



June 2, 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 Emmanuel College (OPE ID: 001563) in Franklin Springs, GA is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to curtail Emmanuel College's freedom to act in accordance with its religious convictions. As President of Emmanuel College, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

Emmanuel College was founded in 1919 as a Christ-centered institution of higher education, emphasizing liberal arts. The sponsoring denomination of Emmanuel College is the International Pentecostal Holiness Church (IPHC). Fourteen (14) officials of the IPHC, including the General Superintendent (CEO), are *ex officio* members of the Emmanuel College Board of Trustees.¹ Within that ecclesiastical context, Emmanuel College exists to provide post-secondary educational services to the denomination and the wider public. Emmanuel College's motto is "*Deus Nobiscum*," meaning, "God with Us."

Acknowledging Christ preeminent as the creator of all things, as the redeemer of people fallen into sin, as the touchstone of all truth, and as the sovereign ruler over all areas of life, the College strives to discern and to unfold the implications of His preeminence in all things. To serve this end, we seek to appropriate the mind of Christ as the biblical perspective from which we characterize and respond to reality. In attempting to make such a biblically-grounded frame of reference explicit and operative, we are committed to

¹ See attached Bylaws of Emmanuel College Inc., page 12.

excellence in academic inquiry, and we seek to define all areas of the College's structure and program according to this understanding of our philosophy. In doing so, the College seeks to exist as "an academic community dedicated to intellectual, physical, personal, and spiritual growth within the context of a liberal arts education and an environment of Christian concern."²

Emmanuel College and the IPHC, as the sponsoring denomination, understand the Bible to be the infallible, written Word of God. In addition, both the Denomination and the College affirm that the Apostle's Creed, the Articles of Faith, the Ordinances of the Church, and the Covenant of Commitment as expressed in the IPHC Church Manual³ (2013-2017: Adopted by the 27th General Conference of the IPHC), provide the most adequate and comprehensive expression of the system of doctrine taught in the Bible. The IPHC and Emmanuel 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 standards, the College has developed a policy on Sexual Behavior and Gender Identity (attached). That policy provides in pertinent part as follows:⁴

Emmanuel College seeks to reflect God's love and concern for all of humanity, including individuals who experience discordance between certain sexual aspects of their personhood. We further recognize our calling within the context of our educational mission to cultivate an environment that supports and reflects our understanding of biblical and theological perspectives of human sexuality and behavior.

God's original and ongoing intent and action were the creation of humanity manifest as two distinct sexes, male and female. In Matthew 19:4 and Mark 10:6, Jesus himself affirmed that "at the beginning the Creator made them male and female." The reality of this biblical teaching is foundational to Emmanuel College's stance that a person's gender identity is directly linked to his or her biological sex at birth and that each person was intended to experience congruence between the physical and experiential dimensions of their sexuality.

Therefore, the utilization of surgical or other medical procedures or interventions to change one's biological gender as established at birth or presenting oneself in a manner intended to change society's perception of one's biological gender are violations of institutional policy.

As you know, the Department of Education's Office for Civil Rights (OCR) recently issued a "Dear Colleague" letter jointly with the Department of Justice, which states that Title

² See attached Philosophy of Emmanuel College, Catalog: pg. 7.

³ IPHC Manual 2013-2017 *available at* <http://iphc.org/iphc-manual-2013-2017/>.

⁴ See attached Emmanuel College Policy on Sexual Behavior and Gender Identity.

IX's prohibition on sex discrimination "encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status."⁵ That is, a school "must not treat a transgender student differently from the way it treats other students of the same gender identity."⁶

OCR's letter indicated that a school must use pronouns and names that reflect a transgender student's gender identity, and permit the student full access, based upon gender identity, to sex-segregated activities and facilities, including locker rooms, restrooms, showers, housing (including overnight accommodations), and athletic teams.⁷ And as you also know, OCR previously issued guidance on sexual violence prevention which incorporates discrimination based on "gender identity" as part of "sex discrimination" under the statute.⁸

Moreover, the resolution agreement⁹ between the Arcadia Unified School District and OCR (and the Department of Justice) required 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.¹⁰ It is thus reasonable to suppose that 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 Emmanuel College.

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 Emmanuel 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 respond to transgender individuals in accordance with its theologically-grounded convictions.

Additionally, the IPHC, consistent with the historic understanding of the Holy Scriptures has set forth doctrinal standards that expresses the denomination's view point of

⁵ U.S. Department of Justice and U.S. Department of Education, Dear Colleague Letter on Transgender Students, *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

⁶ *Id.* at page 2.

