



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 24, 2015

William N. Ellis  
President and CEO  
Howard Payne University  
1000 Fisk Street  
Brownwood, Texas 76801-2715

Dear President Ellis:

I write to respond to your March 25, 2015, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, for Howard Payne University (University) of Brownwood, Texas. 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 and/or regulation that conflict with those tenets.

Your request explained that the University "is controlled by Baptists," in particular, the Baptist General Convention of Texas. Your letter states that "Every member of the board of trustees must be a member of a Baptist church. The majority of the members of the board of trustees are elected by the Convention."

Your letter requests a religious exemption "from provisions of Title IX to the extent application of those provisions would not be consistent with the religious tenets of the Baptist General Convention of Texas . . . regarding marriage, sex outside of marriage, sexual orientation, gender identity (including but not limited to transgender status), pregnancy, and abortion."

In support of this request, you state that "Messengers to the Convention's annual meetings have reaffirmed the view of Scripture on the sacredness and dignity of all human life, both born and

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unborn, and supported legislation prohibiting abortion except to save the life of the mother or in cases of incest or rape.” You also cite to a Resolution on Transgender Issues that the Executive Board of the Convention adopted in February 2015 that, according to your letter, states that “gender is based on biological attributes and is seen as a gift from God and immutable” and that the Convention affirms “that in creation God made male and female as biological gender assignment.” Finally, you cite to the Baptist Faith and Message, adopted by the Convention in 1988. According to your letter, that statement of faith states that “Marriage is the uniting of one man and one woman” and that it provides “the channel for sexual expression according to biblical standards, and the means for procreation of the human race.”

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 College from “engaging in recruiting and admissions under a policy which called for the consideration of an applicant for admission’s sexual orientation, gender identity (including but not limited to transgendered status), marital status, past and present practices regarding marriage, sex outside marriage, pregnancy and abortion; . . . [f]rom 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. § 106.40 (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);

- 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 marriage 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