

It is also reasonable to presume that the previous Administration interpreted Title IX to impose gender identity nondiscrimination obligations upon covered institutions in the employment context. To the extent these suppositions are correct, compliance with Title IX, as interpreted by the previous Administration's OCR to reach transgender discrimination, would be inconsistent with the religious tenets of the University.

I acknowledge and understand that the Department withdrew the May 13, 2016, "Dear Colleague" letter in a letter dated February 22, 2017. As you know, the letter states that the Department (along with the Department of Justice) plans "to further and more completely consider the legal issues involved."

Given the pendency of that reconsideration, and out of an abundance of caution, I 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 the University is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they

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8 Id at page 3.
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 page 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.")
11 Id.
might be interpreted to curtail the University's freedom to respond to transgender individuals in accordance with its theologically grounded convictions.

II. Sexual Orientation

Additionally, the Board of Trustees and the University, consistent with their understanding of the Holy Bible and historic expressions of biblical doctrine, affirms the following regarding sexual conduct:

All human beings are created in God’s image and are, therefore, of immeasurable value (Gen. 1:26-27). Our male and female genders are also a part of God’s original good creation, and our sexuality is to be celebrated. The God-ordained context for virtuous sexual expression and procreation is marriage, a sacred covenant between one man and one woman (Gen. 2:24; Mt. 19:4-6; Heb. 13:4). For Christians, the sanctity of the marital covenant is further reinforced by the New Testament use of marriage as a metaphor of Christ and the church (Eph. 5:31-33).

The biblical design for human sexuality demands sexual faithfulness for married couples (Exod. 20:14; 1 Cor. 6:13-20) and chastity for those who are single (1 Thess. 4:3-8). All premarital and extra-marital sexual activity (e.g., fornication, adultery, incest, prostitution, homosexual behavior, and all sexual activity involving children) is immoral. And all use or involvement with pornographic materials is sinful, as are all forms of sexual abuse, exploitation, and harassment (1 Cor. 6:9-10; 1 Tim. 1:9-10).13

Taylor University welcomes those of professed Christian faith who experience same sex attraction based on sexual orientation. Nevertheless, the University distinguishes between such sexual orientation and behavior, and it therefore 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 has begun declaring that the ban on sex discrimination in Title VII of the Civil Rights Act of 1964 also forbids discrimination on the basis of sexual orientation.14 It is conceivable that the Department of Education’s Office for Civil Rights could interpret Title IX of the Education Amendments of 1972 the same way. To the extent

13 See Taylor University Statement on Human Sexuality, Appendix B.
14 See http://www.eeoc.gov/decisions/0120133080.pdf.
these suppositions are correct, compliance with Title IX, if interpreted by OCR to reach sexual orientation discrimination, would also be inconsistent with the religious tenets of the University. Taylor University, therefore, also seeks exemption on this basis.

III. Abortion

Lastly, Taylor University provides the following summary of our beliefs regarding the sanctity of human life (enclosed as Appendix C):

Scripture affirms the sacredness of human life, which is created in the image of God. Genesis 1:27 NIV states: So God created man in His own image, in the image of God He created him; male and female He created them. Therefore, human life must be respected and protected from its inception to its completion.  

To the extent that OCR interprets Title IX to restrict Taylor University's freedom to apply and enforce its Statement on the Sanctity of Human Life, e.g., by taking adverse action against an employee or student who obtains an abortion, compliance with Title IX would be inconsistent with the religious tenets of the University. For that reason, I 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 the University is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to restrict the University's freedom to apply and enforce its Statement on the Sanctity of Human Life.

Conclusion

In summary, Taylor University requests that your office acknowledge that the University is exempt from Title IX and the following implementing regulations to the extent that they are interpreted to reach gender identity or sexual orientation discrimination, and to the extent they restrict the University’s freedom to apply and enforce its Statement on the Sanctity of 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)

15 See Statement on the Sanctity of Human Life, Appendix C.
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. § 106.42 (textbooks and curricular materials)
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.

