



May 1, 2023

**Via Certified Mail**

Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
United States Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

**Re: Baylor University's Religious Exemption from Title IX Requirements**

Dear Ms. Lhamon:

I write in response to the letters we received from the Office for Civil Rights (OCR) in the U.S. Department of Education, dated April 7, 2023, regarding several complaints filed with OCR in 2021 (OCR Case Nos. 06212204, 06212205, 06212206, 06212226). These complaints must be dismissed because the allegations directly implicate Baylor's religious exemption from Title IX of the Education Amendments of 1972 (Title IX), as well as the Free Exercise Clause of the U.S. Constitution and other laws.<sup>1</sup>

The Department has previously acknowledged the University's religious exemption in a letter issued by the Assistant Secretary for Civil Rights to the University on September 26, 1985,<sup>2</sup> in response to a letter from the University dated January 12, 1976.<sup>3</sup> While Baylor is "not required to provide any written notice to DOE to claim [its] religious exemption," *Maxon v. Fuller Theological Seminary*, No. 20-56156, 2021 WL 5882035, at \*2 (9th Cir. Dec. 13, 2021), the University writes to further clarify its religious tenets and inform OCR of how the University's current exemption prevents the application of Title IX in any manner inconsistent with those religious tenets.

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<sup>1</sup> OCR recently dismissed similar Title IX complaints against other religious institutions, recognizing that it lacks jurisdiction to address them. *See, e.g., U.S. Department of Education Dismisses Title IX Complaint Against BYU, Brigham Young Univ.* (Feb. 10, 2022), [bit.ly/41nGeBM](https://bit.ly/41nGeBM).

<sup>2</sup> Available at [bit.ly/3MJnTuH](https://bit.ly/3MJnTuH).

<sup>3</sup> Available at [bit.ly/3zVDLCN](https://bit.ly/3zVDLCN). The IRS and EEOC have also previously found that Baylor is a religious institution subject to applicable statutory exemptions. *See* [bit.ly/3mukSnh](https://bit.ly/3mukSnh); [bit.ly/3MjotIT](https://bit.ly/3MjotIT).

The mission of Baylor University is to educate men and women for worldwide leadership and service by integrating academic excellence and Christian commitment within a caring community.<sup>4</sup> Integral to this mission is Baylor’s commitment to being “a place where the Lordship of Jesus Christ is embraced, studied, and celebrated.”<sup>5</sup> As a Baptist university, Baylor is “operated within Christian-oriented aims and ideals of Baptists, including those contained in the Baptist Faith and Message of 1963.”<sup>6</sup> Baylor does not demand “religious conformity” but “expects the members of its community to support its mission.”<sup>7</sup>

Baylor is closely affiliated with the Baptist General Convention of Texas, a cooperative association of autonomous Texas Baptist churches, is an associate member of the Baptist World Alliance, and is controlled by a predominantly Baptist Board of Regents.<sup>8</sup> Each member of the University’s governing Board “must be supportive of Baylor University’s mission, vision, and historic Baptist heritage.” At least three-fourths of the University’s at-large Regents and the Regents elected by the Baptist General Convention of Texas must be Baptist and active members of a Baptist church (‘Baptist Regents’). The remaining Regents may be Christian and active members of a local church from a historic Christian tradition (‘Fellow Christian Regents’) or Baptist Regents.<sup>9</sup> “In the election of the Regents elected by the Board of Regents, the University will be receptive to suggestions from Texas Baptists and will give due and careful consideration to the suggestions of The Baptist General Convention of Texas (the ‘Convention’) of persons to be nominated for election to the Board of Regents.”<sup>10</sup> The Bylaws ascribe certain University matters to the sole management and control of the Baptist Regents.<sup>11</sup> Since the founding of the University through today, the President of the University has been Baptist. Baylor’s George W. Truett Theological Seminary is also an associate member of the Baptist World Alliance. The George W. Truett Theological Seminary also closely affiliates with the Baptist General Convention of Texas, is a member of the National Association of Evangelicals, and is accredited by the Commission on Accrediting of the Association of Theological Schools.<sup>12</sup>

As a religiously controlled institution of higher education, the University prescribes standards of personal conduct that are consistent with its mission and values. The Student Conduct

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<sup>4</sup> Baylor University, Mission Statement, [bit.ly/3KWJezn](https://bit.ly/3KWJezn).

<sup>5</sup> Baylor University, About Pro Futuris, [bit.ly/3KZ8fHH](https://bit.ly/3KZ8fHH).

