

February 25, 2016

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 Bryan College ("Bryan" or "the College") 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 College's freedom to act in accordance with its religious convictions. As President of Bryan College, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

Bryan College was chartered in 1930 as William Jennings Bryan University, a Christ-centered institution of higher education, emphasizing liberal arts.¹ The College was founded by persons from a variety of different Christian denominations, including Episcopal, Presbyterian, Baptist, Lutheran, Methodist, and Brethren – a diverse background which in part explains why Bryan is not affiliated with one single denomination,² but rather is controlled by a religious board of trustees.³ The College is devoted to the mission of "educating students to become servants of Christ to make a difference in today's world," and accordingly "seeks to assist in the personal growth and development of qualified students by

¹ See <http://www.bryan.edu/college-history>.

² See <http://www.bryan.edu/college-history>.

³ See Bryan College Charter, p. 3.

providing an education based upon an integrated understanding of the Bible and the liberal arts."⁴

Bryan College's motto is "Christ above all."⁵ The College is "founded on the belief that God is the author of truth; that He has revealed Himself to mankind through nature, conscience, the Bible and Jesus Christ; that it is His will for man to come to a knowledge of truth; and that an integrated study of the arts and sciences and the Bible, with a proper emphasis on the spiritual, mental, social and physical aspects of life, will lead to the balanced development of the whole person."⁶

The College is governed by a board of trustees whose members must be "composed of born-again Christian men and women with a sound Christian testimony," and must sign the College's doctrinal statement annually.⁷ As required by its charter, the College relies on and requires all trustees, administrators, faculty, and staff to affirm the following doctrines, as foundational to all that it does, including what is taught in its classes:

1. We believe that the Holy Bible, composed of the Old and New Testaments, is of final and supreme authority in faith and life and, being inspired by God, is inerrant in the original writings.
2. We believe in God the father, God the Son, and God the Holy Ghost, this trinity being one God, eternally existing in three persons.
3. We believe in the virgin birth of Jesus Christ: that He was born of the Virgin Mary and begotten of the Holy Spirit.
4. We believe that the origin of man was by fiat of God in the act of creation as related in the book of Genesis; that he was created in the image of God; that he sinned and thereby incurred physical and spiritual death.
5. We believe that all human beings are born with a sinful nature and are in need of a Savior for their reconciliation to God.
6. We believe that the Lord Jesus Christ is the only Savior, that He was crucified for our sins, according to the Scripture, as a voluntary representative and substitutionary sacrifice, and that all that believe in Him and Confess Him before men are justified on the ground of His shed blood.
7. We believe in the resurrection of the crucified body of Jesus, in his ascension into heaven, and in "that blessed hope," the personal return to this earth of Jesus Christ, and He shall reign forever.

⁴ See <http://www.bryan.edu/mission-statement>.

⁵ See <http://www.bryan.edu/about>.

⁶ See <http://www.bryan.edu/college-history>.

⁷ Bryan College Bylaws, Section 4.1, p. 8.

8. We believe in the bodily resurrection of all persons, judgment to come, everlasting blessedness of the saved, and the everlasting punishment of the lost.⁸

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. Therefore, consistent with these theological standards, the College has developed its Statement on Gender Identification (enclosed). That statement provides in pertinent part as follows:

Based on the mission of Bryan College, its standards, and uniqueness as a living and learning environment that honors Jesus Christ, the College recognizes that some members of the Bryan Community (faculty, staff, administrative personnel, and students) may struggle with their gender identity and wish to explore living as a particular gender other than their original gender assignment from birth.

When a member of the Bryan Community is cooperative and willing to explore these feelings in an appropriate setting and not act out the feelings, the College will allow them to continue being a part of the Bryan community if they are pursuing counseling and a mentoring relationship that will help them discuss appropriately who God made them to be. In this process, however, the College will uphold a view that we are “fearfully and wonderfully made” (*Psalm 139:14*) in the uniqueness and image of God and, therefore, strategically and purposefully made as the biological gender we were born as.

Because of this belief, the College will not allow a student or any member of the Bryan Community 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, lockers rooms) other than those designated for their original gender assignment from birth.

