



OFFICE OF THE PRESIDENT

March 25, 2015

Assistant Secretary Catherine Lhamon
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1100

Dear Assistant Secretary Lhamon:

As the president and highest-ranking officer of Howard Payne University's administration, I submit the following statement in order to claim on behalf of the University the religious tenet exemption from Title IX of the Education Amendments of 1972 which is provided for in 20 U.S.C. 1681, and which is the subject of 34 C.F.R. 106.12.

This request for exemption is from provisions of Title IX to the extent application of those provisions would not be consistent with the religious tenets of the Baptist General Convention of Texas (hereinafter "the Convention") regarding marriage, sex outside of marriage, sexual orientation, gender identity (including but not limited to transgender status), pregnancy, and abortion. I identify those provisions to be:

Admissions:

34 C.F.R. § 106.21 including but not limited to (b)(iii) (governing differential treatment on the basis of sex in admissions); and (c) (governing admissions prohibition on the basis of marital or parental status).

Recruitment:

34 C.F.R. § 106.23 (governing nondiscriminatory recruitment).

Education Programs or Activities:

34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions), and (b)(7) (otherwise limiting any person in the enjoyment of any right, etc.);

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. § 106.40 (governing different rules based on marital or parental status of students); and

34 C.F.R. § 106.41 (governing athletics);

Employment:

34 C.F.R. § 106.51 (governing employment);

34 C.F.R. § 106.52 (employment criteria);

34 C.F.R. § 106.53 (recruitment);

34 C.F.R. § 106.57 (governing the consideration of marital or parental status in employment decisions); and
34 C.F.R. § 106.60 (governing pre-employment inquires).

Howard Payne University (hereinafter “the University”) is controlled by Baptists. Every member of the board of trustees must be a member of a Baptist church. The majority of the members of the board of trustees are elected by the Convention. I enclose a copy of the University’s Bylaws evidencing these facts.

The Convention’s authority over the University constitutes control by the Convention which is more than sufficient to cause the institution to be exempt from Title VII of the Civil Rights Act of 1964’s general prohibition against religious discrimination in employment under 42 U.S.C. 2000c-2, §703(c)(2) as an educational institution “which is in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association or society.” (See, for example, the decision of the United States Circuit Court of Appeals, Eleventh Circuit, regarding our sister Southern Baptist university in *Killinger v. Samford University*, 113 F. 3d 196 (1997)).

Purpose

The charter of the University contains the following statement: “The purpose of said corporation is the encouragement, support, maintenance, and promotion of education under Christian influence and auspices, with the view to the development of the best type of character, and to the advancement of the gospel of our Lord and Savior, Jesus Christ, and the extension of the Kingdom of God among men.”

Mission Statement

Howard Payne University is a Christ-centered academic community dedicated to excellence by developing and equipping the whole person for intellectual inquiry, personal and professional integrity, and service to God and humanity.

Baptist General Convention of Texas

The Convention encourages, facilitates and connects churches in their work to fulfill God’s mission of reconciling the world to himself. The Convention’s values include:

Bible-God’s Written Word – We value the Bible as the divinely inspired record of God’s revelation of himself to us. It serves as the authoritative guide for life and ministry.

Baptist Distinctives – We value those Biblical truths that shape Baptist life and history, including the soul’s competency before God, the priesthood of each believer and all believers, the autonomy of the local church, and a free church in a free state.

Integrity – We value integrity in our lives and in our churches, demonstrated by Christ-like attitudes and actions that are consistent and evident in all we think and do. Integrity is the foundation for the mutual trust, accountability, excellence in ministry, and teamwork that marks our work together.

Messengers to the Convention's annual meetings have reaffirmed the view of Scripture on the sacredness and dignity of all human life, both born and unborn, and supported legislation prohibiting abortion except to save the life of the mother or in cases of incest or rape.

Messengers to the Convention's annual meetings have adopted resolutions stating:

"Abortion is tragic. Even when exceptions are mentioned, abortion is viewed as a lesser of two evils, not as a good thing to be done."

"The homosexual lifestyle is not normal or acceptable in God's sight and is indeed called sin."

On February 23, 2015, the Executive Board of the Convention adopted a Resolution on Transgender Issues as follows:

WHEREAS, the Bible is the authority for faith and practice by Texas Baptists, the Baptist General Convention of Texas, and BGCT institutions; and

WHEREAS, the Bible states that God created humanity as two genders, male and female, and this includes Jesus' own affirmation (Genesis 1:27; Matthew 19:4; Mark 10:6); and

WHEREAS, in the Bible gender is based on biological attributes and is seen as a gift from God and immutable; and

WHEREAS, some people today are expressing a desire to identify themselves with the gender which differs from their biological gender; and

WHEREAS, some of these persons are seeking to function in the broader society as if they are members of the gender that differs from their biological gender; therefore

BE IT RESOLVED that the Executive Board of the Baptist General Convention of Texas express great concern with the emergence of the transgender agenda and the notion that one's gender is determined psychologically, not biologically; and

BE IT FURTHER RESOLVED that we affirm that in creation God made male and female as biological gender assignment; and

BE IT FURTHER RESOLVED that we desire for all people, including those who consider themselves transgender, to be treated with love and respect but that such love and respect not be construed as approval for every behavior, and

BE IT FINALLY RESOLVED that we seek to minister to all persons, including those who consider themselves transgender.