<sup>6</sup> Section 7.1, Aims and Ideals, Bylaws of Baylor University, [bit.ly/34W4008](https://bit.ly/34W4008).

<sup>7</sup> See Baylor University, Undergraduate Catalog 2022-23, Mission Statement of Baylor University, [bit.ly/43tEJUp](https://bit.ly/43tEJUp).

<sup>8</sup> Baylor University, Notice of Non-Discrimination, [bit.ly/412WWGE](https://bit.ly/412WWGE); Baylor University, BGCT-Baylor Joint Statement on Special Relationship Agreement, <https://bit.ly/3H2iQC2>.

<sup>9</sup> Section 1.1, Qualifications, Bylaws, *supra*; see also Section 7.2, Religious Qualifications of Regents, Bylaws, *supra*.

<sup>10</sup> Section 1.2, Composition, Term and Quorum, Bylaws, *supra*.

<sup>11</sup> Section 1.3, Powers and Authority, Bylaws, *supra*.

<sup>12</sup> Baylor University, Accreditations & Affiliations, <https://bit.ly/3GYjG2s>.

Code and Honor Code apply from the time that a person is notified of his or her acceptance for admission to the University through his or her receipt of a diploma or other credential.<sup>13</sup> All incoming Baylor undergraduate students must also attend two semesters of University Chapel in which they “gather[] to worship and pray, to be taught and inspired, and to encounter God in a way that makes a difference in their college experience.”<sup>14</sup>

Employees are also called to serve as Christ’s witness to the world and a representative of the University and its mission by complying with law and University policy, including behavioral standards.<sup>15</sup> As a Christian religious educational institution, the University is lawfully permitted to, and does, consider an employee applicant’s religion as a selection criterion. For example, the University’s hiring process for faculty includes a candidate’s statement of faith, in which they must espouse a personal belief that is co-religionist with the University to be eligible for employment.<sup>16</sup>

Baylor is committed to equal opportunity and respect of others, even as it enjoys religious exemptions under Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and the Free Exercise Clause of the First Amendment to the United States Constitution, among other laws. Baylor does not unlawfully discriminate on the basis of race, color, national origin, ethnicity, citizenship, immigration status, disability, sexual orientation, gender identity or expression, age, genetic information or the refusal to submit to a genetic test, past, current or prospective service in the uniformed military service, or any other characteristic protected under applicable federal, Texas, or local law.<sup>17</sup> These protected characteristics are interpreted consistently with relevant and applicable law. Baylor practices nondiscrimination in employment, administration of its educational policies, admissions policies, scholarships, loan programs, and athletic and other school-administered programs.<sup>18</sup>

Baylor’s religious beliefs and practices are protected by constitutional and statutory law. The First Amendment to the United States Constitution protects the autonomy of religious institutions like Baylor to be free from government involvement in the teaching or practice of religion, from excessive entanglement with Baylor’s religious affairs, and from any substantial burden on Baylor’s religious free exercise that is not the least restrictive means of pursuing a compelling government interest.

Concerning Title IX, that statute “is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.” 34 C.F.R. §106.1. Title IX is clear that it “shall not apply to an educational institution

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<sup>13</sup> Baylor University, Student Conduct Code, [bit.ly/3GEAT0I](https://bit.ly/3GEAT0I); Baylor University, Honor Code, [bit.ly/3mtt7A9](https://bit.ly/3mtt7A9).

<sup>14</sup> Baylor University, Undergraduate Catalog 2022-23, Other Requirements for Graduation, [bit.ly/3UBe8R2](https://bit.ly/3UBe8R2).

<sup>15</sup> See Baylor University, Personnel Policies, [bit.ly/3MCWnPB](https://bit.ly/3MCWnPB).

<sup>16</sup> See Baylor University, Faculty Application Process, [bit.ly/400H0U8](https://bit.ly/400H0U8).

<sup>17</sup> See Baylor University, Policy & Procedures, [bit.ly/3UBBJkY](https://bit.ly/3UBBJkY).

<sup>18</sup> *Id.*

which is controlled by a religious organization if the application of [Title IX] would not be consistent with the religious tenets of such organization.” 20 U.S.C. §1681(a)(3). The Department has also clarified, consistent with the text of Title IX, that religious institutions like Baylor are not required to seek assurance of their religious exemption in writing to be protected by that exemption. *See* 34 C.F.R. §106.12(b); *see also Maxon*, 2021 WL 5882035, at \*2 (“[T]he exemption is mandatory and automatic.”). And federal courts have unequivocally held that this exemption is constitutional. *See Hunter v. U.S. Dep’t of Educ.*, No. 21-cv-474, 2023 WL 172199 (D. Or. Jan. 12, 2023) (appeal pending).

