

OFFICE OF THE PRESIDENT

BARRY H. COREY



November 14, 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: Biola University's Request for Title IX Religious Exemption

Dear Ms. Lhamon:

As the President of Biola University, Inc. ("Biola"), I am writing to request supplemental approval of Biola's existing religious exemption under 34 C.F.R. §106.12 with regard to the recent actions by the Departments of Education and Justice interpreting Title IX's ban on sex discrimination in education to include discrimination based on gender identity.<sup>1</sup> Enclosed for your reference is a copy of the religious exemption granted to Biola by the Department in 1985.

Biola is a private Christian evangelical institution located in southern California whose mission is to provide biblically centered education, scholarship and service – equipping men and women in mind and character to impact the world for the Lord Jesus Christ. As such, Biola is also committed to the Biblical ethic which makes a differentiation in roles between the sexes and espouses moral standards applicable to the conduct of both sexes equally. Biola's governing board has adopted a "Statement on Transsexualism and Transgenderism" ("Statement") grounded in its long-standing institutional religious identity as expressed in its Articles of Faith contained in its Articles of Incorporation and Bylaws which have been a constant since Biola's founding over one hundred years ago.

The Statement provides in part: *"God's original and ongoing intent and action was the creation of humanity manifest as two distinct sexes, male and female. Jesus Christ himself affirmed this, in his teaching correcting abuses of divorce stating "at the beginning the Creator 'made them male and female'" (Matt. 19:5). Each person was intended to experience congruence between the physical and experiential dimensions of their sexuality. Except in very unusual*

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<sup>1</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.justice.gov/crt/about/edu/documents/arcadiaagree.pdf>

*cases, our sex as male or female is a biological given of the individual human person from conception made manifest at birth, and is not changeable but rather a stable, enduring characteristic of the person determined by God's creational intent."*

*It further states: "We view growth in godliness to be directed toward alignment or reconciliation with one's biological birth sex as God's creational intent for those individuals. Biola University will not support persistent or exaggerated examples of cross-dressing that are grounded in the fundamental rejection of biological birth sex, or other actions or expressions that are deliberately discordant with birth sex, or advocacy of such viewpoints that are inconsistent with the University's theological positions . . ." and "In employment and in student life, we regard sex at birth as the identification of the given biological sex of each member of our constituency. We will not accept as valid alterations of one's sex at birth based on experiential variation or medical intervention."*

We affirm the value of all human beings as created in the image of God. However, we also believe that the behavioral choices one makes are important. 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 concerning the morality of such actions, we cannot in good conscience support or encourage an individual to live in conflict with biblical principles. Moreover, any individual who violates Biola's Standards of Conduct is subject to discipline, including possible dismissal from the university.

Based on the resolution recently entered into by the Department and a California school district<sup>2</sup> and the recent guidance issued by the Department regarding Title IX and sexual violence,<sup>3</sup> it is apparent that the Department is now interpreting Title IX's ban on discrimination in education because of sex to also mean that educational institutions may not "discriminate" on the basis of "gender identity" or "the failure to conform to stereotypical notions of masculinity or femininity." Specifically, the Arcadia school district was ordered to allow a female student presenting herself as male to use the restroom, locker room, and living accommodations of her choice, and to participate in boys' athletic programs.

We would not be able to make similar accommodations consistent with our religious beliefs. Because of our biblical beliefs regarding gender and sexual morality, our practices might be deemed a violation of this interpretation of Title IX. However, under 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12(a), this interpretation does not apply to Biola: "This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization."

Thus, on behalf of Biola, I hereby request an official exemption from compliance with that interpretation of Title IX and particularly as this may relate to the provisions of 34 C.F.R. §§ 106.31(b)(4) (a section where an exemption was previously granted to Biola), 106.32 (governing housing), 106.33 (governing comparable facilities such as restrooms and locker rooms) and 106.41

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<sup>2</sup> See *supra* note 1.

<sup>3</sup> "Questions and Answers on Title IX and Sexual Violence" a guidance document issued by the United States Department of Education, Office for Civil Rights on April 29, 2014.