If a member of the Bryan community decides to identify as a gender other than their biological one or pursues a medical course of action to physically change their biological gender to that of another sex, it is in their best interest and that of Bryan College for them to leave the Bryan College community. Bryan College reserves the right to terminate any member of the faculty or staff and dismiss any student from the Community for violating

⁸ Bryan College Charter, p. 3.

this basic understanding of human life. It is expected that no member of the Bryan Community will publically promote or advocate anything contrary to the position stated above.⁹

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, though the Department of Education recently issued guidance on sexual violence prevention which incorporates discrimination based on "gender identity" as part of "sex discrimination" under the statute.¹⁰

And as you also know, the resolution agreement¹¹ 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 the sex to which they believe they belong.¹² It is thus reasonable to suppose that ED OCR believes that such responses are required by Title IX.

It is 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 Bryan.

For that reason, I 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 Bryan is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to curtail Bryan's freedom to respond to transgender individuals in accordance with its theologically-grounded convictions.

⁹ Bryan College Statement on Gender Identification, p. 1.

¹⁰ U.S. Department of Education, Questions and Answers on Title IX and Sexual Violence, *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> at 5 ("Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation.").

¹¹ 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/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

¹² *Id.*

Additionally, consistent with historic understanding of the Holy Scriptures and our doctrinal standards,¹³ the College's Statement on Human Sexuality (enclosed) provides in pertinent part:

In keeping with our mission and our commitment to biblical fidelity, all members of the College community are expected to follow the teachings of Scripture. We believe that the only authoritative and trustworthy norm for proper moral judgments is what God has revealed in His Word. Therefore, Bryan College affirms that sexual intimacy is designed by God to be expressed solely within a marriage between one man and one woman. This view of sexuality and marriage is rooted in the Genesis account of creation, reflected in the teachings of Jesus Christ Himself, and is maintained consistently throughout Scripture. It is a view based on the biblical teaching of monogamy—that God designed sexual union for the purpose of uniting one man and one woman into a permanent, lifelong, one flesh union in the context of marriage.

Thus, God's design for marriage and sexuality is the foundational reason for viewing 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, as illegitimate moral options for the confessing Christian. Sexual relations of any kind outside the confines of marriage between one man and one woman are inconsistent with the teaching of Scripture, as understood by Christian churches throughout history. On the other hand, chastity in the form of sexual purity for the unmarried person and chastity in the form of sexual faithfulness in marriage are blessed and affirmed. Therefore, as part of living out a consistent, biblical spirituality, one dedicated to the pursuit of Christ-likeness, all members of the College are expected to avoid sexual intimacy outside of marriage and to discourage others from indulging in that behavior. Indeed, whatever one's personal tendencies and desires, the call of Christ on our lives is the same: sexual purity manifested among the married as complete faithfulness and by those who are unmarried by living a chaste life (I Thess. 4:3-8).¹⁴

The College, in service to the Church, acknowledges those of professed Christian faith who experience same sex attraction. But, the College also, consistent with Church teaching, affirms that sexual activities with members of the same sex cannot be condoned as acceptable expressions of one's sexuality. As you are aware, the EEOC has begun declaring

¹³ See Bryan College Charter, p. 3.

¹⁴ Bryan College Statement on Human Sexuality, pp. 1-2.

that the ban on sex discrimination in Title VII of the Civil Rights Act of 1964 also forbids discrimination on the basis of sexual orientation.¹⁵

It is conceivable that the Department of Education's Office for Civil Rights could interpret Title IX of the Education Amendments of 1972 the same way. To the extent these suppositions are correct, it appears as though compliance with Title IX, if interpreted by ED OCR to reach sexual orientation discrimination, would also be inconsistent with the theological commitment of Bryan College. The College, therefore, also seeks exemption on this basis out of an abundance of caution.

Lastly, consistent with a biblical interpretation of the value of life, the College in its Statement on Human Life (enclosed) provided the following summary of its beliefs regarding the sanctity of human life:

[A]ll 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. We, therefore, prohibit all members of the Bryan Community (faculty, staff, administrative personnel, and students) from promoting or participating in any act of, or related to, aborting a child whether such a child is pre-birth or post-birth. Bryan College reserves the right to terminate any member of the faculty or staff and dismiss any student from the Community for violating this basic understanding of human life. Bryan College 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 woman, her doctor, her pastor and her family.¹⁶

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

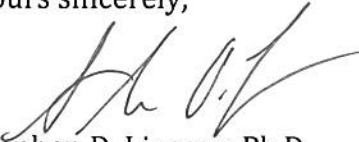
¹⁵ See <http://www.eeoc.gov/decisions/0120133080.pdf>.

¹⁶ See Bryan College Statement on Human Life, p. 1.

- 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)

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.

Yours sincerely,



Stephen D. Livesay, Ph.D.
President, Bryan College

Enclosures