



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

March 30, 2023

D. Mitchell Henry
President
Faulkner University
5345 Atlanta Highway
Montgomery, AL 36109

Dear President Henry:

I write in response to your February 21, 2023, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you asserted a religious exemption from Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, for Faulkner University (the "University") in Montgomery, Alabama.¹

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 regulations at 34 C.F.R. § 106.12 provide that Title IX does not apply to an educational institution controlled by a religious organization to the extent that the application of Title IX would be inconsistent with the controlling organization's religious tenets. Section 106.12(b) of the Department's Title IX regulations describe the process by which an educational institution may request assurance of a religious exemption or assert a religious exemption in response to a pending OCR investigation. 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. Section 106.12(c) of the Department's Title IX regulations describes the evidence that is sufficient to establish that an educational institution is controlled by a religious organization.

Your letter explains how the University is controlled by a religious organization. The letter states that "Faulkner University is a Christian University with a Christian mission," that "was founded by members of the church of Christ," and "since its founding has been affiliated with and supported by members and congregations of the churches of Christ." Your letter further explains that the University is controlled by a Board of Trustees and that the Board of Trustees consists "of from

¹ OCR notes that Faulkner University initially sent a letter asserting a Title IX religious exemption to OCR on November 2, 2022. However, the letter did not meet the procedural requirements outlined in 34 C.F.R. § 106.12(b). The February 21, 2023, letter corrected these issues.

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fifteen to fifty members, who shall be members in good standing of the churches of Christ.” Your letter states that “[m]embership on the Board shall be for five years providing the respective member . . . shall continue to be faithful as a member of the churches of Christ.” According to your letter, every member of the Board of Trustees, as well as all faculty and staff, must adhere to a “Here We Stand” document reflecting “certain commitments with regard to religious and moral issues” including the acknowledgement that “Faulkner University is a Christian University” and “Faulkner University is committed to the centrality of Jesus and His cross.” Your letter explains that the University has “an institutional mission statement that is approved by its Board of Trustees” which states “[t]he mission of Faulkner University is to glorify God through education of the whole person, emphasizing integrity of character in a Christian caring environment where every individual matters every day.” Your letter also states that the University “has a ‘Standards of Conduct’ policy that applies to all of its employees” which provides that “University employees are to live consistently with the moral principles espoused in the New Testament.” Further, “University employees who are members of the church of Christ when hired are expected to remain faithful members of the church of Christ,” and “University employees who are not members of the church of Christ when hired are expected to remain faithful members of a religious group whose religious beliefs and commitments are largely in line with those of the University....”

Your letter also specifies the religious tenets of the controlling religious organization that conflict with Title IX. Your letter states that “the University accepts the Bible as the inspired and inerrant Word of God,” and “believes that God’s creation of Adam as a male/man and Eve as a female/woman is proof of God’s intentional design that there are only two sexes and that God’s design is that a marriage can only be between a biological male and a biological female.” Your letter states that the University also “believes the Bible teaches that same-sex sexual activity is unacceptable to God and is sinful.” Your letter explains that the University has a “Policy on Sexual Purity and Stewardship” which states that “[w]e believe God’s intention is that human beings live their lives (in terms of both sexual orientation and gender identity) in accordance with the male or female biological sex characteristics they possessed at birth.” According to your letter, the University believes “that there are only two sexes (male and female), that gender is static and not fluid; that one’s gender is immutably the same as one’s sex at birth and that it is sinful for a person to modify or attempt to modify his/her birth sex or to present himself/herself as having a sex or gender other than his or her original birth sex.”

For the above reasons, the University requests assurance of its exemption from the following regulatory provisions to the extent that they prohibit discrimination based on sexual orientation or gender identity and are inconsistent with the University’s religious tenets “concerning homosexuality, sexual orientation, same-sex marriage, gender identity, transgenderism and gender fluidity”:

- 34 C.F.R. § 106.21 (admission)
- 34 C.F.R. § 106.22 (preference in admission)
- 34 C.F.R. § 106.23 (recruitment)
- 34 C.F.R. § 106.31 (education programs or activities)
- 34 C.F.R. § 106.32 (housing)
- 34 C.F.R. § 106.33 (comparable facilities)

- 34 C.F.R. § 106.34 (access to classes and schools)
- 34 C.F.R. § 106.36 (counseling)
- 34 C.F.R. § 106.37 (financial assistance)
- 34 C.F.R. § 106.38 (employment assistance to students)
- 34 C.F.R. § 106.39 (health and insurance benefits and services)
- 34 C.F.R. § 106.40 (marital or parental status)
- 34 C.F.R. § 106.41 (athletics)
- 34 C.F.R. § 106.42 (textbooks and curricular material)
- 34 C.F.R. § 106.43 (measuring skills or progress in physical education classes)
- 34 C.F.R. §§ 106.51-61 (employment)

The University is exempt from these provisions to the extent that they prohibit discrimination based on sexual orientation or gender identity and are inconsistent with the University’s religious tenets “concerning homosexuality, sexual orientation, same-sex marriage, gender identity, transgenderism and gender fluidity.”

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulations 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,

A handwritten signature in black ink, appearing to read 'C. Lhamon', written in a cursive style.

Catherine E. Lhamon
Assistant Secretary for Civil Rights