



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 18, 2017

Bruce D. McLarty  
President  
Harding University  
Box 12256  
Searcy, AR 72149-5615

Dear President McLarty:

I write in response to your May 31, 2016, letter to the U.S. Department of Education's Office for Civil Rights (OCR) in which you requested a religious exemption for Harding University (University) of Searcy, Arkansas, 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 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 explains that the University was "founded in 1924 by members of the Churches of Christ," and that the University's "mission is to provide a quality education that will lead to an understanding and philosophy of life consistent with Christian ideals." In addition, "the Articles [of Agreement and Incorporation] limit membership on the Board of Trustees *solely* to members of the Churches of Christ" and "all full-time faculty must be members of the Churches of Christ." Furthermore, "[e]ach faculty member must affirm as part of an annual evaluation that he or she is a member of good standing of a Church of Christ and attends services weekly."

Your letter requests "an exemption, on religious grounds, from Title IX and its implementing regulations, as such apply to students, prospective students, employees, or prospective employees and issues involving gender identity and sexual orientation." In support of your

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request, your letter quotes several passages of Holy Scripture as the basis for the belief of the Churches of Christ that "it is not God's intention for people to engage in homosexual behavior." Thus, your letter concludes, "For Harding to be true to its founding documents and the sincerely held religious belief of its controlling church constituency, it must continue with the view that homosexual practice is sinful, a view which has characterized Harding from its beginning." In addition, your letter quotes Genesis 1:27, which states, "'So God created mankind in his own image, in the image of God he created them; male and female he created them.'" Your request explains that "[b]ased on this and other passages, Churches of Christ would oppose a person's attempt to modify his or her birth sex or present as a sex other than his or her original birth sex, and would consider one who does so to be engaged in sinful behavior."

Your letter requests an exemption from the following regulatory provisions to the extent application of those provisions would not be consistent with the religious beliefs of the University and the Churches of Christ regarding sexual orientation and gender identity:

- 34 C.F.R. § 106.21 (governing 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);
- 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 marital and parental status);
- 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);
- 34 C.F.R. § 106.55 (governing job classification and structure);
- 34 C.F.R. § 106.56 (governing fringe benefits);
- 34 C.F.R. § 106.57 (governing marital or parental status);
- 34 C.F.R. § 106.59 (governing advertising);
- 34 C.F.R. § 106.60 (governing pre-employment inquiries); and
- 34 C.F.R. § 106.61 (governing sex as a bona-fide occupational qualification).

The University is exempt from these provisions to the extent that they would require the University to treat sexual orientation or gender identity in a manner that is inconsistent with the religious tenets of the University's controlling organization.

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,

A handwritten signature in black ink, appearing to read 'C. Lhamon', with a long, sweeping flourish extending to the right.

Catherine E. Lhamon

Assistant Secretary for Civil Rights