⁷ *Id.*

⁸ 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.").

⁹ 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>.

¹⁰ *Id.*

homosexual conduct: “We also maintain a strong biblical position against premarital, extramarital, and deviant sex, including homosexual and lesbian relationships, and all forms of child molestation and/or exploitation. Yet we rejoice that people bound by these sins can find hope and deliverance in the gospel. (Matthew 5:27-30; 1 Thessalonians 4:3; 1 Corinthians 6:9).”¹¹ In light of these doctrinal standards, the IPHC affirms:

1. The act of homosexuality is a sin according to God's Word;
2. Churches should actively seek to lead the homosexual person to confession and repentance that he might find justification and sanctification in Jesus Christ, according to I Corinthians 6:11¹²; and
3. In light of the Biblical view of its sinfulness, a practicing homosexual continuing in this sin would not be a fit candidate for membership¹³ or ordination¹⁴ in the IPHC.

The College, in service to the Church, welcomes those of professed Christian faith even as they experience same sex attraction. But, it also affirms with the IPHC that sexual activities with members of the same sex are sinful and are not to be condoned as acceptable expressions of one’s sexuality:

Emmanuel College adheres to the biblical teaching that God had, and continues to have, a specific design for sexual behavior and marriage (Genesis 1:26-28; 2: 22-24). Specifically, the biblical standard is the expression of sexuality within a monogamous marriage between one man and one woman (Mark 10:4-12). Sexual intimacy outside of the covenant of marriage, whether it is between a man and a woman or between two persons of the same sex, is considered an illegitimate moral option based on the teaching of Scripture and as understood by Christian churches throughout history. Therefore, practices that are known to be incongruent with sound biblical interpretation and teachings in the areas of sexual behavior and gender identity are not acceptable for members of the Emmanuel College community.

The IPHC Position Paper on Marriage and Sexual Morality (July 25, 2015), which outlines the clear teachings of Scripture that God created human beings as male and female (Genesis 1:27; 2:7, 21-25) and that God established and sanctified marriage as the covenant relationship between a man and a woman in which the full measure of love is meant to be expressed (Mark 10:6-9). Therefore, Emmanuel College defines marriage as being between one man and one woman and does not recognize same-sex “married” couples as married in the sight of God.

¹¹ See attached IPHC Manual, Article VII, A, 2, p. 69-70.

¹² *Id*

¹³ See attached IPHC Manual, Article III, A, 1, a, 1), c), pg. 151-152.

¹⁴ See attached IPHC Manual, Article IV, D, 2, b, pg. 182.

As you are aware, the EEOC has begun declaring 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 Emmanuel College. The College, therefore, also seeks exemption on this basis out of an abundance of caution.

Lastly, the IPHC states: "We affirm every person's right to life and maintain a strong position against abortion and euthanasia, both of which undermine the biblical sanctity of life."¹⁶ In addition, Emmanuel College policies reflect the biblical interpretation of the IPHC in the policies that appear in the Code of Student Conduct and Employee Handbook (attached) regarding the sanctity of human life:

Emmanuel College believes, based on the authority of scripture, that all humans, male and female, are made in the image of God (Genesis 1:27) and, therefore, have an inherent dignity that should be treasured. Emmanuel College believes in the sanctity of human life as a reflection of our belief that God, who created all things, is the Giver and Sustainer of all life. Because of the clear teaching of scripture regarding the sacredness of human life (Psalm 139: 13-16; Isaiah 44:24, Jeremiah 1:5), Emmanuel College considers abortion to be an act that violates biblical teaching and institutional policy.¹⁷

Emmanuel 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 Emmanuel 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)
- 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)

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

¹⁶ See attached IPHC Manual, Article VII, A, 2, p. 70.

¹⁷ See attached Emmanuel College Policy on Sanctity of Human Life

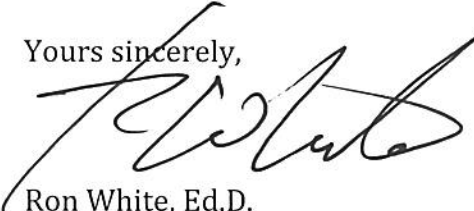
34 C.F.R. § 106.41 (athletics)

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,

A handwritten signature in black ink, appearing to read "Ron White". The signature is fluid and cursive, with a large initial "R" and "W".

Ron White, Ed.D.

President, Emmanuel College