



# ARCHIVED INFORMATION

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

August 1, 2014

Dr. Eliza Byard  
90 Broad Street, 2<sup>nd</sup> Floor  
New York, NY 10004

Dear Dr. Byard:

Thank you for your letters to Secretary Duncan expressing concern about the U.S. Department of Education's grant of a religious exemption to George Fox University and urging us to issue guidance on Title IX rights of transgender students. The Secretary's office forwarded your letters to the Department's Office for Civil Rights (OCR) for review and I am pleased to respond.

OCR has made clear that all students, including transgender and gender-nonconforming students, are protected from sex-based discrimination under Title IX of the Education Amendments of 1972 (Title IX) and that Title IX's prohibition on sex discrimination extends to discrimination based on gender identity or gender nonconformity. OCR is deeply committed to helping all students thrive at school and ensuring that all schools take action to prevent and respond promptly and effectively to discrimination, including gender-identity discrimination, and we vigorously enforce Title IX to that effect.

At the same time, since its enactment, Title IX has provided an exemption for schools that are controlled by religious organizations to the extent that complying with Title IX would conflict with the religious tenets of the controlling organization. *See* 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12. When a school requests a religious exemption from a provision of Title IX and meets the statutory requirement for such an exemption, OCR informs the school of the exemption and its scope by letter. OCR does not draw a distinction between religious exemption requests that relate to transgender students and those that request an exemption on any other ground. OCR's current process for assessing religious exemption requests is the same regardless of the provision of Title IX from which the school seeks an exemption.

Consistent with the statute, OCR limits eligibility for a religious exemption to schools that can demonstrate that they are controlled by a religious organization. Of course no public educational institution can be controlled by a religious organization. A private school seeking such an exemption will normally be considered to be controlled by a religious organization if one or more of the following conditions prevail:

- It is a school or department of divinity; or
- It requires its faculty, students or employees to be members of, or otherwise espouse a personal belief in, the religion of the organization by which it claims to be controlled; or

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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.*

- Its charter and catalog, or other official publication, contains explicit statement that it is controlled by a religious organization or an organ thereof or is committed to the doctrines of a particular religion; and the members of its governing body are appointed by the controlling religious organization or an organ thereof; and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.

A religious school also must identify the Title IX provisions that conflict with specific religious tenets of the controlling religious organization. And OCR still requires a religious school to comply with Title IX when the application of the law is consistent with the controlling organization's religious tenets.

Although the statute exempts this small subset of schools from some important aspects of Title IX coverage, OCR vigorously enforces the rights of transgender students in all other schools across the U.S. to which Title IX applies, including all public elementary, secondary, and post-secondary schools, and any private schools that receive funds from the Department. As with other critical and emerging civil rights issues on which the public would benefit from guidance, we also are considering issuing additional policy guidance on the rights of transgender students to promote compliance with the law.

Thank you again for your letter and for the leadership on this issue. We appreciate your insights and your continued support of the fair and equitable treatment of students.

Sincerely,



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