

NORTHWEST NAZARENE
UNIVERSITY



CENTENNIAL
1913-2013

July 29, 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: Northwest Nazarene University Request for Title IX Religious Exemption

Dear Ms. Lhamon:

It is our understanding that the Department of Education and the Department of Justice have recently interpreted Title IX's ban on sex discrimination to include discrimination based on gender identity.¹ As President of Northwest Nazarene University, ("NNU") a private, religious liberal arts University in Nampa, Idaho, I hereby request pursuant to 34 C.F.R. §106.12, an exemption for Northwest Nazarene University from this interpretation of Title IX, due to the deeply-held and inherent religious beliefs of our University.

Background

Northwest Nazarene University is a Christian university located in Nampa, Idaho. Last year, we celebrated our Centennial year and we now enter into our second century. Our identity as a Christian university is central to all that we do. From our beginning as the Idaho Holiness School in 1913, we have never wavered from this important truth: that we exist to help students learn to serve Christ. Our official Mission, Values and Vision², adopted by the Board of Directors, are as follows:

Mission

The mission of Northwest Nazarene University is the transformation of the whole person. Centered in Jesus Christ, the NNU education instills habits of heart, soul, mind and strength to enable each student to become God's creative and redemptive agent in the world.

¹ Resolution Agreement between 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>; and **Questions and Answers on Title IX and Sexual Violence, April 29, 2014, available at** <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> which contains the following: "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."

² <http://www.nnu.edu/about/mission-values-vision/>.

Northwest Nazarene University is a Christian university of the liberal arts, professional and graduate studies. The University is grounded in the Wesleyan-Holiness tradition and is an educational expression of the Northwest region of the Church of the Nazarene.

Northwest Nazarene University is founded upon belief in and relationship with the One Triune God—Father, Son and Holy Spirit. Therefore, we seek to build our lives and the practices of the University upon the Kingdom of God as revealed in Jesus.

Values

Transformation—We believe education fosters transformation. NNU engages and affects all domains of life—intellectual, social, physical and spiritual—thereby advancing the transformation of the individual, the church and the world.

Truth—We believe education pursues truth. NNU explores knowledge, the wonder of God’s creative activity, the story of human civilization and the achievements in the arts, sciences and professions. Ultimately, we believe Jesus is the truth incarnate; therefore, we pursue Christ.

Community—We believe education flourishes in community. NNU provides a learning and faith community that teaches, challenges and encourages each other through intellectual and spiritual practices. Within covenantal relationships we express our love for God and others.

Service—We believe education cultivates service. NNU teaches the importance of a life of servanthood as modeled by Jesus Christ. We learn to lead by giving of ourselves to God and humankind.

Vision 2025 - A More Excellent Way

Guided by a vision of the Kingdom of God, Northwest Nazarene University seeks a more excellent way, to be a transformative learning community expressing the love of Jesus by forming scholars, nurturing disciples, serving the Church, shaping the culture, redeeming the world. Five vision imperatives give focus to NNU VISION 2025:

1. Forming Scholars—Pursuing Truth, Seeking Wisdom
2. Nurturing Disciples—Living in the Great Commandments
3. Serving the Church—Covenant Partners in the Great Commission
4. Shaping the Culture—God’s Creative Agents
5. Redeeming the World—God’s Redemptive Agents

Control by a Religious Organization

NNU is an Idaho Nonprofit Corporation³, with Amended and Restated Articles of Incorporation date November 7, 2002. Pursuant to the Articles of Incorporation, the purpose of the University is described in terms of a Christian mission as follows:

Without limiting the former, the specific purposes of the Corporation, as an institution of higher education, shall be to serve the Church of the Nazarene and the greater Christian community by providing an educated laity and ministry, loyal to Christ and emphasizing the Wesleyan doctrine of perfect love. The Corporation’s curriculum shall be consistent with the doctrines set forth in the Manual of the Church of the Nazarene, and shall conserve, maintain, advocate and promulgate the New Testament Doctrine of Entire Sanctification or

³ Created pursuant to the Idaho Nonprofit Corporation Act, Idaho Code §30-3-94.

