



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

July 29, 2015

Dr. J. Derek Halvorson
President
Covenant College
14049 Scenic Highway
Lookout Mountain, GA 30750

Dear Dr. Halvorson:

I write to respond to your May 28, 2015, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for Covenant College (College) of Lookout Mountain, Georgia, 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.

The implementing regulation at 34 C.F.R. § 106.12 provides that Title IX does not apply to an educational institution 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.

Your request explained that the College "was founded in 1955 as a Christ-centered institution of higher education, emphasizing liberal arts. It is an agency of the Presbyterian Church in America (PCA) and is governed by a Board of Trustees elected by the General Assembly of the Presbyterian Church of America." Your request explains that "[t]he Presbyterian Church in America and Covenant College—as one of its agencies—understand the Bible to be the infallible written Word of God...[and] both the Denomination and the College affirm that the Westminster Confession of Faith and the Westminster Larger and Shorter Catechisms provide the most adequate and comprehensive expression of the system of doctrine taught in the Bible."

Your letter requests a religious exemption from the provisions of Title IX and its accompanying regulations "to the extent that they are interpreted to curtail the College's freedom to respond to transgender individuals in accordance with its theologically-grounded convictions." In support of this request you cite to the College's Statement on Sexual Identity and Conduct (Statement), which you assert is consistent with the Westminster Confession of Faith and the Westminster Larger and Shorter Catechisms. The Statement provides that "[t]he creation of human beings

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was a special creative act of God. God created human beings, male and female...As such, students are not to adopt a gender identity different from one gifted them by their Creator. This gendered ordering of creation is to be accepted, honored, and reflected in sexual intimacy.”

Your request also notes that “the EEOC has begun openly 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.’ 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.” Your letter states “[t]o the extent these suppositions are correct, it appears as though compliance with Title IX, if interpreted by ED OCR to reach sexual orientation ‘discrimination,’ would also be inconsistent with the theological commitment of Covenant College. The College, therefore, also seeks exemption on this basis.” In support of this request, you cite the following language from the Presbyterian Church of America’s Fifth General Assembly in 1977: “The act of homosexuality is a sin according to God’s Word;...In light of the Biblical view of its sinfulness, a practicing homosexual continuing in this sin would not be a fit candidate for ordination or membership in the Presbyterian Church in America.”

Finally you request an exemption from Title IX to the extent that it restricts the College’s freedom to apply and enforce its Statement on Human Life. In support of this request, you cite to the Presbyterian Church of America’s Position Paper on Abortion which states, “the intentional killing of an unborn child is a violation of God’s command and authority” and the College’s Statement of Community Beliefs which, according to your letter, states that the College “strongly oppose[s] abortion since it devalues and destroys human life.”

You state that, for these reasons, the College is requesting an exemption from Title IX and the following implementing regulations “to the extent they are interpreted to reach gender identity or sexual orientation discrimination, and to the extent they restrict the College’s freedom to apply and enforce its Statement on Human Life:”

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.22 (governing preferences 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 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 and use of appraisal and counseling materials);
- 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 different rules based on marital or parental status of students);

- 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 they prohibit discrimination based on gender identity, sexual orientation, or abortion and 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 granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization 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 responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,



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