



OFFICE OF THE PRESIDENT
Jason K. Allen, Ph.D.

March 31, 2016

Via UPS Overnight

Catherine E. Lhamon
Assistant Secretary for Civil Rights
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100

Re: Midwestern Baptist Theological Seminary (OPEID 00248500)
Application for Recognition of Exemption from Title IX

Dear Assistant Secretary Lhamon:

The purpose of this letter is to request a religious exemption for Midwestern Baptist Theological Seminary (the "Seminary") from certain aspects of Title IX of the Education Amendments of 1972 ("Title IX").¹ I make this request in my capacity as the Seminary's President, and as an ordained minister of the Southern Baptist Church ("SBC" or the "Church").

As you know, Title IX generally prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance. Title IX does not apply, however, to educational institutions controlled by religious organizations, to the extent application of Title IX would be inconsistent with such institutions' religious tenets.² In keeping with this limitation, qualifying institutions are permitted to apply to the U.S. Department of Education, Office of Civil Rights ("OCR") for an exemption from the provisions of Title IX that conflict with the religious tenets upheld by the organization.

The law directs an educational institution desiring to claim an exemption to submit "in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization."³ Historically, OCR has advised institutions that any such letter should (1) identify the religious organization that controls the educational institution and (2) specify the tenets of that organization and the provisions of the law or regulation that conflict. Consistent with this guidance, we hereby submit our request for exemption, organized to address each of these points in turn.

¹ 20 U.S.C. § 1681 *et seq.*

² 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a).

³ 34 C.F.R. § 106.12(b).

The Seminary and the Baptist Church

OCR has long taken the position that, for purposes of granting an exemption from the provisions of Title IX, an institution is considered to be controlled by a religious organization if one or more of the following conditions is true:⁴

1. It is a school or department of divinity, defined as an institution or a department or branch of 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; or
2. It requires its faculty, students or employees to be members of, or otherwise espouse a personal belief in, the religion of the organization by which it claims to be controlled; or
3. Its charter and catalog, or other official publication, contains an explicit statement that it is controlled by a religious organization or an organ thereof or is committed to the doctrines of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.

The Seminary fully satisfies each of the conditions set out above.

The Seminary's mission, as stated in its *Academic Catalog*, *Employee Handbook*, and on its website, is to serve the Church "by Biblically educating God-called men and women to be and make disciples of Jesus Christ."⁵ A school of divinity, the Seminary's control and governance structure, and financial relationship to the Church, all are discussed at length in the institution's *Academic Catalog*, which provides in relevant part:

Midwestern Baptist Theological Seminary is an entity of the Southern Baptist Convention, serving as a community of learning for persons called to ministry. The Seminary's primary source of support is the Southern Baptist Cooperative Program. The Seminary is governed by a board of 35 trustees elected by the Southern Baptist Convention with 7 trustees elected on a rotating basis each year. In accordance with the Program Statement for seminaries adopted by the Southern Baptist Convention in 1979, Midwestern is primarily a graduate professional school. It is accredited by the Association of Theological Schools and the Higher Learning Commission. It provides academic programs leading to the Master of Divinity, Master of Arts, Master of Theological Studies, Doctor of Ministry, Doctor of Counseling, Doctor of Educational Ministry, and Doctor of Philosophy in Biblical Studies, as well as undergraduate studies.⁶

⁴ See U.S. Department of Education, Office of Civil Rights, Religious Exemption (available online at <http://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/rel-exempt-pr.html>).

⁵ Midwestern Baptist Theological Seminary website, *What We Believe* (available online at <http://www.mbts.edu/about/what-we-believe/>).

⁶ Midwestern Baptist Theological Seminary 2015-2016 *Academic Catalog*, pg. 1 (available online at <http://www.mbts.edu/news-resources/current-students/catalogs-and-forms/>).

