



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 13, 2016

Dr. Lanny Hall
President
Hardin-Simmons University
Box 16000
Abilene, Texas 79698

Dear Dr. Hall:

I write to respond to your October 20, 2015, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for Hardin-Simmons University (University) of Abilene, Texas 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 University, "a Baptist institution of higher education," "is controlled by a religious organization, the Baptist General Convention of Texas . . . whose constituency is the cooperating Baptist churches of Texas." Your letter states that "[p]ursuant to the University's Articles of Incorporation, . . . [t]he Baptist General Convention of Texas controls the University in part by exercising its right to select a majority of the board of trustees of the University, the governing body of the University."

Your letter requests a religious exemption from the provisions of Title IX "to the extent application of those provisions would not be consistent with the Convention's religious tenets regarding marriage, sex outside of marriage, sexual orientation, gender identity, pregnancy, and abortion." In support of this request, you cite to the Baptist Faith and Message, which expresses the "religious tenets of the Convention." According to your letter, the Baptist Faith and Message

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states that “It is God[']s unique gift . . . to provide for the man and the woman in marriage the framework for intimate companionship, the channel for sexual expression according to biblical standards, and the means for procreation of the human race.” You explain that the Baptist Faith and Message states that “Children, from the moment of conception, are a blessing and heritage from the Lord.” Your letter further states that the “Convention has declared ‘. . . the Bible teaches that the ideal for sexual behavior is the marital union between husband and wife and that all other sexual relations- whether premarital, extramarital, or homosexual- are contrary to God’s purposes and thus sinful.” You also explain that the “Convention has declared its religious belief that ‘gender is based on biological attributes and is seen as a gift from God and immutable.’”

You explain that it would not be consistent with the Convention’s religious tenets for the University to comply with Title IX to the extent that it prohibits the University from “engaging in recruiting and admissions under a policy which called for the consideration of an applicant for admission’s sexual orientation, transgendered status, marital status, past and present practices regarding marriage, sex outside marriage, pregnancy, and abortion[; . . . from] subjecting students to rules of behavior, sanctions, or other treatment because of these student characteristics[; or from] making all employment decisions. . . in a manner which takes into consideration these employee characteristics.”

You state that, for these reasons, the University is requesting an exemption from the following regulatory provisions “to the extent the regulation would require the institution to treat marriage, sex outside of marriage, homosexuality, gender identity, pregnancy, and abortion in a manner that is inconsistent with the religious tenets of the Convention:”

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions);
- 34 C.F.R. § 106.31(b)(7) (governing the limitation of rights, privileges, advantages, or opportunities);
- 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. § 106.37 (governing financial assistance);
- 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. § 106.51 (governing employment);
- 34 C.F.R. § 106.52 (governing employment criteria);
- 34 C.F.R. § 106.53 (governing recruitment of employees);
- 34 C.F.R. § 106.57 (governing the consideration of marital or parental status in employment decisions); and
- 34 C.F.R. § 106.60 (governing pre-employment inquiries).

The University is exempt from these provisions to the extent that they prohibit discrimination on the basis of marital status, sex outside of marriage, sexual orientation, gender identity, pregnancy, 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