



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 18, 2017

Timothy C. Tennent, Ph.D.  
President  
Asbury Theological Seminary  
204 North Lexington Avenue  
Wilmore, KY 40390

Dear President Tennent:

I write in response to your May 12, 2016, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested a religious exemption for Asbury Theological Seminary (the Seminary) of Wilmore, Kentucky, 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 the Seminary is an institution "whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects." The letter further explains that the Seminary is "both a school *and* an established religious organization founded on and governed by principles of Wesleyan theology." Your letter also notes that "all members of the Seminary community (faculty, staff, students, and trustees) commit to life consistent with the Seminary's religious beliefs," which includes subscription to a Statement of Faith, Statement of Mission, Statement of Ethos and Code of Institutional Ethics and Values.

Your letter requests exemption from certain provisions of Title IX and its implementing regulations to the extent they are interpreted as contrary to the Seminary's religious tenets and beliefs, which "make it necessary for the Seminary to make decisions and take actions on the basis of sex, including gender identity and sexual orientation, in virtually every area of Seminary life, including employment, admissions, conduct, housing and living arrangements, restrooms, locker rooms, and intramural athletics."

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*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

In support of this request, your letter cites religious tenets drawn from Scripture, the Seminary's Wesleyan roots, and the Seminary's own theological statements. The letter states that "God wonderfully and immutably creates each person as male or female...; that the term 'marriage' has only one meaning: the uniting of one man and one woman in a single, exclusive union...; [that] God intends sexual intimacy to occur only between a man and a woman who are married to each other...; [and] [a]ny form of sexual immorality is sinful and offensive to God." The letter further states that John Wesley's own study of the Scripture indicates "the sinful nature of non-heterosexual behavior and the need to guard against it." Your letter explains that the Seminary's Statement of Ethos affirms its commitment "the belief that human life as created by God is sacred, that there is one design for sexual intimacy, and one design for marriage."

The letter notes that these are not just philosophical ideals, but religious tenets that "dictate the Seminary's theological orientation and...permeate every facet of the Seminary's work;" and, trustees, administrators, faculty, staff, and students are expected to commit to and live by these principles. The Seminary also "reserve[s] the right to make admission, employment and degree conferral decisions on the basis of those principles and beliefs set forth in the ethos statement and statement of faith." Your letter explains that "the Seminary's religious tenets and beliefs on issues of marriage, gender, sexuality, and the sanctity of human life impact virtually every aspect of the Seminary's operations, programs and services."

You state that, for the above reasons, the Seminary is requesting an exemption from the following regulatory provisions to the extent that they restrict the Seminary's freedom to apply and enforce its religious tenets and beliefs, including with respect to marriage, gender, sexuality, and the sanctity of human life:

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions);
- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities);
- 34 C.F.R. § 106.40 (governing marital or parental status);
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.51 (governing employment); and
- 34 C.F.R. § 106.57 (governing marital or parental status).

The Seminary is exempt from these provisions to the extent that compliance would conflict with the Seminary'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 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 contact the 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,

A handwritten signature in black ink, appearing to read 'C. Lhamon', with a long, sweeping horizontal flourish extending to the right.

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