As a pre-requisite to admission, students must “[b]e able to enunciate a clear testimony of conversion to faith in Jesus Christ.”⁷ Accepted students of the Seminary are “expected to participate actively and regularly in a local church,” and “are classified as ‘Southern Baptist,’ ‘other (non-SBC) Baptist,’ or ‘non-Baptist’ based on the church membership information they provide the seminary at the time of their admission.”⁸

Upon election to the faculty, the Seminary’s faculty members are required to subscribe to the *Baptist Faith and Message, 2000* statement of faith adopted by SBC in 2000 and discussed in more detail below.⁹ Each faculty member also is required to participate in a local Southern Baptist church, teaching classes, serving as a deacon, or leading a congregation as an interim pastor.¹⁰ The Seminary does not require that all non-faculty employees be members of the Church. However, every employee must “accept The Baptist Faith and Message as the standard of faith by which MBTS operates.”¹¹ The institution also expressly reserves the right afforded it under the law to “give preference in the hiring of persons who are Christian, and/or members in good standing of the Southern Baptist Convention.”¹²

Baptist Theology and Title IX

The Seminary accepts the Scriptures as the inspired and inerrant Word of God, and is compelled by the Scriptures to be faithful to the religious tenets articulated therein. These religious tenets are illuminated by the *Baptist Faith and Message, 2000*, a statement of faith that serves as a witness to the beliefs of the Church and a pledge of its members’ faithfulness to the doctrines revealed in Holy Scripture. As noted in the Seminary’s *Academic Catalog*, the school’s Trustees, upon founding the Seminary in 1957, expressly adopted *The Baptist Faith and Message* as the Seminary’s own confession.¹³

In addition to the *Baptist Faith and Message, 2000*, the “*Danvers Statement on Biblical Manhood and Womanhood*, the *Chicago Statement on Biblical Inerrancy*, and Midwestern Seminary’s own statement on *Sex, Sexuality, and Gender Identity*, function as guiding institutional documents.”¹⁴ The Seminary notes in its *Academic Catalog* that these various statements, like the *Baptist Faith and Message, 2000*, “function as instruments of confessional accountability to the churches of the Southern Baptist Convention.”¹⁵ Faculty and instructional staff are required “to believe and teach in accordance with and not contrary to them.”¹⁶ Emphasizing the importance of these statements of faith, the Seminary includes the entire text of each in its *Academic Catalog*.

To the extent that the Church’s religious tenets permit, the Seminary remains committed to complying with the spirit and letter of federal laws affording equal educational opportunity and nondiscrimination

⁷ *Id.* at 40.

⁸ *Id.* at 22.

⁹ See Midwestern Baptist Theological Seminary website, *What We Believe* (available online at <http://www.mbts.edu/about/what-we-believe/>).

¹⁰ *Id.*

¹¹ Midwestern Baptist Theological Seminary 2012 *Employee Handbook*, pg. 13.

¹² *Id.* at 25.

¹³ Midwestern Baptist Theological Seminary 2015-2016 *Academic Catalog*, pg. 2 (available online at <http://www.mbts.edu/news-resources/current-students/catalogs-and-forms/>).

¹⁴ *Id.* at 7.

¹⁵ *Id.*

¹⁶ *Id.*

in admission to and participation in the Seminary's programs and activities. However, in some instances, Scripture, as understood by the Church and articulated in the statements of faith detailed above, requires the institution to act in ways that may conflict with certain of the regulations implementing Title IX, as interpreted by OCR.

Premarital, Extramarital, and Homosexual Sexual Activities

The Baptist Faith and Message, 2000, articulates the Church's position regarding marriage and family as follows:

Marriage is the uniting of one man and one woman in covenant commitment for a lifetime. It is God's unique gift to reveal the union between Christ and His church and to provide for the man and the woman in marriage the framework for intimate companionship, the channel of sexual expression according to Biblical standards, and the means for procreation of the human race.¹⁷

Flowing from this conviction in the sanctity of marriage is the Church's belief that "Christians should oppose... all forms of sexual immorality, including adultery, homosexuality, and pornography."¹⁸ Indeed, the SBC will not seat messengers from churches that "act to affirm, approve, or endorse homosexual behavior."¹⁹

