



# Westminster Seminary California

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March 29, 2016

**VIA U.S. MAIL, FEDERAL EXPRESS, AND  
EMAIL [OCR@ed.gov]**

Ms. 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: Westminster Seminary California Request for Title IX Religious Exemption

Dear Ms. Lhamon:

The purpose of this letter is to request, pursuant to 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 Westminster Seminary California ("the Seminary" or "WSC") is exempt from Title IX of the Education Amendments of 1972 ("Title IX") and its accompanying regulations to the extent that they are interpreted to curtail the Seminary's freedom to establish standards concerning gender identity, sexual orientation, abortion, marriage, and homosexual practice in accordance with its deeply held religious convictions. As President of the Seminary, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

## **A. GOVERNING STANDARDS**

As you know, under Title IX and its implementing regulation at 34 C.F.R. § 106.12, Title IX does not apply to an educational institution that is controlled by a religious organization to the extent that application of Title IX would be inconsistent with the religious tenets of the organization. As the Office for Civil Rights has explained in its guidance ("OCR Guidance"):

An institution will normally be considered to be controlled by a religious organization if one or more of the following conditions is true:

- (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  
....<sup>1</sup>

## **B. THE SEMINARY QUALIFIES FOR THE EXEMPTIONS**

As explained below, the Seminary is entitled to the requested religious exemption and is controlled by a religious organization within the meaning of the statute, implementing regulations, and OCR Guidance in that it meets at least the above two conditions.

Westminster Seminary California is a school of divinity that primarily prepares students to become ministers of religion. Specifically, the Seminary is a California non-profit graduate institution of higher education<sup>2</sup> offering theological and biblical study designed primarily and specifically for the education of students to prepare them to become future pastors (i.e., ministers of religion) for Christian churches or to prepare them to teach theological subjects or to pursue other religious vocations.

Westminster Seminary California opened its doors in Escondido, California, in 1979 as an extension of Westminster Theological Seminary in Philadelphia, Pennsylvania ("WTS") and welcomed its first students in the Fall of 1980. At that time, WSC came under the umbrella of a request for Title IX exemptions that had been submitted by WTS on August 9, 1977. WSC became independent of WTS in 1982. The exemption requested by WTS was granted by the Office for Civil Rights to WTS on September 18, 1985. WSC now seeks an exemption in its own name. Because WSC's religious tenets, mission, and control structure remain substantially the same as those of WTS at the time when the latter was granted Title IX exemptions, the same considerations that supported the grant of exemptions to WTS in 1985 support the grant of exemptions to WSC today.

WSC's mission is defined as follows:

Westminster Seminary California (WSC) is a Christian institution seeking to glorify God through graduate theological study. Its primary responsibility is to educate future pastors for Christian churches, especially for Presbyterian and Reformed denominations. It also provides theological education for others who will serve in the Christian community and the larger society.

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<sup>1</sup> Website, U.S. Department of Education, "Religious Exemption, Protecting Students>Sex Discrimination," at <http://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/rel-exempt-pr.html>.

<sup>2</sup> As evidenced by the Restated Articles of Incorporation of Westminster Theological Seminary in California (submitted with this letter as Exhibit "A," "Certificate of Amendment and Restatement of Articles of Incorporation of Westminster Theological Seminary in California"), the Seminary is a California non-profit corporation organized and existing under and by virtue of the non-profit corporation laws of the State of California. As also evidenced by the Restated Articles, the legal name of the Seminary is "Westminster Theological Seminary in California." The Seminary operates under and is generally known by the d/b/a "Westminster Seminary California" or "WSC."

WSC offers instruction in biblical, theological, and ministerial disciplines to both men and women as the heart of a program to help students to develop intellectually and spiritually as leaders. While the focus of our programs is to educate and prepare men for office-bearing ordained ministries of instruction and leadership as pastors, WSC also furnishes training in Scripture and theology to both women and men who are preparing to serve Christ and His church in vocations other than the ordained leadership ministries so that the whole body of Christ may be enriched through the diverse gifts bestowed by God's Spirit.