Very truly yours,

Paul Lowell Haines, Ed.D., J.D.
President, Taylor University
Appendix A – Statement on Policy on Transgenderism/Transsexuality

Taylor University Statement on Transgender Policy

Definitions

For this policy, transgenderism is used to describe the condition in which an apparently biologically normal individual (normal genitalia, gonads, hormones and karyotype) acts upon the feeling or perception that he or she is actually a member of the opposite sex by seeking to live in their preferred gender role. Such individuals may or may not undergo surgery to conform their body to that of the opposite sex.

The term “sex” may be defined as “the genetic, physical and hormonal characteristics that differentiate between male and female.” “The most basic distinguishing factor is the chromosomal difference.” Gender “has to do with how people present themselves as either masculine or feminine” or “That which a person says or does to indicate to oneself and to others the degree to which one is male or female.”

Connection with our Institutional Religious Identity

The Taylor University policy regarding transsexualism, transgenderism, and broader related gender identity issues is grounded in our long-standing institutional religious identity as expressed in our Statement of Faith, Life Together Covenant, Sanctity of Life Statement and Statement on Human Sexuality. These documents, in turn, are grounded in the teachings of the Bible and in the Evangelical theological tradition derived therefrom. We see our institutional understandings and policies as congruent with that broader worldwide Evangelical tradition. In this specific case, our reflections on transsexualism are aligned with and informed by those of the Evangelical Alliance, a trans-denominational group representing Protestant evangelical churches in the United Kingdom.

The following statements from the institutional documents referenced above are particularly relevant to these matters. From the Statement of Faith, we are “firmly committed to the lordship of Jesus Christ and evangelical Christianity.” We affirm that “The Holy Bible is the only inspired, authoritative written word of God, progressively revealing God’s will for humankind.” Moreover, we affirm that “the Holy Spirit is present in the life of the believer, testifying to the lordship of Christ and enabling the believer to live a godly life.” From the Sanctity of Life Statement, we believe that “Scripture affirms the sacredness of human life which is created in the image of God.”
From the Life Together Covenant:

- We affirm that “All persons are created in the image of God and each person is known by God and knit together in the womb with intentional design.”
- We affirm that “Because of the God-given worth and dignity of persons, each member of the community is expected to be sensitive to the image of God created in every person . . . Any kind of demeaning gesture, symbol, communication, threat or act of violence directed toward another person will not be tolerated.”
- We affirm that “We are also called to lives characterized by peace and holiness.”
- We affirm that “A community like ours can be strengthened by speaking the truth to each other with love.”
- We affirm that “Certain behaviors are expressly prohibited in Scripture and therefore to be avoided by all members of the community . . . including dishonesty . . . [and] sexual immorality.”

From the Statement on Human Sexuality

- We affirm “As Christians we are called not only to right belief but good conduct.”
- We affirm that “the body is the ‘temple of the Holy Spirit.’ Thus we are to honor God with our bodies.”
- We affirm, “Our male and female genders are also a part of God’s original good creation, and our sexuality is to be celebrated.”
- We affirm “The God-ordained context for virtuous sexual expression and procreation is marriage, a sacred covenant between one man and one woman.”
- We affirm, “The biblical design for human sexuality demands sexual faithfulness for married couples and chastity for those who are single.
- We affirm, Behavioral conduct is under one’s control and thus reasonably subject to biblical standards governing sexual expression.” The call to exercise our Christian freedom responsibly within the framework of God’s Word, humbly submitting ourselves to one another with loving regard for the needs of others.”

Biblical and Theological Implications

As an institution, we recognize there are persons whose experience of their gender (gender identity, gender expression, or gender behavior) is at variance with the physical reality of their biological birth sex. Some experience distress at this reality, while others do not or instead embrace this experience. Our calling as Christians is to respond to such persons, as to all persons, with respect for their moral responsibility, and with love informed by the following Biblical and theological understandings:
• **From the Doctrine of Creation:** God's original and ongoing intent and action was the creation of humanity manifest as two distinct sexes, male and female. Jesus Christ himself affirmed this in his teaching correcting abuses of divorce stating "at the beginning the Creator 'made them male and female'" (Matt. 19:4; Mark 10:6). Each person was intended to experience congruence between the physical and experiential dimensions of their sexuality. Except in very unusual cases, our sex as male or female is a consistent biological given determined at conception and made manifest during gestation and at birth. As such, it is not changeable but rather it is a stable, enduring characteristic of the person determined by God's creational intent.