Reflecting this religious doctrine, the Seminary strictly prohibits students from engaging in sexual impropriety, which is defined as "participation in premarital sex, extramarital sex, homosexual activities or any form of deviant sexual behavior or cohabitation."²⁰ The Seminary's *Employee Handbook* also requires employees to act in accordance with the Church's beliefs regarding the sanctity of marriage, emphasizing that employees and volunteers must "conduct themselves in a professional and Biblical manner at all times."²¹

Gender Identity

The Seminary adheres to the belief, fundamental to Scripture and observed by most Christian churches today, that our embodiment as male and female is understood as an aspect of our creation by God. On this point, the *Baptist Faith and Message, 2000*, observes that "[m]an is the special creation of God, made in His own image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God's creation."²² Concomitant with this belief is the understanding that our God-given gender is instructive regarding the moral behavior and lifestyles that are good and pleasing to Him.

¹⁷ *Baptist Faith and Message, 2000*, Art. XVIII, The Family (available online at <http://www.sbc.net/bfm2000/bfm2000.asp>).

¹⁸ *Id.* at Art. XV, The Christian and the Social Order.

¹⁹ *Southern Baptist Convention Constitution*, Article III.1. (available online at <http://www.sbc.net/aboutus/legal/constitution.asp>).

²⁰ *Midwestern Baptist Theological Seminary 2015-2016 Academic Catalog*, pg. 19 (available online at <http://www.mbts.edu/news-resources/current-students/catalogs-and-forms/>).

²¹ *Midwestern Baptist Theological Seminary 2012 Employee Handbook*, pg. 13-14.

²² *Baptist Faith and Message, 2000*, Art. III, Man (available online at <http://www.sbc.net/bfm2000/bfm2000.asp>).

In 2014, the SBC passed a series of resolutions that further articulates the Church's views with regard to transgender identity. Among the specific resolutions were the following:

- That gender identity is determined by biological sex and not by one's self-perception—a perception which is often influenced by fallen human nature in ways contrary to God's design (Ephesians 4:17–18).
- That we love our transgender neighbors, seek their good always, welcome them to our churches and, as they repent and believe in Christ, receive them into church membership (2 Corinthians 5:18–20; Galatians 5:14).
- That we regard our transgender neighbors as image-bearers of Almighty God and therefore condemn acts of abuse or bullying committed against them.
- That we oppose efforts to alter one's bodily identity (*e.g.*, cross-sex hormone therapy, gender reassignment surgery) to refashion it to conform with one's perceived gender identity.
- That we continue to oppose steadfastly all efforts by any governing official or body to validate transgender identity as morally praiseworthy (Isaiah 5:20).²³

In its *Academic Catalog*, the Seminary discusses at length the institution's views regarding sex, sexuality, and gender identity:

We affirm that God's original and ongoing intent and action is the creation of humanity manifest as two distinct sexes, male and female. We also recognize that due to sin and human brokenness, our experiential perception of our sex and gender is not always that which God the Creator originally designed, and yet affirm further God's capacity to heal and transform our brokenness in keeping with His purposes and will. With this foundational understanding of creation, fall, and redemption, we do not support or affirm the resolution of tension between one's biological sex and one's experiential perception of gender by the adoption of a psychological identity discordant with one's birth sex. Similarly we do not support or affirm attempts to change one's given biological birth sex via medical intervention in favor of the identity of the opposite sex or of an indeterminate identity. Although as a Christian residential institution of higher learning we will respect those whose moral views diverge from ours, we will make institutional decisions in light of this policy regarding housing, student admission and retention, employment hiring and retention, and other matters.²⁴

In the preamble to this policy, the Seminary notes that the policy is “grounded in the teachings of the Bible as understood in the Seminary's confessional commitment—the Baptist Faith & Message 2000” and “intended to address transsexualism, transgenderism, and related gender identity issues.”²⁵

²³ *On Transgender Identity* (Baltimore, MD 2014) (available online at <http://www.sbc.net/resolutions/2250/on-transgender-identity>).

