



UNIVERSITY OF  
NORTHWESTERN  
ST. PAUL

February 12, 2016

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

Re: University of Northwestern- St. Paul's Request for Title IX Religious Exemption

Dear Ms. Lhamon:

I have become aware that the Department of Education recently interpreted Title IX's ban on sex discrimination in education to include discrimination based on gender identity.<sup>1</sup> As president of the University of Northwestern- St. Paul (UNW), a private, religious college in Minnesota, I hereby request, under 34 C.F.R. §106.12, an exemption for UNW from this interpretation of Title IX due to the religious beliefs of our institution, to the extent we are not covered by our current exemption.

As described in its Bylaws and Board Roles and Responsibilities (enclosed), UNW is a Christ-centered, higher education institution built upon the historic, Christian, Protestant, evangelical tradition. The University was founded in 1902 as Northwestern Bible and Missionary Training School. Though now known as UNW, our mission remains providing Christ-centered higher education equipping students to grow intellectually and spiritually, to serve effectively in their professions, and to give God-honoring leadership in the home, church, community, and world.<sup>2</sup> Our core religious convictions are central to our educational experience and learning community as demonstrated by the fact that all members of the UNW community—all students, faculty, and staff—are required to profess faith in Jesus Christ as Lord and Savior.<sup>3</sup> As further evidence of its identity as a religious organization, UNW also offers undergraduate and graduate degrees in theology, divinity, ministry, and Biblical studies, in addition to traditional liberal arts degrees.

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<sup>1</sup> See U.S. Department of Education, Questions and Answers on Title IX and Sexual Violence, *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> at 5 ("Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation."); *see also* Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, *available at* <http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf>.

<sup>2</sup> <https://unwsp.edu/web/about/mission-vision>.

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In 1989, UNW was previously granted exemption from Title IX by your office, to the extent that Title IX prohibited UNW from making “gender-based distinctions in matters of moral behavior, marriage, and residential living environments and standards,” after ED OCR found that UNW is controlled by a religious organization and therefore met the criteria for the exemption.<sup>4</sup> This has not changed. As it was in 1989, UNW is completely controlled by, and receives its financial support from University of Northwestern–St. Paul, Inc., a non-profit religious corporation.<sup>5</sup> Every member of the Board of Trustees of the corporation is required to subscribe to the beliefs outlined in our doctrinal statement.<sup>6</sup> “This relationship between the Corporation and the College adequately establishes that [UNW] is controlled by a religious organization as is required for consideration for exemption under § 106.12 of the Title IX regulation.”<sup>7</sup>

As a religious corporation with a specific educational mission, UNW is committed to an evangelical theology that arises from its Christian Protestant tradition. UNW’s theological and ethical tradition is articulated in its doctrinal statement, which is agreed to by all trustees, students, faculty, and staff. A copy of the doctrinal statement is enclosed. A nondenominational institution, UNW’s doctrinal heritage defines its mission, guides the development of its academic programs, shapes strategic planning and decision-making, and also determines the ethical values embraced by the trustees, faculty, and staff. UNW’s “Declaration of Christian Community” (also enclosed) reaffirms our longstanding belief in the authority of the Bible; the care and compassion we want to characterize our community; and our understanding of the Bible’s teaching on moral issues, including human sexuality. The Declaration of Christian Community must also be agreed to by all trustees, students, faculty and staff.

In keeping with UNW’s mission and commitment to evangelical Christianity, all members of the University community are expected to live and support the teachings of Scripture.<sup>8</sup> UNW affirms that sexual relationships are designed by God to be expressed solely within a marriage between husband and wife.<sup>9</sup> This view of sexuality and marriage is rooted in the Genesis account of creation and is maintained consistently throughout Scripture, including in the teachings of Jesus. The University believes that sexual relations of any kind outside these confines of heterosexual marriage are inconsistent with the teaching of Scripture, as understood by Christian churches throughout history.<sup>10</sup> Additionally, UNW believes that we are created by God in His image as two distinct sexes—male and female—and believes that each person glorifies God and affirms His infinite holiness and wisdom by living in alignment with his or her birth sex. While we acknowledge there may be confusion and brokenness for some individuals in this area, we do not affirm or support transgender identity or expression. Instead, we place our faith and trust in God’s redemptive plan.<sup>11</sup>

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<sup>4</sup> 1989 Religious Exemption Letter.