• **From the Doctrine of the Fall:** As the result of the choices of our first human parents, Adam and Eve, sin and death have entered and permeated the human condition. The Apostle Paul graphically depicts the profound confusion that characterizes human experience as a result of our replacing God's will with our own fallen, finite human will (Rom. 1:18-32). The totality of our experience is distorted by fallenness and brokenness in various forms, including biological (disease and biological abnormality), psychological (emotional and mental disorders), and spiritual (moral and existential) dimensions. Our sex and gender as we experience it as men and women is not always our sex and gender as God the Creator intended.

• **From Guiding Biblical Principles:** Gender, as the experiential and psychological counterpart of an individual's sex, is considerably more fluid and variable than one's fixed, dichotomous biological sex. While released from legalistic obligation to the few ceremonial guidelines in the Old Testament governing gender roles and expressions, we nevertheless draw from the Biblical narrative a) the equal dignity and worth of humanity as male and female (Gal. 3:28), and b) the importance of not fostering confusion between male and female (Rom. 1:26-27). We further recognize that rigid, stereotyped and unreasonable standards for gender distinctiveness have at times had a restrictive and negative impact. In contrast, we see the negative impact of the absence of and confusion about gender distinctions and standards, and of a cultural trajectory that denies any God-given boundaries to our created sexual and gender realities, together generating widespread confusion surrounding sexuality and gender.

• **From the Doctrines of Redemption and Restoration:** Christians believe in a God of redemption, sanctification, and healing, and thus we are unable to accept as appropriate the resolution of tension between one's biological sex and one's experience of gender by the adoption of a psychological identity that rejects one's given biological birth sex in favor of the identity of the opposite sex or of an indeterminate identity. We further do not accept the utilization of surgical or other medical procedures that seek to change facets of one's biological sex as established at conception and during gestation.
and subsequently manifest at birth. We reject such procedures because they inherently flow from an individual’s implicit or explicit rejection of the gift of his or her biological sex.

- **Pastoral Focus:** Tension and conflict between one’s biological sex and one’s experience of gender should be treated with pastoral concern and care based on the shared understanding that one’s biological sex is a given of one’s gendered embodiment. Further, while respecting considerable variance in gender identity, expression, and behavior, we nevertheless regard persistent or exaggerated manifestations of gender atypical behavior as incongruent with Christian maturity and the proper embrace of the gift of one’s biological sex.

**Resulting Institutional Policy**

The following are the major implications of this theological foundation:

1. We affirm God’s love and concern for all of humanity, including those brothers and sisters who experience discord between their biological sex and psychological gender, and who seek to resolve that perceived discord in ways that are in conflict with the principles outlined here. We commit ourselves to support individuals struggling with various sexual identity disorders toward the resolution of these disorders in alignment with their birth sex, and to engage with respect those who pursue alternate paths. We deeply regret hurt caused by Christian persons or institutions to men and women whose experience of their sexuality is atypical, and seek to be agents of healing and care for such individuals even as we uphold the standards articulated here.

2. In employment and in student life, we regard sex at birth as the identification of the given biological sex of each member of our constituency. We will not affirm as valid any alterations of one’s biological birth sex whether based on experiential variation or medical intervention. Requests to affirm subsequent changes of any kind from one’s sex at birth are considered to be a rejection of the biblical and theological understandings to which the institution is committed, and hence as grounds for removal from consideration for employment for an employment applicant, from consideration for enrollment for a student applicant, termination of employment for a current employee (faculty or staff), and/or termination of enrollment of a current student.