Because zeal without knowledge or knowledge without zeal can only injure the church, WSC seeks to develop in its students a balanced combination of scholarship and Christ-like piety, where proper cultivation of the mind increases the devotion of the heart. Westminster Seminary California seeks to establish a pastoral and scholarly community that ultimately seeks to glorify Christ, promote His Gospel, and serve His Church.

(WSC Website, "Mission.")(Emphasis in original.)<sup>3</sup>

Consistent with this mission, all classes offered by the Seminary have an instructional focus and content that is religious in nature. All classes are designed primarily to prepare future pastors (i.e., ministers of religion), and secondarily, to prepare other persons who may serve in other religious vocations, or to prepare them to teach theological subjects.<sup>4</sup> The Seminary offers a Master of Divinity (M.Div.) program designed to prepare future pastors. Approximately seventy percent (70%) of enrolled students are pursuing an M.Div. degree. In addition to this degree, WSC offers three Master of Arts (M.A.) programs for men and women who do not plan to serve in ordained ministry. Built off of the M.Div., the M.A. programs allow students to focus on a particular area: Biblical Studies, Theological Studies, or Historical Theology.<sup>5</sup>

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<sup>3</sup> <https://www.wscal.edu/about-wsc/welcome-to-wsc/mission>. The Seminary's By-Laws similarly provide in pertinent part:

MISSION STATEMENT. Westminster Seminary California is a Christian institution seeking to glorify God through graduate theological study. Its primary responsibility is to educate future pastors for Christian churches, especially for Presbyterian and Reformed denominations. It also provides theological education for others who will serve the Christian community and the larger society.

(Bylaws of Westminster Theological Seminary in California, Section 1, p.1.) A copy of the By-Laws is submitted with this letter as Exhibit "B".)

<sup>4</sup> The Seminary's By-Laws, at Art. II, Section 4, p.3, state in pertinent part:

TASKS: In view of its foundational convictions and institutional characteristics WSC understands its primary tasks to be the following:

- A. WSC's central task is to educate and form men for ordained ministries of instruction and leadership as pastors, evangelists, and teachers. The seminary seeks to prepare ordained leaders who believe and love, and who therefore strive to explore, communicate and defend, the depth and breadth of the Scripture's instruction for faith and life, summarized in the Reformed confessions.
- B. WSC also furnishes training in Scripture and theology to both men and women who are preparing to serve Christ and his church in vocations other than the ordained leadership ministries, so that the whole body of Christ may be enriched through the diverse gifts bestowed by the manifold grace of God.
- C. WSC supports and advances the ministries of those engaged in ordained teaching and preaching ministries by offering continuing theological education.

<sup>5</sup> <https://www.wscal.edu/academics/degrees-and-programs>.

WSC's mission, educational framework, and governing principles are shaped by the fact that the Seminary is a confessional institution committed to Reformed theology as expressed in its written confessional standards. The Seminary is controlled by the written Reformed confessional standards (i.e. the tenets) of the Reformed and Presbyterian church denominations (i.e., religious organizations) belonging to the North American Presbyterian and Reformed Council (specifically the United Reformed Churches, the Orthodox Presbyterian Church, the Presbyterian Church in America, the Associated Reformed Presbyterian Churches, and the Korean-American Presbyterian Church) and the Christian Reformed Church.<sup>6</sup> The Reformed Confessional standards that govern WSC and align it with these church denominations are the Westminster Confession and Catechisms in the form in which they were adopted by Westminster Theological Seminary (Philadelphia) in 1936, the Heidelberg Catechism, Belgic Confession, and Canons of Dort as adopted by the Synod of Dort in 1619 (with a certain commonly received revision of Article 36) (the "Confessional Standards").<sup>7</sup>

