

26 February 2016

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

Re: Request for Religious Exemption from Certain Applications of Title IX

Dear Ms. Lhamon:

I hereby request, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, that the Department of Education's Office for Civil Rights acknowledge that Virginia Baptist College is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to curtail the College's freedom to act in accordance with its religious convictions. As President of Virginia Baptist College, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and am thus qualified to seek these exemptions.

Virginia Baptist College ("VBC" or "the College") was established in 1984 as Berean Bible Institute, a ministry of Faith Baptist Church of Fredericksburg, Virginia.<sup>1</sup> Don Forrester, then a pastor of Faith Baptist Church, founded the Institute along with two other local pastors, in order "to further the purposes of their churches, through a combined effort, by providing college-level training for Christian workers."<sup>2</sup>

Renamed Virginia Baptist College in 1994, the school exists "to equip men and women for dynamic Christian service and leadership in Bible-believing churches by providing higher education that emphasizes academic excellence, spiritual development, and preparation for ministry, both lay and professional."<sup>3</sup> VBC exists for the following purposes:

- To train leaders and workers to serve in local churches;
- To train pastors and missionaries to plant and lead local churches; and
- To continue to train pastors and church staff members who are serving in area churches.<sup>4</sup>

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<sup>1</sup> See <http://www.vbc.edu/general-information-2/history>.

<sup>2</sup> See *id.*

<sup>3</sup> Virginia Baptist College Board Manual, Mission Statement, p. vii.

<sup>4</sup> VBC Board Manual, Bylaws, Article III, p. 17.

Acknowledging Christ preeminent as the creator of all things, as the redeemer of people fallen into sin, as the touchstone of all truth, and as the sovereign ruler over all areas of life, the College strives to discern and to unfold the implications of His preeminence in all things. To serve this end, we seek to appropriate the mind of Christ as the biblical perspective from which we characterize and respond to reality:

A thoroughly Scriptural philosophy of education begins with the centrality of Christ. All things exist by Him and for Him. From start to finish the primary goal of the educational process is to glorify God. The Christian considers God to be the source of all wisdom and knowledge. The Scriptures, as inspired divine revelation, provide not only the most important body of knowledge available to men, but they also become the filter and the illuminator which allows the Christian to properly evaluate and interpret knowledge stemming from natural revelation of any other source.<sup>5</sup>

In attempting to make such a biblically-grounded frame of reference explicit and operative, we are committed to excellence in academic inquiry, and we seek to define all areas of the VBC's structure and program according to this understanding of our purpose.<sup>6</sup> VBC's "goal is more than imparting academic knowledge; rather it is leading each student to spiritual maturity and Christlikeness."<sup>7</sup>

VBC continues to be affiliated with Faith Baptist Church as VBC's host church. Faith Baptist Church lists VBC as one of its ministries on its website<sup>8</sup> and provides significant financial support to VBC.<sup>9</sup> VBC's dormitories, offices, and other facilities are located on properties owned by Faith Baptist Church.<sup>10</sup> The chairman of VBC's governing board is the pastor of Faith Baptist Church.<sup>11</sup> Additionally, VBC receives support from local Baptist churches,<sup>12</sup> and VBC's board is governed by Baptist theology: board members must be

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<sup>5</sup> See Educational Philosophy, <http://www.vbc.edu/general-information-2/mission-statement>.

<sup>6</sup> See *id.*

<sup>7</sup> See Purpose, <http://www.vbc.edu/general-information-2/mission-statement>.

<sup>8</sup> See <http://www.fbcnet.org/>.

<sup>9</sup> See Virginia Baptist College Financial Statements for the Year Ended June 30, 2015, p. 10 ("Virginia Baptist College, Inc. is an organization that is controlled by individuals who are associated with both Faith Baptist Church and the College. The College is subsidized by the Church. This subsidy is in the form of facilities provided rent-free and cash support when needed."). See also VBC Financial Statements, p. 9 ("Due to the large level of cash support and the facilities provided by Faith Baptist Church, the discontinuance of support from Faith Baptist Church would severely impact the operations of the College."); VBC Board Manual, Host Church Policy, p. 32.

<sup>10</sup> VBC Board Manual, pp. iv-vi.

<sup>11</sup> VBC Board Manual, Host Church Policy, pp. 32 (requiring that the board elect the pastor of the host church, if he chooses to serve, as chairman), 43.

<sup>12</sup> See VBC Financial Statements, p. 7.

Christians who attend independent Baptist churches and must sign the VBC Doctrinal Statement.<sup>13</sup>

Faith Baptist Church and VBC—as one of its ministries—understand the Bible to be the infallible, written Word of God. In addition, both Faith Baptist Church and the College affirm that the Doctrinal Statement provides the most adequate and comprehensive articulation of the system of doctrine taught in the Bible.<sup>14</sup> Accordingly, the College seeks to express positions that are in accord with those standards.