3. It is our goal to have this community be a respectful, loving and accepting community that engages with loving and confident respect those who embrace views of sexual identity discordant with ours, and in which those who experience gender identity struggles can grow and flourish. This is not, however, a directionless support; rather, we view growth in
godliness to be directed toward alignment or reconciliation with one's biological birth sex as God's creational intent for those individuals. Taylor University will not support examples of cross-dressing or other expressions or actions that are deliberately discordant with birth sex and motivated by the need to resolve gender identity issues. We will deal with such matters within the appropriate pastoral and conduct processes of the University.

4. As a largely residential student community that values modesty and holiness, and that seeks to foster the holistic development of our students, we will make housing decisions and other related decisions of practical life in light of the sex at birth of all individuals who are members of this community. Thus we will not, for example, make housing decisions in accord with the psychological identity issues of the student, but rather in light of their sex at birth.

5. We will exercise prayerful discernment and make reasonable judgments about issues outside the explicit bounds of these specified policies based on our Statement of Faith, Life Together Covenant, Sanctity of Life, Statement on Human Sexuality, and the biblical and theological commitments articulated above and in the context of pastoral concern and prayer. The Taylor University Board of Trustees reserves the final responsibility for the interpretation of our Statement of Faith, our Life Together Covenant, our Sanctity of Life Statement and our Statement on Human Sexuality and of the biblical principles that underlie such documents.

Appendix B: Statement on Human Sexuality

**Taylor University Statement on Human Sexuality**

**Biblical Standards**

As Christians we are called not only to right belief, but good conduct. In fact, Scripture tells us that obedience is essential to the life of faith (Jn. 14:23-24; Js. 2:20-24). This is critically important in the area of sexuality, as the body is the “temple of the Holy Spirit.” Thus, we are called to honor God with our bodies and “flee from sexual immorality” (1 Cor. 6:18-20). Taylor University therefore affirms the following biblical standards for human sexuality, which constitute the consensus of the Christian church, both East and West, for nearly 2000 years.

All human beings are created in God’s image and are, therefore, of immeasurable value (Gen. 1:26-27). Our male and female genders are also a part of God’s original good creation, and our sexuality is to be celebrated. The God-ordained context for virtuous sexual expression and procreation is marriage, a sacred covenant between one man and one woman (Gen. 2:24; Mt. 19:4-6; Heb. 13:4). For Christians, the sanctity of the marital covenant is further reinforced by the New Testament use of marriage as a metaphor of Christ and the church (Eph. 5:31-33).

The biblical design for human sexuality demands sexual faithfulness for married couples (Exod. 20:14; 1 Cor. 6:13-20) and chastity for those who are single (1 Thess. 4:3-8). All premarital and extra-marital sexual activity (e.g., fornication, adultery, incest, prostitution, homosexual behavior, and all sexual activity involving children) is immoral. And all use or involvement with pornographic materials is sinful, as are all forms of sexual abuse, exploitation, and harassment (1 Cor. 6:9-10; 1 Tim. 1:9-10).

**Application**

We endorse compassion, care, and mercy for all of us who struggle with sexual sin (Jn. 3:17). We strive to follow the model of Christ, who did not condemn but called for repentance (John 8:1-11).

In all of these matters we recognize the critical distinction between sexual orientation and behavior. The former pertains to attraction or desire, which are not necessarily of a person’s own choosing. Behavioral conduct, however, is under one’s control and thus reasonably subject to biblical standards governing sexual expression.

The biblical call to sexual purity is challenging. Therefore, we encourage rigorous, sensitive, biblically informed discussion of sexuality, whether in the classroom, outside the classroom, or in the context of scholarly research. We pledge a principled and loving response to those who disagree with the university’s stance on these issues, whether those within or outside of the Taylor University community.
And in this matter, as with all others related to the Christian life, we depend upon and pray for God's wisdom and mercy as we seek to do his will and proclaim his Gospel to a world in need.
Appendix C: Statement on the Sanctity of Human Life

Sanctity of Life Statement

Scripture affirms the sacredness of human life, which is created in the image of God. Genesis 1:27 NIV states: So God created man in His own image, in the image of God He created him; male and female He created them. Therefore, human life must be respected and protected from its inception to its completion.
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