



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 2, 2018

Dr. Robert E. Gustafson, Jr.  
President  
Erskine College and Erskine Theological Seminary  
P.O. Box 338  
Two Washington Street  
Due West, SC 29639

Dear President Gustafson:

I write in response to your September 12, 2017, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested a religious exemption for Erskine College and Erskine Theological Seminary (collectively, the College) of Due West, South Carolina, from Title IX of the Educational 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 the application of Title IX would be inconsistent with the controlling organization's religious tenets. Therefore, such educational institutions may 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 states that Erskine Theological Seminary was founded by and is an agency of the Associate Reformed Presbyterian Church. The letter explains that Erskine Theological Seminary "provides graduate theological studies according to Reformed Presbyterian doctrine as defined by the Westminster Confession and the Westminster Larger and Shorter Catechisms." Your letter further explains that Erskine College, also an agency of the Associate Reformed Presbyterian Church, was founded on the same site "with the express purpose of providing postsecondary education in the context of the Reformed Presbyterian faith." Your letter states that these two entities "form one combined institution of higher Christian education led by one President and one Board of Trustees, who serve under the authority of the Associate Reformed Presbyterian Church." Your letter further explains that College's "employees affirm that the Bible is God's inerrant Word, infallible in all matters of religious faith and practice.

Your letter requests exemption from certain provisions of Title IX and its implementing regulations to the extent that they are "applied to issues involving human sexuality or discrimination based on sexual orientation, gender identity, or abortion," and "conflict with the

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religious beliefs of the Associate Reformed Presbyterian Church.” In support of this request, your letter cites the College’s Statement on Human Sexuality, which states that “monogamous marriage between a man and a woman is God’s intended design for humanity and that sexual intimacy has its proper place only with the context of marriage.” Your letter also cites the minutes of the Associate Reformed Presbyterian Church’s General Synod, which states that “it is not for men basically to be the determiners of life and death, even for the unborn child.”

Your letter states that, for the above reasons, the College is requesting an exemption from the following regulatory provisions to the extent that they conflict with the Associate Reformed Presbyterian Church’s religious beliefs on human sexuality or discrimination based on sexual orientation, gender identity, or abortion:

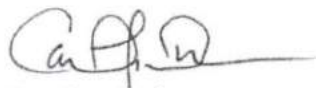
- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.22 (governing preference in admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31 (governing education programs or activities);
- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities);
- 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 College is exempt from these provisions to the extent that compliance would conflict with the controlling organization’s religious tenets.

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 recognized.

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

Sincerely,



Candice Jackson  
Acting Assistant Secretary for Civil Rights