Christian Holiness. The basic mission of the University is the development of Christian character within the philosophy and framework of genuine scholarship.⁴

It is assigned by the Church of the Nazarene to serve seven districts of the denomination. Upon hypothetical dissolution, assets are to be distributed for purposes associated with the Church of the Nazarene. The Board of Trustees is elected from the members of the seven districts and at least half of the Board membership is comprised of clergy ordained in the Church.⁵ Our faculty and staff are required to profess faith⁶ and are prohibited from professing views not in harmony with the Articles of Faith⁷ of the Church of the Nazarene. Students are required to behave in accordance with lifestyle expectations consistent with the Church of the Nazarene.⁸

The University and the denomination believe that the Bible is authoritative and inerrant with regard to matters of salvation and we are committed to lives in harmony with the truth as set forth in Scripture. We believe that the Bible speaks to many contemporary issues with mandatory perspective; matters of human sexuality are included in that authority and as such, the Bible regulates morally acceptable behavior and behavior coincident with the requirements of salvation.

Additional indices of control of NNU by the Church of the Nazarene are included in discussions below.

Bible-Based Sexual Identity and Other Sexual Morality Policies

The University and its denomination believe that human beings are fashioned by God in His own image, and are created male and female (Genesis 1:27). In the New Testament, Jesus confirms the heterosexual creation of human beings: God made them male and female (Matthew 19:4). Like the rest of God's creation, the sexual differences between man and woman are pronounced "very good" (Genesis 1:31). Sexual practices that are divorced from loving, conventional relationships between man and woman conflict with God's intentions and result in sinful behavior that separates man from God and threatens Salvation. Humanity's failure to ground sexual identity in God's creative intent and holy

⁴ Amended and Restated Articles of Incorporation, adopted November 7, 2002, Article V.

⁵ Amended and Restated Articles of Incorporation, adopted November 7, 2002, Article VIII provide: " District Assemblies of the Northwest USA Region of the Church of the Nazarene shall elect, consistent with these Articles of Incorporation and the Bylaws of the Corporation, the Board of Trustees. The Board of Trustees shall consist of the President and members elected thereto by the various district assemblies, all of whom shall be members of the Church of the Nazarene and shall be in the experience of Entire Sanctification and in full agreement and sympathy with the Bible doctrines and usages held by the Church of the Nazarene as set forth in the Manual of said church."

⁶ The Statement of Faith of the University can be found at <http://www.nnu.edu/about/statements-of-faith-belief/>.

⁷ The Articles of Faith of the Church of the Nazarene can be found at <http://www.nnu.edu/about/articles-of-faith/>.

⁸ "As an institution of the Church of the Nazarene, the University follows the directives and guidelines established by the General Assemblies of the Church and published in the Church Manual, which serve as a guide for the Lifestyle Expectations of the University." Student Handbook, Lifestyle Expectations, *available at* <http://www.nnu.edu/campus-life/student-handbook/lifestyle-expectations/>.

character violates biblical standards of sexual purity and morality. We reject all attempts at construing sexuality or sexual identity by medically altering the human body, cross dressing, or similarly practicing behaviors characteristic of the opposite sex as morally objectionable and sinful (Deuteronomy 22:5)

NNU's Board Policy Manual, Faculty Policy Manual, and University Staff Policy Manual each identifies as a grounds for termination for cause (or other discipline) "Sexual Conduct outside of heterosexual marriage" and "Practice or promotion of transgender or transvestite conduct." Such disciplinary policy is consistent with the Covenant of Christian Character of the Church of the Nazarene set forth in the Manual of the Church of the Nazarene 2013-2017.⁹ Further, it is consistent with and mandated by the Pastoral Perspectives on Homosexuality, issued by the General Superintendents of the Church of the Nazarene as an official policy of the Church of the Nazarene on the topic.¹⁰

Students are also required by doctrinally-mandated policy to abide by requirements relating to gender identity and sexual propriety. Such policies are set forth for students in the Student Handbook, Lifestyle Expectations.¹¹

⁹ D. Human Sexuality

32. The Church of the Nazarene views human sexuality as one expression of the holiness and beauty that God the Creator intended for His creation. It is one of the ways by which the covenant between a husband and a wife is sealed and expressed. Christians are to understand that in marriage human sexuality can and ought to be sanctified by God. Human sexuality achieves fulfillment only as a sign of comprehensive love and loyalty. Christian husbands and wives should view sexuality as a part of their much larger commitment to one another and to Christ from whom the meaning of life is drawn.