Therefore, consistent with these standards, VBC has developed a Statement on Human Sexuality (enclosed). That statement provides in pertinent part as follows:

God created man and woman in His image as two distinct but equal genders which He intends to use for His glory (Gen. 1:26-27). Furthermore, individual gender is assigned by God and determined at conception (Ps. 139:13-16). Therefore we believe that to intentionally alter or change one's physical gender or to live as a gender other than the one assigned at conception is to reject God's right as Creator to assign gender to His creatures and is a personal rejection of His plan to glorify Himself through the original gender He assigned that individual (1 Cor. 10:31). Students who wish to live on campus must choose the appropriate dorm based on their biological sex.

Any student or employee involved in any immoral behavior, including, but not limited to, premarital sex, adultery, homosexuality, and written, verbal, visually sexual communication, abortion, or transgender activities should expect immediate suspension or dismissal from the College.<sup>15</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>16</sup>

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<sup>13</sup> VBC Board Manual, Bylaws, Article IV, p. 17.

<sup>14</sup> Compare VBC Doctrinal Statement, <http://www.vbc.edu/doctrinalstatement> with Faith Baptist Church, "What We Believe," <http://www.fbcnet.org/new/what-we-believe/>.

<sup>15</sup> See Virginia Baptist College Statement on Human Sexuality, page 2.

<sup>16</sup> 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.").

And as you also know, the resolution agreement<sup>17</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 the sex to which they believe they belong.<sup>18</sup> It is thus reasonable to suppose that ED OCR believes that such responses are required by Title IX.

It is 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 VBC.

For that reason, I request, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, that the Department of Education's Office for Civil Rights acknowledge that VBC is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to curtail the College's freedom to respond to transgender individuals in accordance with its theologically-grounded convictions.

Additionally, consistent with historic understanding of the Holy Scriptures and the doctrinal standards shared with Faith Baptist Church,<sup>19</sup> the College affirms the following regarding sexual conduct:

[S]exual intimacy is designed by God to be expressed solely within a marriage between one man and one woman. This view of sexuality and marriage is rooted in the Genesis account of creation (2:18-25), reflected in the teachings of Jesus Christ himself (Matt. 19:4-6), and is maintained consistently throughout Scripture. It is a view based on the biblical teaching of monogamy—that God designed sexual union for the purpose of uniting one man and one woman into a permanent, lifelong, intimate, one flesh union in the context of marriage.

Thus, God's design for marriage and sexuality is the foundational reason for viewing acts of sexual intimacy between a man and a woman outside of

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<sup>17</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.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

<sup>18</sup> *Id.*

<sup>19</sup> VBC Doctrinal Statement, <http://www.vbc.edu/doctrinalstatement>; Faith Baptist Church, "What We Believe," <http://www.fbcnet.org/new/what-we-believe/>.



marriage, and any act of sexual intimacy between two persons of the same sex, as illegitimate moral options for the confessing Christian. Sexual relations of any kind outside the confines of marriage between one man and one woman are inconsistent with the teaching of Scripture, as understood by Christian churches throughout history.<sup>20</sup>

The College, in service to the Church, welcomes those of professed Christian faith who experience same sex attraction. But, the College also, consistent with Faith Baptist Church and historic Baptist theology, affirms that sexual activities with members of the same sex cannot be condoned as acceptable expressions of one's sexuality. As you are aware, the EEOC has begun 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>21</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 theological commitment of VBC. The College, therefore, also seeks exemption on this basis out of an abundance of caution.

Lastly, consistent with a biblical interpretation of the value of life, the College in its Statement on Human Sexuality provided the following summary of its beliefs regarding the sanctity of human life:

We believe that human life begins at conception and that the unborn child is a living human being. Abortion constitutes the unjustified, unexcused taking of unborn human life. Abortion is murder. We reject any teaching that abortions of pregnancies due to rape, incest, birth defects, gender selection, birth or population control, or the physical or mental well-being of the mother are acceptable. (Job 3:16; Ps. 51:5, 139:14-16; Isa. 44:24, 49:1, 5; Jer. 1:5, 20:15-18; Luke 1:44).<sup>22</sup>

VBC accordingly requests that your office acknowledge that VBC 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 the College's freedom to apply and enforce its beliefs regarding the sanctity of life):

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<sup>20</sup> See Virginia Baptist College Statement on Human Sexuality, p. 1.

<sup>21</sup> See <http://www.eeoc.gov/decisions/0120133080.pdf>.

<sup>22</sup> See Statement on Human Sexuality, p. 2.

- 34 C.F.R. § 106.21 (admission)
- 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 (housing)
- 34 C.F.R. § 106.33 (comparable facilities)
- 34 C.F.R. § 106.34 (access to classes and schools)
- 34 C.F.R. § 106.36 (counseling)
- 34 C.F.R. § 106.37 (financial assistance)
- 34 C.F.R. § 106.38 (employment assistance to students)
- 34 C.F.R. § 106.39 (health and insurance benefits and services)
- 34 C.F.R. § 106.40 (marital or parental status)
- 34 C.F.R. § 106.41 (athletics)
- 34 C.F.R. § 106.43 (standards for measuring skill or progress in physical education classes)
- 34 C.F.R. § 106.51-61 (relating to employment)

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.

Yours sincerely,



Daniel Stevens  
President, Virginia Baptist College

Enclosures