The Seminary is governed by a Board of Trustees made up of eighteen (18) individuals. Pursuant to the Seminary's By-Laws, the board members must have been previously recognized by election and ordination to the office of elder in one of the above confessionally Reformed denominations with which the Seminary is aligned, and they are accountable to their respective denomination for their actions and faith.<sup>8</sup> Further, the Seminary's By-laws also require that at least six (6) but not more than nine (9) board members must be ordained ministers of the gospel.<sup>9</sup> Moreover, the By-Laws require that each Board member elected to the Board of Trustees, before assuming office, must express agreement with the written Confessional Standards of the Seminary and of these denominations in the form of a written subscription to the following pledge:

I do solemnly declare in the presence of God and of these representative members of the faculty and trustees of Westminster Seminary California (1) that I believe the Scriptures of the Old and New Testaments to be the Word of God, the only infallible rule of faith and practice; (2) that I do solemnly and *ex animo* adopt, receive, and subscribe to the confessional standards of the seminary as the confession of my faith, or as a summary and just exhibition of that system of doctrine and religious belief, which is contained in Holy Scripture, and therein revealed by God to man for his salvation; and I do solemnly promise and engage not to inculcate or insinuate anything which shall contradict or contravene either directly or impliedly, any element in that system of doctrine, nor to oppose any of the fundamental principles of that form of church government, while I continue as a member of the Board of this seminary; (3) and I pledge that, approving the

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<sup>6</sup> ByLaws, Art. II, Section 3.A, p.2.

<sup>7</sup> ByLaws, Art. II, Section 2.C, p.2; ByLaws, Art. III.2), p. 4; Art. IV, Section 4, p. 5. These Confessional Standards also affirm belief that the Scriptures of the Old and New Testaments are the Word of God, the only infallible rule of faith and practice. The Confessional Standards and Scriptures are an integral part of the Statement of Faith of WSC, as stated in its ByLaws at Art. III, p. 3.

<sup>8</sup> ByLaws, Art. IV, Sections 1 and 2, p. 4.

<sup>9</sup> ByLaws, Art. IV, Section 1, p. 4.

Articles of Incorporation of Westminster Seminary California, I will faithfully endeavor to carry into effect those articles and to promote the great design of the seminary.<sup>10</sup>

The board members, as elder officers in their respective churches within the aligned Reformed and Presbyterian denominations mentioned above, are also required by their church body to subscribe and be in submission to the Confessional Standards.

The faculty of the Seminary consists of the president of the Seminary, all teaching staff, the deans, and the library director. Appointments as assistant professor, associate professor, and professor entail the right to vote, and the president and library director are voting members of the faculty.<sup>11</sup> All voting members of the faculty whose primary teaching responsibilities are in the M.Div. programs must be persons who are ministers in confessional Reformed churches mentioned above. In addition, all voting members of the faculty, before assuming office, must subscribe to the pledge similar to that required by the Trustees and set forth in the ByLaws – in essence to the effect that they subscribe to the same Confessional Standards.<sup>12</sup> The faculty is responsible to the Board of Trustees through the president.<sup>13</sup>

### **C. A RELIGIOUS EXEMPTION IS WARRANTED.**

Application of Title IX and certain regulations promulgated pursuant to it would conflict with the religious tenets of the Seminary and the denominations with which it is aligned concerning marriage, sex outside of marriage, sexual orientation, homosexual behavior, gender identity, abortion, pregnancy, and divorce.

The Seminary's Board of Trustees has adopted Behavioral Standards that apply to all members of the Seminary community, including students, faculty, and staff. The Behavioral Standards are derived from the Confessional Standards and the Seminary's belief in the Scriptures. The Behavioral Standards provide in pertinent part:

#### **BEHAVIORAL STANDARDS**

Westminster Seminary California is a distinctively and pervasively Christian community of scholars and expects its students, employees and authorized volunteers to conform to the standards of behavior set forth in Scripture and in the historic Reformed confessions, namely the Westminster Standards (Westminster Confession of Faith and the Westminster Larger and Shorter Catechisms) and the Three Forms of Unity (the Belgic Confession, Heidelberg Catechism, and Canons of Dort) (collectively, "the Confessional Standards"). These Confessional Standards teach that authentic goodness is a state of the heart, the product of regeneration by God's Holy Spirit. We cannot judge another's heart, and therefore we cannot judge the internal thoughts and attitudes that produce good or wicked actions. But we can and must take account of the external actions that Scripture praises or condemns.