The Christian home should serve as a setting for teaching children the sacred character of human sexuality and for showing them how its meaning is fulfilled in the context of love, fidelity, and patience. Our ministers and Christian educators should state clearly the Christian understanding of human sexuality, urging Christians to celebrate its rightful excellence, and rigorously to guard against its betrayal and distortion. Sexuality misses its purpose when treated as an end in itself or when cheapened by using another person to satisfy pornographic and perverted sexual interests. We view all forms of sexual intimacy that occur outside the covenant of heterosexual marriage as sinful distortions of the holiness and beauty God intended for it.

Homosexuality is one means by which human sexuality is perverted. We recognize the depth of the perversion that leads to homosexual acts but affirm the biblical position that such acts are sinful and subject to the wrath of God. We believe the grace of God sufficient to overcome the practice of homosexuality (1 Corinthians 6:9-11). We deplore any action or statement that would seem to imply compatibility between Christian morality and the practice of homosexuality. We urge clear preaching and teaching concerning Bible standards of sexual morality. (Genesis 1:27; 19:1-25; Leviticus 20:13; Romans 1:26-27; 1 Corinthians 6:9-11; 1 Timothy 1:8-10)
<http://nazarene.org/files/docs/Manual2013-17.pdf>.

¹⁰ http://nazarene.org/files/docs/Perspectives_Homosexuality.pdf.

¹¹ "The following are categories of behavior which are not permissible or acceptable for an NNU student and may result in action by the University: ...2. Sexual immorality and pornography. The University accepts the Biblical standards that prohibit all sexual immorality. Because there are many social and emotional forces that challenge this standard, the University believes that the power of God and the wisdom of the Holy Spirit combine to provide the means to live victoriously with respect to sexual purity. Examples of unacceptable behavior by students include the following: (a) Student commission of or attempt to commit a sexual act that, if proven in court, would be a criminal act. (b) Student involvement in the use or distribution of pornography (whether web-based or otherwise). (c) Unmarried student involvement in a sexually active heterosexual, incestuous, or homosexual relationship. (d) Married student involvement in a sexually active adulterous, incestuous, or homosexual relationship. (e) Student cohabitation with a member of the opposite sex, including but not limited to spending the night together and/or

The University and the denomination also believe in the sanctity of life and by doctrine and policy strongly oppose intentional termination of a pregnancy absent a very few compelling circumstances.¹² This belief, expressed in the Manual of the Church of the Nazarene, is integrated into the policy of the University by virtue of repeated references to compliance with Church of the Nazarene doctrine and beliefs.

Affirmation of Human Dignity and Christian Love

We affirm the dignity of all human beings. We also separate the value of each person from the behavioral choices one makes. 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 surrounding the morality of such actions, we cannot in good conscience support or encourage an individual to live in conflict with biblical principles. Moreover, an individual who violates campus standards for biblical living is subject to discipline, including termination or expulsion.

Request for Religious Exemption

Based on the resolution recently entered into by the Department and the Arcadia Unified School District and the April 2014 Guidance document, it appears that the Department is now interpreting Title IX's ban on discrimination in education based on sex to also mean that educational institutions may not "discriminate" on the basis of gender identity. Specifically, the school district in that dispute was ordered to allow a female student presenting herself as a male to use the restroom, locker room and living accommodations of her choice, and to participate in boy's athletic programs.

We would not be able to make similar accommodations consistent with our religious beliefs and convictions. In addition, we would not be able to make similar accommodations for employees and applicants for employment. Because of our scripture-based beliefs regarding gender and sexual morality, our practices might be deemed in violation of the Department's current interpretation of Title IX. However, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12(a), this interpretation must not be applied to Northwest Nazarene University. "This part does not apply to an educational institution controlled by a religious

living together. (f) Students of the opposite sex meeting in residence halls, other than places and times set aside by the University for such activities. (g) Inappropriate public displays of affection not in keeping with the Christian Life Perspective and Lifestyle Expectations." Student Handbook, Lifestyle Expectations, available at <http://www.nnu.edu/campus-life/student-handbook/lifestyle-expectations/>.

¹² The Manual of the Church of the Nazarene, Covenant of Christian Conduct, provides: "C. Sanctity of Human Life: The Church of the Nazarene believes in the sanctity of human life and strives to protect against abortion, embryonic stem cell research, euthanasia, and the withholding of reasonable medical care to handicapped or elderly." available at <http://nazarene.org/files/docs/Manual2013-17.pdf>.

