

BARRY H. CORLEY



November 14, 2014

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: Biola University's Request for Title IX Religious Exemption

Dear Ms. Lhamon:

As the President of Biola University, Inc. ("Biola"), I am writing to request supplemental approval of Biola's existing religious exemption under 34 C.F.R. §106.12 with regard to the recent actions by the Departments of Education and Justice interpreting Title IX's ban on sex discrimination in education to include discrimination based on gender identity.<sup>1</sup> Enclosed for your reference is a copy of the religious exemption granted to Biola by the Department in 1985.

Biola is a private Christian evangelical institution located in southern California whose mission is to provide biblically centered education, scholarship and service – equipping men and women in mind and character to impact the world for the Lord Jesus Christ. As such, Biola is also committed to the Biblical ethic which makes a differentiation in roles between the sexes and espouses moral standards applicable to the conduct of both sexes equally. Biola's governing board has adopted a "Statement on Transsexualism and Transgenderism" ("Statement") grounded in its long-standing institutional religious identity as expressed in its Articles of Faith contained in its Articles of Incorporation and Bylaws which have been a constant since Biola's founding over one hundred years ago.

The Statement provides in part: *"God's original and ongoing intent and action was the creation of humanity manifest as two distinct sexes, male and female. Jesus Christ himself affirmed this, in his teaching correcting abuses of divorce stating "at the beginning the Creator 'made them male and female'" (Matt. 19:5). Each person was intended to experience congruence between the physical and experiential dimensions of their sexuality. Except in very unusual*

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<sup>1</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/crt/about/edu/documents/arcadiaagree.pdf>

*cases, our sex as male or female is a biological given of the individual human person from conception made manifest at birth, and is not changeable but rather a stable, enduring characteristic of the person determined by God's creational intent."*

*It further states: "We view growth in godliness to be directed toward alignment or reconciliation with one's biological birth sex as God's creational intent for those individuals. Biola University will not support persistent or exaggerated examples of cross-dressing that are grounded in the fundamental rejection of biological birth sex, or other actions or expressions that are deliberately discordant with birth sex, or advocacy of such viewpoints that are inconsistent with the University's theological positions . . ." and "In employment and in student life, we regard sex at birth as the identification of the given biological sex of each member of our constituency. We will not accept as valid alterations of one's sex at birth based on experiential variation or medical intervention."*

We affirm the value of all human beings as created in the image of God. However, we also believe that the behavioral choices one makes are important. We believe that, as Christians, we are called to treat all people, including those who practice sexual behavior in conflict with the Bible, 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 concerning 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 Biola's Standards of Conduct is subject to discipline, including possible dismissal from the university.

Based on the resolution recently entered into by the Department and a California school district<sup>2</sup> and the recent guidance issued by the Department regarding Title IX and sexual violence,<sup>3</sup> it is apparent that the Department is now interpreting Title IX's ban on discrimination in education because of sex to also mean that educational institutions may not "discriminate" on the basis of "gender identity" or "the failure to conform to stereotypical notions of masculinity or femininity." Specifically, the Arcadia school district was ordered to allow a female student presenting herself as male to use the restroom, locker room, and living accommodations of her choice, and to participate in boys' athletic programs.

We would not be able to make similar accommodations consistent with our religious beliefs. Because of our biblical beliefs regarding gender and sexual morality, our practices might be deemed a violation of this interpretation of Title IX. However, under 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12(a), this interpretation does not apply to Biola: "This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization."

Thus, on behalf of Biola, I hereby request an official exemption from compliance with that interpretation of Title IX and particularly as this may relate to the provisions of 34 C.F.R. §§ 106.31(b)(4) (a section where an exemption was previously granted to Biola), 106.32 (governing housing), 106.33 (governing comparable facilities such as restrooms and locker rooms) and 106.41

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<sup>2</sup> See *supra* note 1.

<sup>3</sup> "Questions and Answers on Title IX and Sexual Violence" a guidance document issued by the United States Department of Education, Office for Civil Rights on April 29, 2014.

(governing athletics) and Subpart E of 34 CFR §106 (§§ 106.51 through 106.61 -governing employment). Biola wholeheartedly supports and complies with Title IX with respect to granting equal opportunities in educational programs or employment to members of both sexes; our request for exemption is limited to the recent interpretation that "sex" under Title IX also includes gender identity to the extent that such matters conflict with Biola's religious tenets.

If you require anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry H. Corey". The signature is stylized and cursive.

Barry H. Corey  
President  
Biola University

cc: Gregory S. Baylor, Esq., Alliance Defending Freedom  
Jerry D. Mackey, Esq., Biola University Legal Counsel



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, DC 20202

December 22, 2014

Barry H. Corey  
President  
Biola University  
13800 Biola Avenue  
La Mirada, CA 90639

Dear President Corey:

The purpose of this letter is to respond to your November 14, 2014, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for Biola University of La Mirada, California from Title IX of the Education Amendments of 1972. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. We are processing your request and have determined that we need further information.

Subsection (a)(3) of Title IX, 20 U.S.C. § 1681(a)(3), and the Department's implementing regulation at 34 C.F.R. § 106.12 provide that Title IX and its regulations do not apply to an educational institution controlled by a religious organization to the extent that application of Title IX would not be consistent with the controlling organization's religious tenets. Such educational institutions are allowed to claim an exemption from Title IX by identifying the provisions of the Department's Title IX regulations that conflict with a specific tenet of the controlling religious organization.

Your letter included sufficient information regarding the provisions of the Department's Title IX regulations from which the University requests exemption. But your letter did not identify the religious organization that controls the University. Your letter describes the University as "a Christian evangelical institution," but does not name a specific religious organization. An educational institution will normally be considered to be controlled by a religious organization under Title IX if one or more of the following conditions prevail:

- (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

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- 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.

If you would like OCR to make a determination regarding the University's religious exemption request, please let us know the specific religious organization that controls the University. Feel free to provide any explanation or supporting documentation that may be helpful to OCR's understanding. If you no longer desire a religious exemption determination, please simply let us know your wish to withdraw the request at this time so that we may close the request file.

Thank you for your cooperation. If you have any questions, please do not hesitate to contact me. I can be reached at (202) 453-6048.

Sincerely,



Seth Galanter  
Principal Deputy Assistant Secretary  
Office for Civil Rights  
U.S. Department of Education