Westminster Seminary California takes firm stands on matters of moral conduct as taught in the Scriptures and summarized in the Confessional Standards. For instance, the seminary affirms the sanctity of human life, including the life of an unborn child (Gen. 1:26-31; Psalm 22:10-11; 139:13-15; Gal. 1:15; WCF 4.2;

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<sup>10</sup> ByLaws, Art. IV, Section 4, p. 5.

<sup>11</sup> ByLaws, Art. XI, Section 1, p. 19.

<sup>12</sup> ByLaws, Art. XI, Section 2, p. 19.

<sup>13</sup> ByLaws, Art. XI, Section 5, p. 19.

HC Q 6; BC 14). The seminary has deeply held religious beliefs that homosexual behavior, lifestyle, and cohabitation, sexual relations outside the marital relationship, prurient use of pornography, transgender and cross-dressing behavior are immoral (Gen. 1:28; 2:18; Lev. 18:22; 20:13; Rom. 1:26-27; 1 Cor. 6:9-11; 2 Cor. 12:21; WCF 24.1-2, 5-6; HC Q 108-109) These are only select examples of the seminary's positions on some contemporary questions of conduct and morals.

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#### **Sexual Conduct Policy**

Westminster Seminary California believes that all persons, male and female, deserve to be treated with dignity, respect, honor, and love because they are created in the image of God. Sexuality is a good gift from God that enhances the whole of life, yet, for our benefit, God has provided boundaries for the expression of human sexuality. Westminster Seminary has deeply held religious beliefs, based upon biblical principles and our Confessional Standards, that only marriage between one man and one woman is God's intention for the joyful fulfillment of sexual intimacy. According to the Scriptures, Christians will uphold sexual abstinence among the unmarried (1 Cor. 6:18) and the sanctity of marriage between a man and a woman (Heb. 13:4). Therefore, it is our deeply held religious belief that Scripture condemns all forms of sexual intimacy outside of marriage, such as pre-marital sex, extra-marital sex, homosexual behavior, pornography, and all other sexual relations outside the bounds of monogamous marriage between one man and one woman (Matt. 5:27-28; Rom. 1:21-27; 1 Cor. 6:9-10; Gen. 2:24; Eph. 5:31). Violation of marriage vows by unfaithfulness or unbiblical divorce displeases God and injures others. Sexual practices that are divorced from loving, covenantal marriage relationships between a man and a woman distort God's intentions and result in sinful behavior. Not only sexual intimacy outside of marriage violates biblical standards, but so too may words, attitudes, and thoughts. We recognize that these principles may conflict with the practice or opinion of some within the larger culture. Nonetheless, Westminster Seminary California is convinced that this is God's design for human sexuality, and all members of the seminary community are expected to live within this biblical standard.

Sexual misconduct allegations will be viewed as serious and will be subject to appropriate disciplinary and other measures. Complaints will be investigated immediately and thoroughly. If it is determined that sexual misconduct has occurred, prompt and appropriate disciplinary action will be taken, up to and including termination (of an employee) and/or expulsion (of a student). The seminary will not retaliate, or permit retaliation (including terminating employment), for bringing an allegation of sexual misconduct in good faith (i.e., not frivolously, maliciously, or with vengeful intent).

....

**Gender Policy** It is also Westminster Seminary California's deeply held religious belief that human gender is assigned by God at birth and that birth gender may not be changed (Gen. 1:27; 5:2; Matt. 19:4). A person's expression of gender should be consistent with his or her birth gender. Westminster Seminary California reserves the right to dismiss any student [or terminate the employment of any employee] whose conduct, speech, and/or influence upon our faith community should prove to be in our judgment intractably contrary to this standard or contrary to the best interests of our students and their commitments to the seminary and to our Lord. Therefore, Westminster Seminary California will not support persistent or conspicuous displays of cross-dressing or other expressions or actions that are deliberately discordant with birth gender.<sup>14</sup>