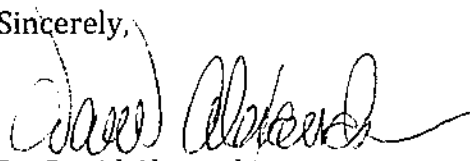
organization to the extent application of this part would not be consistent with the religious tenets of such organization.”

Thus, on behalf of Northwest Nazarene University, I hereby request an official exemption from compliance with that interpretation of Title IX. NNU specifically requests a religious exemption from the following requirements insofar as they prohibit discrimination based on gender identity: 34 C.F.R. § 106.31(b)(4) (governing different rules of behavior or sanctions), 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. § 106.41 (governing athletics), and 34 C.F.R. § 106.51 (governing employment), and any other requirement inconsistent with NNU’s biblically-based beliefs as described herein. NNU also requests a religious exemption from any regulation prohibiting discrimination against a student on account of termination of pregnancy¹³.

NNU gladly complies with Title IX with respect to the granting of 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 and to any requirement that is inconsistent with NNU’s policies regarding sanctity of life and any NNU policy which reserves the right to take adverse action against a student or employee who violates that policy.

Please feel free to contact me if more information is needed. Thank you for your consideration.

Sincerely,



Dr. David Alexander
President
Northwest Nazarene University

¹³ 34 C.F.R. §106



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

August 18, 2014

Dr. David Alexander
President
Northwest Nazarene University
623 S. University Boulevard
Nampa, Idaho 83686

Dear Dr. Alexander:

The purpose of this letter is to respond to your July 29, 2014, letter to the U.S. Department of Education, Office for Civil Rights (OCR), in which you requested a religious exemption for Northwest Nazarene University (University) of Nampa, Idaho 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 and/or regulation that conflict with those tenets.

Your request explained that the University "is grounded in the Wesleyan-Holiness tradition, and is an educational expression of the Northwest region of the Church of the Nazarene." The letter explains that the school is "assigned by the Church of the Nazarene to serve seven districts of the denomination" and that its "Board of Trustees is elected from the members of the seven districts." Your letter states that the University's Amended and Restated Articles of Incorporation require all members of the University's Board of Trustees to be members of the Church of Nazarene and that half of the Board members must be clergy. Your letter further explains that the University's "faculty and staff are required to profess faith and are prohibited from professing views not in harmony with the Articles of Faith of the Church of the Nazarene." In addition, students are expected to maintain a lifestyle that is consistent with the directives and guidelines established by the General Assemblies of the Church and published in the Church of Nazarene Manual.

You state that the University and the Church of Nazarene's belief, based on biblical interpretation, is that human beings are created male and female, and that the University

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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.

"reject[s] all attempts at construing sexuality or sexual identity by medically altering the human body . . . or . . . practicing behaviors characteristic of the opposite sex as morally objectionable and sinful." You refer to the Church of Nazarene's Manual as evidence of the Church's belief that homosexuality is a sin. Additionally, because the Manual states that the Church is opposed to abortion, the University also opposes the "intentional termination of a pregnancy absent a very few compelling circumstances."

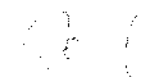
Your exemption request points to a recent OCR resolution agreement in which a school district agreed to allow a transgender male student to use the restroom, locker room, and living facilities consistent with the student's gender identity, and to play on boys' athletic teams. You explain that the University "would not be able to make similar accommodations consistent with [its] religious beliefs and convictions." You further state that, for these reasons, the University is requesting an exemption from the following regulatory provisions to the extent that they prohibit discrimination based on gender identity: 34 C.F.R. §§ 106.31(b)(4) (governing different rules of behavior or sanctions); 106.32 (governing housing), 106.33 (governing comparable facilities such as restrooms and locker rooms), and 106.41 (governing athletics). The University is exempt from these provisions to the extent that they require a recipient to treat students consistent with their gender identity, but doing so would conflict with the controlling organization's religious tenets.

Your request also seeks a "religious exemption from any regulation prohibiting discrimination against a student on account of termination of pregnancy." We interpret that as a request for exemption from 34 C.F.R. § 106.40(b). The University is exempt from this provision to the extent that 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