



28 May, 2015

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 Covenant 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 respond to individuals in accordance with its religious convictions. As President of the College, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

Covenant College was founded in 1955 as a Christ-centered institution of higher education, emphasizing liberal arts. It is an agency of the Presbyterian Church in America (PCA) and is governed by a Board of Trustees elected by the General Assembly of the Presbyterian Church in America. Within that ecclesiastical context, Covenant College exists to provide post-secondary educational services to the denomination and the wider public.¹ The College's motto is "In All Things Christ Preeminent [Colossians 1:18]." 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

¹ Bylaws of Covenant College, page 1.

we characterize and respond to reality. 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 College's structure and program according to this understanding of our purpose.² In doing so, it seeks to “explore and express the preeminence of Jesus Christ in all things [Colossians 1:18]. . . . [and to] educate Christians to engage culture and cultures, to examine and unfold creation, and to pursue biblical justice and mercy in community.”

The Presbyterian Church in America and Covenant College—as one of its agencies—understand the Bible to be the infallible, written Word of God. In addition, both the Denomination and the College affirm that the Westminster Confession of Faith and the Westminster Larger and Shorter Catechisms provide the most adequate and comprehensive expression of the system of doctrine taught in the Bible. The Denomination and the College submit themselves to the Bible and to these historic expressions of its doctrine and seek to express positions that are in accord with those standards.

Therefore, consistent with these standards, the College has developed a Statement on Sexual Identity and Conduct (enclosed). That statement provides in pertinent part as follows:

The creation of human beings was a special creative act of God. God created human beings, male and female, in His own image and thus they are unique with respect to all other life in the created order. Adam and Eve, equally made in the image of God, belonged to the created order that God himself declared to be very good, serving as God's agents to care for, cultivate, and govern creation, living in holy and devoted fellowship with their Maker. Gender is not a cultural construct, but a divine gift assigned by the Creator at conception. As such, students are not to adopt a gender identity different from the one gifted them by their Creator. This gendered ordering of creation is to be accepted, honored, and reflected in sexual intimacy.

Adam and Eve were made to complement each other in a one-flesh union. This creation ordinance establishes marriage between one man and one woman as the only proper context for all sexual relations. The New Testament makes clear that this relationship ultimately serves as a picture of the union between Christ and his Church. Although sin has distorted our affections, attractions, and impulses, we are still responsible as created beings and as those united with Christ by faith for our actions and thoughts. Sexual immorality, adultery, homosexual practice, the adoption of a different

² The Purpose of Covenant College: <http://www.covenant.edu/about/who/purpose>

sexual identity, and all other sexual relations outside the bounds of marriage between a man and woman are inconsistent with the teaching of Scripture and will result in disciplinary follow-up by the College. Students with questions regarding sexual morality or permissible behaviors should talk with a member of the Student Development staff.³

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.⁴ And as you also know, the resolution agreement⁵ 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.⁶ 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 Covenant College. 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 Covenant 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 respond to transgender individuals in accordance with its theologically-grounded convictions.

Additionally, the PCA, consistent with the historic understanding of the Holy Scriptures and our doctrinal standards⁷ have affirmed the following regarding homosexual conduct:

1. The act of homosexuality is a sin according to God's Word;

³ See Statement on Sexual Identity and Conduct.

⁴ 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.")

⁵ 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.

⁶ *Id.*

⁷ Westminster Larger Catechism Questions 137-139

2. Churches should actively seek to lead the homosexual person to confession and repentance that he might find justification and sanctification in Jesus Christ, according to I Corinthians 6:11; and
3. In light of the Biblical view of its sinfulness, a practicing homosexual continuing in this sin would not be a fit candidate for ordination or membership in the Presbyterian Church in America.⁸

The College, in service to the Church, welcomes those of professed Christian faith even as they experience same sex attraction. But, it also affirms with the PCA that sexual activities with members of the same sex are sinful and are not to be condoned as acceptable expressions of one's sexuality. As you are aware, 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."⁹ 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 Covenant College. The College, therefore, also seeks exemption on this basis out of an abundance of caution.