In 1988, the Convention adopted an addition to its previously adopted statement of Baptist Faith and Message which includes the following expression of religious tenets of the Convention:

XVIII. THE FAMILY

God has ordained the family as the foundational institution of human society. It is composed of persons related to one another by marriage, blood or adoption. Marriage is the uniting of one man and one woman in covenant commitment for a lifetime. It is Gods unique gift to reveal the union between Christ and His church, and to provide for the man and the woman in marriage the framework for intimate companionship, the channel for sexual expression according to biblical standards, and the means for procreation of the human race.

The University's policies are rooted in the Convention's religious tenets. Application of a regulation would not be consistent with these tenets if the regulation prohibited the institution from following its policies, that is, if the regulation prohibited the University:

From engaging in recruiting and admissions under a policy which called for the consideration of an applicant for admission's sexual orientation, gender identity (including but not limited to transgendered status), marital status, past and present practices regarding marriage, sex outside marriage, pregnancy, and abortion (these considerations collectively referred to hereafter as "student and employee characteristics"), and prohibited the institution from treating that person differently as a result of that consideration; From subjecting students to rules of behavior, sanctions, or other treatment because of these student characteristics. Examples would be the institution's rules regarding eligibility for employment of the student by the institution; the assignment of housing, restrooms and locker rooms, and restrictions to athletic activities by birth sex; rules prohibiting homosexual conduct including but not limited to a prohibition of a student's engaging in sex with a person of his or her birth sex; prohibition of sex outside of marriage between a man and a woman; sanctions as the result of pregnancy and abortion; and

From making all employment decisions, including but not limited to selection criteria and pre-employment inquiries, recruitment, the decision to employ, retention decisions, and decisions regarding sanctions, in a manner which takes into consideration these employee characteristics.

Thus, this claim for exemption includes exemption from these specified regulations to the extent the regulation would require the institution to treat marriage, sex outside of marriage, homosexuality, gender identity, pregnancy and abortion in a manner that is inconsistent with the religious tenets of the Convention.

If you have any questions, or if additional information is required, please do not hesitate to contact me.

Sincerely,



William N. Ellis, Ph.D.
President and CEO
Howard Payne University

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 24, 2015

William N. Ellis
President and CEO
Howard Payne University
1000 Fisk Street
Brownwood, Texas 76801-2715

Dear President Ellis:

I write to respond to your March 25, 2015, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, for Howard Payne University (University) of Brownwood, Texas. 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 and/or regulation that conflict with those tenets.

Your request explained that the University "is controlled by Baptists." In particular, the Baptist General Convention of Texas. Your letter states that "Every member of the board of trustees must be a member of a Baptist church. The majority of the members of the board of trustees are elected by the Convention."

Your letter requests a religious exemption "from provisions of Title IX to the extent application of those provisions would not be consistent with the religious tenets of the Baptist General Convention of Texas . . . regarding marriage, sex outside of marriage, sexual orientation, gender identity (including but not limited to transgender status), pregnancy, and abortion."

In support of this request, you state that "Messengers to the Convention's annual meetings have reaffirmed the view of Scripture on the sacredness and dignity of all human life, both born and

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

unborn, and supported legislation prohibiting abortion except to save the life of the mother or in cases of incest or rape.” You also cite to a Resolution on Transgender Issues that the Executive Board of the Convention adopted in February 2015 that, according to your letter, states that “gender is based on biological attributes and is seen as a gift from God and immutable” and that the Convention affirms “that in creation God made male and female as biological gender assignment.” Finally, you cite to the Baptist Faith and Message, adopted by the Convention in 1988. According to your letter, that statement of faith states that “Marriage is the uniting of one man and one woman” and that it provides “the channel for sexual expression according to biblical standards, and the means for procreation of the human race.”

You explain that it would not be consistent with the Convention’s religious tenets for the University to comply with Title IX to the extent that it prohibits the College from “engaging in recruiting and admissions under a policy which called for the consideration of an applicant for admission’s sexual orientation, gender identity (including but not limited to transgendered status), marital status, past and present practices regarding marriage, sex outside marriage, pregnancy and abortion; . . . [f]rom subjecting students to rules of behavior, sanctions, or other treatment because of these student characteristics[; or from] making all employment decisions. . . in a manner which takes into consideration these employee characteristics.”

You state that, for these reasons, the University is requesting an exemption from the following regulatory provisions “to the extent the regulation would require the institution to treat marriage, sex outside of marriage, homosexuality, gender identity, pregnancy and abortion in a manner that is inconsistent with the religious tenets of the Convention:”

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions);
- 34 C.F.R. § 106.31(b)(7) (governing the limitation of rights, privileges, advantages, or opportunities);
- 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. § 106.40 (governing different rules based on marital or parental status of students);
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.51 (governing employment);
- 34 C.F.R. § 106.52 (governing employment criteria);
- 34 C.F.R. § 106.53 (governing recruitment of employees);
- 34 C.F.R. § 106.57 (governing the consideration of marital or parental status in employment decisions);

- 34 C.F.R. § 106.60 (governing pre-employment inquiries).

The University is exempt from these provisions to the extent that they prohibit discrimination on the basis of marriage status, sex outside of marriage, sexual orientation, gender identity, pregnancy, 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