



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

March 24, 2015

Dr. Randy O'Rear
President and CEO
University of Mary Hardin-Baylor
900 College Street
Belton, Texas 76513

Dear Dr. O'Rear:

The purpose of this letter is to respond to your January 29, 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 the University of Mary Hardin-Baylor (University) of Belton, 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 a religious organization, the Baptist General Convention of Texas." Your request stated that pursuant to the University's Restated Certificate of Formation, "the Baptist General Convention of Texas controls the University in part by exercising its right to select a majority of the board of directors of the University, the governing body of the University."

Your letter requests exemption from 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 (including but not limited to transgender status), pregnancy, and abortion." In support of this request, you cite to *On Sexual Ethics*, a resolution adopted by the Convention in 2009. According to your letter, that resolution states that "the Bible teaches that the idea 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 further cite the Convention's religious belief that "gender is based on biological attributes and is seen as a gift from God and immutable." Finally, you cite to the Baptist Faith and Message, which, according to your letter, states that "[m]arriage is the uniting of one man and one woman."

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, 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

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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 that they “would require the institution to treat marriage, sex outside of marriage, homosexuality, gender identity (including but not limited to transgender status), pregnancy and abortion in a manner that is inconsistent with the religious tenets” of the Baptist General Convention of Texas:

- 34 C.F.R. § 106.21 (governing admissions);
- 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 (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