



January 20, 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 Southern Wesleyan University (SWU) 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 University's freedom to respond to transgender individuals in accordance with its religious convictions and those of The Wesleyan Church. SWU also is exempt from those regulations that might be interpreted to curtail its freedom to enforce its prohibition on the taking of innocent human life. As President of SWU, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

SWU was founded by The Wesleyan Church to provide higher education within a Christian environment for Wesleyan youth, and is owned and operated by The Wesleyan Church to this day.<sup>1</sup> SWU's mission statement provides that "Southern Wesleyan University is a Christ-centered, student-focused learning community devoted to transforming lives by challenging students to be dedicated scholars and servant leaders who impact the world for Christ." All aspects of the college's life, from its curricula to its athletic endeavors to its code of conduct are guided by this evangelical Christian mission statement.

SWU's Statement on Human Sexuality, a copy of which is attached for your convenience, provides in pertinent part as follows:

SWU holds to the Biblical norm that all human beings are "fearfully and wonderfully made" with a clear and distinct biological gender that identifies them as male and female. Therefore, the university does not permit any members of its community (faculty, staff or student) to choose behaviors that disregard or discourage such gender distinctions. Behaving

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<sup>1</sup> Southern Wesleyan University, <http://www.swu.edu/about-swu/>; The Wesleyan Church, Wesleyan Colleges and Universities, <http://www.wesleyan.org/college>.

in ways that compromise or confuse one's biological gender identity as given by God at birth is considered a personal choice that is beyond the bounds of the Christian community.

SWU's denomination, The Wesleyan Church, has issued a statement entitled, "A Wesleyan View of Gender Identity and Expression," a copy of which is also attached for your convenience. Among other things, the statement declares that "all humans have the same responsibility for stewarding physical attributes and abilities" and that "[g]ender assignment is a divine prerogative." The statement invokes *The Discipline of The Wesleyan Church*, observing that the "article of religion" on "Marriage and the Family" asserts the binary nature of human sexual identity and expression. The statement sets forth the Church's specific religious convictions about gender expression:

1. Gender differentiation is sacred.
2. The Church is an advocate for social holiness for all persons.
3. Gender identity reflects God's sovereignty.
4. Gender non-conformity that disrupts marriage and adult family relationships violates the law of love and the sanctity of the family.
5. Reconciliation with God is the foundation for reconciliation with oneself and with others.
6. Those who are struggling with gender identity issues deserve the Church's compassion and ministry.
7. When necessary, church discipline of gender non-conforming individuals must be administered in holy love.

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. As you also know, however, the resolution agreement<sup>2</sup> 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 their chosen sex.<sup>3</sup> 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 SWU and The Wesleyan Church.

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<sup>2</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.nclrights.org/wp-content/uploads/2013/09/Arcadia\\_Resolution\\_agreement\\_07.24.2013.pdf](http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf).

<sup>3</sup> *Id.*

SWU has also adopted a Statement on Human Life, which reads in pertinent part as follows:

Southern Wesleyan University holds that all human life is sacred and is God's greatest blessing and, therefore, must be respected and protected from its conception to its completion. The taking of a human life through any means (including but not limited to abortion, homicide or suicide) is considered abhorrent and contrary to the University's missional core and that of The Wesleyan Church.<sup>4</sup> We, therefore, prohibit all members of the SWU community from promoting or participating in any act of, or related to, aborting a child whether such a child is pre-birth or post-birth. In addition to surgical abortions, Southern Wesleyan University considers the use of abortifacients and chemically induced abortions as the commission of an act wrongfully terminating human life. The University therefore reserves the right to discharge any member of the faculty or staff and dismiss any student from the community for violating this basic understanding of human life. SWU understands that in cases where a pregnancy may put at risk the very life of a mother, triage decisions must be made within the private context of the woman, her doctor, her pastor and her family.

SWU accordingly requests that your office acknowledge that the University is exempt from Title IX and the following implementing regulations (to the extent they are interpreted to reach gender identity discrimination, and to the extent they restrict the University'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)

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<sup>4</sup> The Wesleyan Church Statement on the Sanctity of Life; <http://www.wesleyan.org/475/sanctity-of-life>

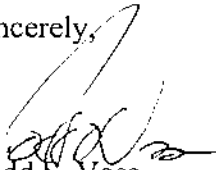
Letter to Catherine Lhamon

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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.

Sincerely,

A handwritten signature in black ink, appearing to read 'Todd S. Voss', with a stylized flourish at the end.

Todd S. Voss

President, Southern Wesleyan University



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

March 24, 2015

Todd S. Voss  
President  
Southern Wesleyan University  
907 Wesleyan Drive  
P.O. Box 1020  
Central, South Carolina 29630

Dear President Voss:

The purpose of this letter is to respond to your January 20, 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 Southern Wesleyan University (University) of Central, South Carolina. 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 "was founded by The Wesleyan Church to provide higher education within a Christian environment for Wesleyan youth, and is owned and operated by The Wesleyan Church to this day." Your letter references the University's website that states that the University "is a sponsored higher education institution of The Wesleyan Church."<sup>1</sup> Your letter also references the website of The Wesleyan Church where the University is listed as one of five Wesleyan institutions in the United States and Canada.<sup>2</sup>

Your letter requests a religious exemption from provisions of Title IX that would "curtail the University's freedom to respond to transgender individuals in accordance with its religious convictions and those of The Wesleyan Church." In support of this request, you cite to The Wesleyan Church's statement entitled "A Wesleyan View of Gender Identity and Expression." According to your letter, the statement sets forth The Wesleyan Church's tenets related to gender identity, specifically that "[g]ender differentiation is sacred." 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, to the extent that this agreement indicates that Title IX prohibits discrimination on the basis of gender identity, compliance "would be inconsistent with the religious tenets of [the University] and The Wesleyan Church."

<sup>1</sup> Southern Wesleyan University, <http://www.swu.edu/about-swu/>

<sup>2</sup> The Wesleyan Church, Wesleyan Colleges and Universities, <http://www.wesleyan.org/college>

Your letter also requests an exemption from the Title IX provisions related to abortion. In support of this request, you cite to The Wesleyan Church's statement on "Sanctity of Life." You explain that the University has adopted a "Statement on Human Life" that "prohibit[s] all members of the [University] community from promoting or participating in any act of, or related to, aborting a child whether such a child is pre-birth or post-birth."

You 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 or abortion:

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.22 (governing preference in admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31 (governing sex discrimination in education programs and 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);
- 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 University is exempt from these provisions to the extent that they prohibit discrimination on the basis of gender identity 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