



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

October 24, 2016

Stephen D. Livesay, Ph.D.  
President  
Bryan College  
821 Bryan Drive  
Dayton, TN 37321-6275

Dear President Livesay:

I write in response to your February 25, 2016, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested a religious exemption for Bryan College (the College) of Dayton, Tennessee, 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.

Title IX and its implementing regulation at 34 C.F.R. § 106.12 provide that Title IX does not apply to an educational institution that is controlled by a religious organization to the extent that the application of Title IX would be inconsistent with the controlling organization's religious tenets. Therefore, such educational institutions may 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 explains that the College is governed by a Board of Trustees, "whose members must be 'born-again Christian men and women with a sound Christian testimony,' and must sign the College's doctrinal statement annually." According to your letter, the College's charter requires "all trustees, administrators, faculty, and staff to affirm the [certain] doctrines, as foundational to all that it does, including what is taught in its classes." Your letter goes on to outline the doctrinal statement and states that the "Board of Trustees 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." Further, the College's mission is to educate "students to become servants of Christ to make a difference in today's world" and "seeks to assist in the personal growth and development of qualified students by providing an education based upon an integrated understanding of the Bible and the liberal arts."

Your letter requests an exemption from certain provisions of Title IX and its implementing regulations to the extent that they prohibit gender identity or sexual orientation discrimination and to the extent they restrict the College's freedom to apply and enforce its beliefs and policy regarding the sanctity of human life. Your letter states that the College believes that "we are 'fearfully and wonderfully made' (*Psalms 139:14*) in the uniqueness and image of God and,

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therefore, strategically and purposefully made as the biological gender we were born as.” Thus, you state that the College will not allow students “of a particular gender to dress and act differently than the biological one that God created them to be nor to use college facilities (including, but not limited to, restrooms, dorms, locker rooms) other than those designated for their original gender assignment from birth.” According to your letter, the College affirms that “sexual intimacy is designed by God to be expressed solely within a marriage between one man and one woman...; acts of sexual intimacy between a man and a woman outside of marriage, and any act of sexual intimacy between two persons of the same sex, [are] illegitimate moral options for the confessing Christian...; [t]herefore...all members of the College are expected to avoid sexual intimacy outside of marriage and to discourage others from indulging in that behavior.” Additionally, your letter explains that “all human life is sacred and is God’s greatest blessing” and “[t]he taking of a human life through any means (including but not limited to abortion, homicide or suicide) is considered abhorrent.” Therefore, all members of the Bryan Community are prohibited 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 the above reasons, the College is requesting an exemption from the following regulatory provisions to the extent they are interpreted to reach gender identity or sexual orientation discrimination and to the extent that they restrict the College’s freedom to apply and enforce its beliefs and policy regarding the sanctity of human life:

- 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);
- 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);
- 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 marital or parental status);
- 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 on the basis of gender identity or sexual orientation or restrict the College’s freedom to apply and enforce its beliefs and policy regarding the sanctity of human life 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 granted here. Also, in the unlikely event that a complaint alleges that the practices followed by the institution are not based on the religious tenets identified in your request, OCR is obligated to identify a controlling organization to contact 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 fully responds to your request. If you have any further questions, please do not hesitate to contact me.

Sincerely,



Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
U.S. Department of Education