



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

October 5, 2016

Dr. W. Robert Godfrey
President
Westminster Seminary California
1725 Bear Valley Parkway
Escondido, CA 92027-4128

Dear President Godfrey:

I am writing in response to your March 29, 2016, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested a religious exemption for the Westminster Seminary California (Seminary) of Escondido, California, from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.

Title IX and its implementing regulation at 34 C.F.R. § 106.12 provide that Title IX does not apply to an educational institution that is controlled by a religious organization to the extent that application of Title IX would be inconsistent with the controlling organization's religious tenets. Therefore, such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law or regulation that conflict with those tenets. An institution may be considered controlled by a religious organization if it is a school or department of divinity.

Your request letter explains that the Seminary is a "school of divinity that primarily prepares students to become ministers of religion." Moreover, your mission states that the Seminary is a "Christian institution seeking to glorify God through graduate theological study" and that its "primary responsibility is to educate future pastors for Christian churches, especially for Presbyterian and Reformed denominations." The Seminary offers "theological and biblical study designed primarily and specifically for the education of students to prepare them to become future pastors (i.e., ministers of religion) for Christian churches or to prepare them to teach theological subjects or to pursue other religious vocations."

The Seminary is governed by a Board of Trustees that is composed of eighteen individuals who must have been "previously recognized by election and ordination to the office of elder in one of the . . . confessionally Reformed denominations with which the Seminary is aligned." Before assuming office, Board members "must express agreement with the written Confessional Standards of the Seminary" and denominations through a written pledge. According to your letter, these Confessional Standards "affirm belief that the Scriptures of the Old and New

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Testaments are the Word of God, the only infallible rule of faith and practice. The Confessional Standards and Scriptures are an integral part of the Statement of Faith of [the Seminary].” Your letter further states that “[a]ll voting members of the faculty whose primary teaching responsibilities are in the M.Div. programs must be persons who are ministers in confessional Reformed churches,” and that “all voting members of the faculty, before assuming office, must subscribe to the pledge” that they subscribe to the Confessional Standards.

Your letter requests an exemption from certain provisions of Title IX and its implementing regulations to the extent they “conflict with the religious tenets of the Seminary and the denominations with which it is aligned concerning marriage, sex outside of marriage, sexual orientation, homosexual behavior, gender identity, abortion, pregnancy, and divorce.” In support of this request, your letter cites to the Seminary’s Behavioral Standards, which apply to students, faculty, and staff. The Behavioral Standards state the following: “the seminary affirms the sanctity of human life, including the life of an unborn child,” “[t]he seminary has deeply held religious beliefs that homosexual behavior, lifestyle, and cohabitation, sexual relations outside the marital relationship, prurient use of pornography, transgender and cross-dressing behavior are immoral.” According to the Behavioral Standards’ Sexual Conduct Policy, it is the Seminary’s “deeply held religious belief that Scripture condemns all forms of sexual intimacy outside of marriage, such as pre-marital sex, extra-marital sex, homosexual behavior, pornography, and all other sexual relations outside the bounds of monogamous marriage between one man and one woman.” According to the Behavioral Standards’ Gender Policy, it is the Seminary’s “deeply held religious belief” that “birth gender may not be changed” and that “[a] person’s expression of gender should be consistent with his or her birth gender.”

You state that the Seminary is requesting an exemption from the following regulatory provisions to the extent they are interpreted to reach gender identity and to the extent that they would require the Seminary to treat marriage, sex outside marriage, homosexual behavior, gender identity, pregnancy, unmarried pregnancy, or elective termination of pregnancy in a manner that is inconsistent with the religious tenets of the Seminary and the denominations with which it is aligned:

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.22 (governing preference in admission);
- 34 C.F.R. § 106.23 (governing recruitment);
- 34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions);
- 34 C.F.R. § 106.31(b)(7) (governing the limitation of rights, privileges, advantages or opportunities);
- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities such as restrooms and locker rooms);
- 34 C.F.R. § 106.34 (governing access to classes and schools);
- 34 C.F.R. § 106.36 (governing counseling);
- 34 C.F.R. § 106.37 (governing financial assistance);
- 34 C.F.R. § 106.38 (governing employment assistance to students);
- 34 C.F.R. § 106.39 (governing health and insurance benefits and services);
- 34 C.F.R. § 106.40 (governing marital or parental status);

- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.43 (governing standards for measuring skill or progress in physical education classes); and
- 34 C.F.R. § 106.51-61 (governing employment).

The Seminary is exempt from these provisions to the extent that compliance would conflict with the controlling organization's religious tenets as described above.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complaint alleges that the practices followed by the institution are not based on the religious tenets identified in your request, OCR is obligated to identify a controlling organization to contact 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.

I hope this letter fully responds to your request. If you have any further questions, please do not hesitate to contact me.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education