Lastly, the PCA affirms that "the intentional killing of an unborn child is a violation of God's command and authority. Scripture considers such a child a person and thus covered by Divine protection even as a person after birth. We are convinced Scripture forbids abortion. . . . God in His Word speaks of the unborn child as a person and treats him as such, and so must we. The Bible teaches the sanctity of life, and so must we. The Bible, especially in the Sixth Commandment, gives concrete protection to that life which bears the image of God. We must uphold that commandment."¹⁰

Consistent with this biblical interpretation, the College in its Statement of Community Beliefs (enclosed) provided the following summary of our beliefs regarding the sanctity of human life:

We believe that the God who created all things is the Giver and Sustainer of life. Therefore, we must value, honor, and protect life, especially human life, which was made in God's image. This means that the Church should do all it can to cultivate life. For example, we strongly oppose abortion since it devalues and destroys human life. At the same time Christians should

⁸ 5th General Assembly, 1977, 5-49, 4, p. 67 and 8, p. 68.

⁹ See http://www.macon.com/2015/03/30/3668458_eec-issues-determination-letter.html?rh=1

¹⁰ PCA Position Paper on Abortion, page 29-30, Sixth General Assembly, 1978.

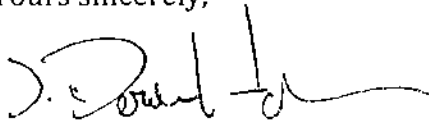
actively seek to provide for, protect, and nurture those who face the temptation to abort their baby.¹¹

Covenant College accordingly requests that your office acknowledge that the College 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 Statement on Human Life):

- 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,



J. Derek Halvorson, Ph.D.
President, Covenant College

¹¹ See Statement of Community Beliefs at 2.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

July 29, 2015

Dr. J. Derek Halvorson
President
Covenant College
14049 Scenic Highway
Lookout Mountain, GA 30750

Dear Dr. Halvorson:

I write to respond to your May 28, 2015, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for Covenant College (College) of Lookout Mountain, Georgia, from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681. 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 or regulation that conflict with those tenets.

Your request explained that the College "was founded in 1955 as a Christ-centered institution of higher education, emphasizing liberal arts. It is an agency of the Presbyterian Church in America (PCA) and is governed by a Board of Trustees elected by the General Assembly of the Presbyterian Church of America." Your request explains that "[t]he Presbyterian Church in America and Covenant College---as one of its agencies---understand the Bible to be the infallible written Word of God...[and] both the Denomination and the College affirm that the Westminster Confession of Faith and the Westminster Larger and Shorter Catechisms provide the most adequate and comprehensive expression of the system of doctrine taught in the Bible."

Your letter requests a religious exemption from the provisions of Title IX 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." In support of this request you cite to the College's Statement on Sexual Identity and Conduct (Statement), which you assert is consistent with the Westminster Confession of Faith and the Westminster Larger and Shorter Catechisms. The Statement provides that "[t]he creation of human beings

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was a special creative act of God. God created human beings, male and female...As such, students are not to adopt a gender identity different from one gifted them by their Creator. This gendered ordering of creation is to be accepted, honored, and reflected in sexual intimacy.”

Your request also notes that “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.’ 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.” Your letter states “[t]o 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 Covenant College. The College, therefore, also seeks exemption on this basis.” In support of this request, you cite the following language from the Presbyterian Church of America’s Fifth General Assembly in 1977: “The act of homosexuality is a sin according to God’s Word;...In light of the Biblical view of its sinfulness, a practicing homosexual continuing in this sin would not be a fit candidate for ordination or membership in the Presbyterian Church in America.”

Finally you request an exemption from Title IX to the extent that it restricts the College’s freedom to apply and enforce its Statement on Human Life. In support of this request, you cite to the Presbyterian Church of America’s Position Paper on Abortion which states, “the intentional killing of an unborn child is a violation of God’s command and authority” and the College’s Statement of Community Beliefs which, according to your letter, states that the College “strongly oppose[s] abortion since it devalues and destroys human life.”

You state that, for these reasons, the College is requesting an exemption 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 Statement on Human Life:”

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.22 (governing preferences in admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31(governing education programs or activities);
- 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. § 106.34 (governing access to classes and schools);
- 34 C.F.R. § 106.36 (governing counseling and use of appraisal and counseling materials);
- 34 C.F.R. § 106.37 (governing financial assistance);
- 34 C.F.R. § 106.38 (governing employment assistance to students);
- 34 C.F.R. § 106.39 (governing health and insurance benefits and services);
- 34 C.F.R. § 106.40 (governing different rules based on marital or parental status of students);

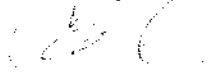
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.43 (governing standards for measuring skill or progress in physical education classes); and
- 34 C.F.R. §§ 106.51-61 (governing employment).

The College is exempt from these provisions to the extent that they prohibit discrimination based on gender identity, sexual orientation, 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