(governing athletics) and Subpart E of 34 CFR §106 (§§ 106.51 through 106.61 -governing employment). Biola wholeheartedly supports and complies with Title IX with respect to granting 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 to the extent that such matters conflict with Biola’s religious tenets.

If you require anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry H. Corey". The signature is written in a cursive, somewhat stylized font.

Barry H. Corey  
President  
Biola University

cc: Gregory S. Baylor, Esq., Alliance Defending Freedom  
Jerry D. Mackey, Esq., Biola University Legal Counsel

OFFICE OF THE PRESIDENT

BARRY H. COREY



February 5, 2015

Mr. Seth Galanter  
Principal Deputy Assistant Secretary  
Office for Civil Rights  
U.S. Department of Education  
Lyndon Baines Johnson Department of Education Building  
400 Maryland Ave., SW  
Washington, DC 20202-1100

Re: Biola University's Request for Title IX Religious Exemption

Dear Mr. Galanter:

I am in receipt of your thoughtful letter dated December 22, 2014, regarding Biola University's request for a supplemental religious exemption to the exemption granted to the University in 1985. Thank you. With respect to Biola status as "controlled by a religious organization" and identification of the religious organization that controls the University, I want to submit the following information.

As stated in my request letter of November 14, 2014, and in the September 3, 1985 letter from the Department granting Biola's original religious exemption that accompanied my letter, Biola is a private Christian evangelical institution. The University is governed and controlled by its Board of Trustees pursuant to the statement of mission and purpose and Articles of Faith contained in its Articles of Incorporation. A copy of Biola's Articles of Incorporation are enclosed with this letter. The 1985 letter from the Department states: "The inclusion of the Articles of Faith in the Articles of Incorporation of Biola University, and the governance by the Board of Trustees pursuant to the Articles of Faith in the Articles of Incorporation, adequately establishes that Biola University is controlled by a religious organization as is required for consideration for exemption under §106.12 of the Title IX regulation."

We are not aware of any changes in the law or regulations governing Title IX that would modify or contradict the position of the Department taken in Biola's 1985 religious exemption. In point of fact, it is our understanding that the conditions referenced in your letter regarding the "controlled by" requirement were in place prior to Biola's initial exemption pursuant to an explanation of Title IX compliance issued in 1977 by the then Department of Health, Education and Welfare.

Further, the University's Articles of Incorporation require that every member of the Board of Trustees, every officer, member of the faculty and every employee espouse a personal belief in the

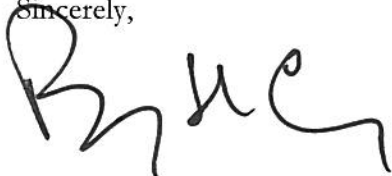
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Christian faith and to subscribe annually to the Articles of Faith of the University. The Bylaws of the University require that all students of the University profess a belief in Jesus Christ as personal savior. All students and employees of the University agree to abide by a Standard of Conduct which expresses a commitment to the principles of Christian living found in the Bible.

One of the six schools of the University is Talbot School of Theology—and the largest by far of our graduate schools—whose purpose is specifically for the education of students to prepare them to become ministers, theology teachers, or to enter other religious vocations. In addition, the educational philosophy and practice of the University is to provide a Christ-centered and Biblically integrative educational program throughout the University in all programs of study consistent with the University's purposes. As stated in the University bylaws: "As the role of Scripture is central to a Biola University education, all undergraduate students are required to complete thirty (30) semester units of Biblical studies. All courses shall be taught at every level from a position faithful to the Word of God and consistent with the corporation's Purposes (Article 3.1) and the Articles of Faith (Article 4.1)."

Based on the foregoing, it is our position and belief based on the prior religious exemption granted to the University, that Biola does meet the requirements for the religious exemption requested in my letter of November 14, 2014. Please let me know if you are in need of further information in regard to this matter. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "BHC", written over the word "Sincerely,".

Barry H. Corey  
President  
Biola University

cc: Gregory S. Baylor, Esq., Alliance Defending Freedom  
Jerry D. Mackey, Esq., Biola University Legal Counsel