In the employment context, both applicants and existing employees who perform any duties requiring teaching, imparting, or exemplifying Christian belief or practice are required to

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<sup>14</sup> Westminster Seminary California Student Handbook, Westminster Seminary California Faculty Handbook, and Westminster Seminary California Staff Handbook. The pertinent portion of the Behavioral Standards from the Student Handbook are submitted with this letter as Exhibit "C." The pertinent portion of the Behavioral Standards from the Faculty Handbook are submitted with this letter as Exhibit "D." The pertinent portion of the Behavioral Standards from the Staff Handbook are submitted with this letter as Exhibit "E."

profess Christian faith. In addition they are required to affirm their commitment to the Seminary's written sexual standards and conduct.<sup>15</sup>

As is apparent from the Behavioral Standards, derived from the Confessional Standards and the Scriptures, it would not be consistent with the Seminary's religious tenets and those of the denominations with which it is aligned to comply with the provisions of Title IX and the associated regulations to the extent that they would require the Seminary to allow males and females to reside in the same housing, to visit within the housing of the opposite sex without restrictions, to allow an unmarried male and female to live together, to allow same-sex married persons to reside together, to permit same-sex married persons to be students or employees, to allow a person with gender identity issues (including but not limited to transgender persons) to be treated as a member of the gender which they have assigned themselves rather than their birth gender, or would require that the Seminary not discriminate in discipline, recruiting, admissions, financial assistance, hiring, and employment decisions in matters such as employment leaves for pregnancy, childbirth, elective termination of pregnancy, or on the basis of pre-marital sex, unmarried pregnancy, certain elective abortion, extra-marital sex, or homosexual activity, past or present; or would require that the Seminary not subject students or employees to rules of behavior, sanctions, or other treatment because of these students' or employees' characteristics or behavior in violation of the Code of Christian Conduct.

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> In addition, as you know, the resolution agreement<sup>17</sup> between the Arcadia Unified School District and ED OCR (and the Department of Justice) requires the 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 their chosen sex.<sup>18</sup> Accordingly, it is reasonable to presume that your office interprets Title IX to impose gender identity non-discrimination obligations upon covered institutions in the academic and employment context. To the extent these suppositions are correct, it appears that compliance with Title IX, as interpreted by ED OCR to reach transgender "discrimination," would be inconsistent with the religious tenets of WSC and the denominations with which it is aligned.

For these reasons, Westminster Seminary California respectfully requests that your office acknowledge that the Seminary is exempt from Title IX and the following implementing

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<sup>15</sup> Westminster Seminary California Faculty Handbook, Westminster Seminary California Staff Handbook.

<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>, B-2 ("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.").

<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>.

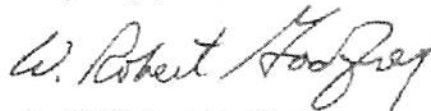
<sup>18</sup> *Id.*

regulations (including to the extent that they reach gender identity discrimination), and any other regulations or interpretations that would require the Seminary to treat marriage, sex outside marriage, homosexual behavior, gender identity, pregnancy, unmarried pregnancy, or elective termination of pregnancy in a manner that is inconsistent with the religious tenets of the Seminary and the denominations with which it is aligned:

- 34 C.F.R. § 106.21 (admission)
- 34 C.F.R. § 106.22 (preference in admission)
- 34 C.F.R. § 106.23 (recruitment of students)
- 34 C.F.R. § 106.31(b)(4) (different rules of behavior or sanctions; education programs or activities)
- 34 C.F.R. § 106.31(b)(7) (limitation of rights, privileged, advantages or opportunities)
- 34 C.F.R. § 106.32 (housing)
- 34 C.F.R. § 106.33 (comparable facilities such as restrooms or locker rooms)
- 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 (different rules based on marital or parental status of students)
- 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, employment criteria, recruitment of employees, consideration of marital or parental status in employment decisions, and pre-employment inquiries)

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

Very truly yours,



Dr. W. Robert Godfrey  
President  
Westminster Seminary California