As noted, Baylor is “controlled by” a predominantly Baptist Board of Regents, which operates within the Christian-oriented aims and ideals of Baptists.<sup>19</sup> Baylor is thus exempt from any Title IX requirements that are inconsistent with its religious tenets. *See* 20 U.S.C. §1681(a)(3); 34 C.F.R. §106.12. Specifically, Baylor is exempt from any Title IX requirements to the extent those requirements conflict with Baylor’s religious tenets including, without limitation, Title IX’s provisions regarding admission (34 C.F.R. §106.21-22), student recruitment (*id.* §106.23), education programs or activities (*id.* §106.31), housing (*id.* §106.32), comparable facilities (*id.* §106.33), access to classes and schools (*id.* §106.34), counseling (*id.* §106.36), financial assistance (*id.* §106.37), employment assistance to students (*id.* §106.38), health and insurance benefits and services (*id.* §106.39), marital or parental status (*id.* §106.40), athletics (*id.* §106.41), measuring skills or progress in physical education classes (*id.* §106.43), “unwelcome conduct” (*id.* §§106.30(a), 106.44-45),<sup>20</sup> employment (*id.* §106.51-61), the effect of rules of private organizations (*id.* §106.6(c)), and any other regulatory provision implementing Title IX that is interpreted to apply to Baylor in conflict with its religious tenets.

The University does not discriminate on the basis of sexual orientation or gender identity or expression *per se*, but it does regulate conduct that is inconsistent with the religious values and beliefs that are integral to its Christian faith and mission.<sup>21</sup> Since Baylor “affirms the biblical understanding of sexuality as a gift from God” and requires “purity in singleness and fidelity in marriage between a man and a woman as the biblical norm,”<sup>22</sup> any asserted Title IX requirement that Baylor must allow sexual behavior outside of marital union between a man and a woman, or that contradicts the Baptist doctrine of marriage and the created distinction between men and women, is inconsistent with Baylor’s religious tenets, and the University is exempt from such requirement.

The OCR complaints at issue here allege that Baylor violated OCR’s Title IX regulations by its application of its Statement on Human Sexuality, Sexual Conduct Policy, Civil Rights Policy, Theological Seminary Policy, Baptist Faith and Message of 1963, and Truett Handbook to its campus community, both as a general matter and specifically in three situations: (1) the

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<sup>19</sup> *Id.*

<sup>20</sup> Specifically, Baylor could not be found in violation of Title IX on the ground that the belief in or practice of its religious tenets by the University or its students constitutes “unwelcome conduct.” 34 C.F.R. §§106.30(a), 106.44-45.

<sup>21</sup> *See* Baylor University, Human Sexuality at Baylor University, [bit.ly/41IrCgz](https://bit.ly/41IrCgz).

<sup>22</sup> *Id.*

University's alleged decision to deny applications for an official charter for Gamma Alpha Upsilon, (2) the University's alleged response to notice that students were subjected to harassment based on their sexual orientation and/or gender identity, and (3) the University's alleged decision to pressure University media to not report on LGBTQ events and protests in September and October 2021. Because each of Baylor's rules and policies at issue derives from Baylor's religious tenets as a Baptist university, Baylor's enforcement of those rules and policies is fully exempt from any requirements under Title IX relating to sexual orientation or gender identity.

Baylor welcomes and supports all its students and employees who agree to abide by its religious tenets, including those who identify as LGBTQI+. Recognizing the complicated realities that many of these individuals experience as they navigate issues surrounding sexual orientation, gender identity, and religious doctrine, Baylor is committed to showing love and respect to each member of its campus community and "welcom[ing] all students into a safe and supportive environment in which to discuss and learn about a variety of issues, including those of human sexuality."<sup>23</sup> But both Title IX and the U.S. Constitution protect Baylor from any complaint that would compel the University to act in a manner contrary to its deeply held religious beliefs.

We appreciate your consideration and look forward to your response confirming that Baylor is protected by Title IX's religious exemption as set forth herein.

Sincerely,



Dr. Linda A. Livingstone, Ph.D.

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<sup>23</sup> *Id.*