<sup>5</sup> Bylaws, Art. III, Section 1; Roles and Responsibilities, Article I; see also Articles of Incorporation (enclosed). The name of the corporation in 1989 was Northwestern College, Inc., but the name was amended to reflect the new name of the college in 2013. It is otherwise the same.

<sup>6</sup> Bylaws, Art. III, Section 2; Roles and Responsibilities, Article I.

<sup>7</sup> 1989 Religious Exemption Letter.

<sup>8</sup> Declaration of Christian Community at 1-2.

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Conduct that violates UNW's biblical beliefs on sexuality and/or marriage, depending on the facts and circumstances of each case, may result in disciplinary action. In all disciplinary matters, we will seek to be redemptive in the lives of the individuals involved. Consequently, UNW will offer counsel and assistance to support and strengthen the individual's resolve to live consistently with Christian teaching on sexuality. UNW also believes that abortion is morally equivalent to murder based on the teachings of Scripture.<sup>12</sup> Any individual who unrepentantly participates in abortion would also be in violation of our community standards.

UNW affirms the dignity of all human beings. We also separate the value of each person from the behavioral choices one makes. We believe that, as Christians, we are called to treat all people with compassion, and to extend the gospel of repentance, forgiveness, and transformation through Jesus Christ to such persons without reservation. However, in keeping with our biblical beliefs surrounding the morality of such actions, we cannot in good conscience support or encourage an individual to live in conflict with biblical principles. Moreover, any individual who violates campus standards for biblical living is subject to discipline, including expulsion.<sup>13</sup>

As you know, the Office for Civil Rights has not issued regulations or guidance explaining how an educational institution's response to a transgender individual might violate Title IX and its accompanying regulations, though the Department of Education recently issued guidance on sexual violence prevention which incorporates discrimination based on "gender identity" as part of "sex discrimination" under the statute.<sup>14</sup> And as you also know, the resolution agreement<sup>15</sup> between the Arcadia Unified School District and ED OCR (and the Department of Justice) requires that school district to permit transgender students to use the restroom, locker room, and living accommodations of their choice, and to participate in athletic programs as a member of a sex to which they believe they belong.<sup>16</sup> It is thus reasonable to suppose that ED OCR believes that such responses are required by Title IX. It also reasonable to presume that your office interprets Title IX to impose gender identity non-discrimination obligations upon covered institutions in the employment context. To the extent these suppositions are correct, it appears as though compliance with Title IX, as interpreted by ED OCR to reach transgender "discrimination," would be inconsistent with the religious tenets of UNW.

Additionally, recently the EEOC has begun openly declaring that the ban on "sex" discrimination in Title VII of the Civil Rights Act of 1964 also forbids discrimination on the basis of "sexual orientation."<sup>17</sup> It is conceivable that the Department of Education's Office for Civil Rights could interpret Title IX of the Education Amendments of 1972 the same way. To the extent these suppositions are correct, it appears as though compliance with Title IX, if interpreted by ED OCR to reach sexual orientation "discrimination," would also be inconsistent with the religious

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<sup>12</sup> *Id.*

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<sup>15</sup> Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, *available at* [http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia\\_Resolution\\_agreement\\_07.24.2013.pdf](http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf).

<sup>16</sup> *Id.*

<sup>17</sup> *See* [http://www.macon.com/2015/03/30/3668458\\_eec-issues-determination-letter.html?rh=1](http://www.macon.com/2015/03/30/3668458_eec-issues-determination-letter.html?rh=1).

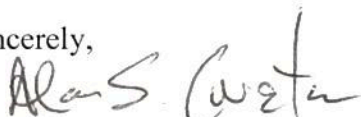
tenets of UNW, and UNW therefore seeks exemption on this basis as well out of an abundance of caution.

UNW accordingly requests that your office acknowledge that the University is exempt from Title IX and the following implementing regulations (to the extent they are interpreted to reach gender identity or sexual orientation discrimination, and to the extent they restrict UNW's freedom to apply and enforce its beliefs and policy regarding abortion):

- 34 C.F.R. § 106.21 (admission)<sup>18</sup>
- 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 (governing housing);
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- 34 C.F.R. § 106.51-61 (relating to employment)<sup>20</sup>

Thank you in advance for your consideration. I look forward to hearing from you soon. If you require anything further, please do not hesitate to contact me.

Sincerely,



Alan S. Cureton, Ph.D.  
President

- Enclosures:
- (a) 1989 Title IX Exemption Letter
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