²⁴ *Midwestern Baptist Theological Seminary 2015-2016 Academic Catalog*, pg. 10 (available online at <http://www.mbts.edu/news-resources/current-students/catalogs-and-forms/>).

²⁵ *Id.*

Inconsistency with Title IX

As noted above, the Seminary is dedicated to “educating God-called men and women to be and make disciples of Jesus Christ.” To this end, the faculty, staff, and students of the Seminary are expected to conduct themselves in a manner consistent with the tenets of the Church and, as much as humanly possible, to model Christ in every area of their lives, including sexual conduct and gender identity. The policies and practices of the Seminary, which are informed by the Holy Scripture, the *Baptist Faith and Message 2000*, and the other statements of faith referenced above, are designed to encourage, facilitate, and protect this Christ-like conduct.

Application of Title IX and its implementing regulations would not be consistent with the religious tenets described above, or with the Seminary policies and practices that reflect those tenets, if the law prohibited the Seminary from, among other things:

- Engaging in recruiting, admissions, and financial assistance under a policy that called for the consideration of an applicant for admission’s sexual orientation, gender identity (including but not limited to transgender status), marital status, or past and present practices regarding marriage, sex outside marriage, or pregnancy (these considerations collectively referred to hereafter as “Individual Characteristics”), and prohibited the Seminary from treating that person differently as a result of that consideration;
- From subjecting students to rules of behavior, sanctions, or other treatment based on their Individual Characteristics. Examples would be the Seminary’s rules regarding the assignment of housing, restrooms, and locker rooms; restrictions to extracurricular activities by birth sex; rules prohibiting homosexual conduct including but not limited to a prohibition of a student’s engaging in sex with a person of his or her birth sex; and prohibition of sex outside of marriage between a man and a woman; or
- From making all employment decisions, including but not limited to selection criteria and pre-employment inquiries, recruitment, the decision to employ, retention decisions, and decisions regarding sanctions, in a manner that takes into consideration the employee’s Individual Characteristics.

Request for Exemption

In light of the forgoing, the Seminary formally requests exemption from Title IX, to include the following, implementing regulations, where the law would prohibit discrimination on the basis of sexual orientation, gender identity (including but not limited to transgender status), marital status, or past and present practices regarding marriage, sex outside marriage, or pregnancy, and compliance would conflict with the Church’s religious tenets.²⁶

Subpart C—Discrimination of the Basis of Sex in Admission and Recruitment Prohibited

²⁶ Each section of the regulations listed below is located in Title 34, Subtitle B, Chapter I of the U.S. Code of Federal Regulations.

- 106.21 Admission.
- 106.22 Preference in admission.
- 106.23 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

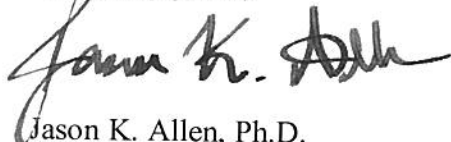
- 106.31 Education programs or activities.
- 106.32 Housing.
- 106.33 Comparable Facilities.
- 106.34 Access to classes and schools.
- 106.36 Counseling and use of appraisal and counseling materials.
- 106.37 Financial Assistance.
- 106.38 Employment Assistance to Students.
- 106.39 Health and insurance benefits and services.
- 106.40 Marital or parental status.
- 106.41 Athletics.
- 106.43 Standards for measuring skill or progress in physical education classes.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

- 106.51 Employment.
- 106.52 Employment Criteria.
- 106.53 Recruitment.
- 106.54 Compensation.
- 106.55 Job classification and structure.
- 106.56 Fringe Benefits.
- 106.57 Marital or parental status.
- 106.58 Effect of State or local law or other requirements.
- 106.59 Advertising.
- 106.60 Pre-employment Inquiries.
- 106.61 Sex as a bona-fide occupational qualification.

Thank you for your attention to this request. If you have any questions, or if additional information is required, please do not hesitate to contact me.

Very truly yours,



Jason K. Allen, Ph.D.

President

Midwestern Baptist Theological Seminary