



March 18, 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 Indiana Wesleyan University (IWU) 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 University's freedom to act in accordance with its religious convictions. As President of IWU, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

IWU was founded by The Wesleyan Church to provide higher education within a Christian environment for Wesleyan youth, and remains an institution of The Wesleyan Church to this day.¹ The Wesleyan Church has issued a statement entitled, "A Wesleyan View of Gender Identity and Expression," a copy of which is attached for your convenience. Among other things, the statement declares that "all humans have the same responsibility for stewarding physical attributes and abilities" and that "[g]ender assignment is a divine prerogative."

The statement invokes *The Discipline of The Wesleyan Church*, observing that the "article of religion" on "Marriage and the Family" asserts the binary nature of human sexual identity and expression. The statement sets forth the Church's specific religious convictions about gender identity expression:

1. Gender differentiation is sacred.
2. The Church is an advocate for social holiness for all persons.
3. Gender identity reflects God's sovereignty.
4. Gender non-conformity that disrupts marriage and adult family relationships violates the law of love and the sanctity of the family.
5. Reconciliation with God is the foundation for reconciliation with oneself and with others.
6. Those who are navigating gender identity issues deserve the Church's compassion and ministry.

¹ Indiana Wesleyan University, <http://www.indwes.edu/About/IWU-Profile/>; The Wesleyan Church, Wesleyan Colleges and Universities, <http://www.wesleyan.org/144/wesleyan-colleges-and-universities>.

DR. DAVID WRIGHT

7. When necessary, church discipline of gender non-conforming individuals must be administered in holy love.

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. As you also know, however, the resolution agreement² between the Arcadia Unified School District and ED OCR (and the Department of Justice) requires the school district to permit transgender students to use the restroom, locker room, and overnight accommodations of their choice, and to participate in athletic programs as a member of their chosen sex.³ 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 IWU and The Wesleyan Church.

The Wesleyan Church has also issued a statement entitled, "A Wesleyan View of Homosexuality," a copy of which is attached for your convenience.⁴ Among other things, the statement declares that "[i]t is the historic and sustained conviction of The Wesleyan Church that homosexual activity is contrary to the known will of God as revealed to us in the Bible." The statement sets forth a detailed Scriptural basis for the Church's view, invoking both the Old and New Testaments of Holy Scripture. The statement quotes *The Discipline of The Wesleyan Church*, declaring that "[s]exual relationships outside of marriage and sexual relationships between persons of the same sex are immoral and sinful. The depth of the sinfulness of homosexual practice is recognized, and yet we believe the grace of God sufficient to overcome both the practice of such activity and the perversion leading to its practice." (*Discipline* 410:5).

Significantly, the statement, which is consistent with IWU's practices, sets forth not just the Church's views on homosexual behavior but also mandates a loving and compassion response to members of the gay community:

[W]e call on Wesleyans to respond to the homosexual community with **both** boundless compassion **and** a call to biblical standards of sexual morality. We do not, cannot, and will not endorse homosexual activity as a lifestyle; just as we cannot, do not, and will not endorse all other kinds of behaviors that displease God. But we also do not, cannot, and will not endorse condemning, hate-filled, self-righteous attitudes toward those in the gay community.⁵

² 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.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf.

³ *Id.*

⁴ The statement is also available on the web at <https://www.wesleyan.org/235/a-wesleyan-view-of-homosexuality> (last visited Mar. 4, 2016)

⁵ *Id.*

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 forbids discrimination on the basis of sexual orientation.⁶ 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 this supposition is correct, it appears as though compliance with Title IX, if interpreted by ED OCR to reach sexual orientation discrimination, would also be inconsistent with IWU's theological commitments. IWU therefore also seeks exemption on this basis out of an abundance of caution.

IWU has also adopted The Wesleyan Church's *Church and Culture* statement, which contains a chapter entitled Sanctity of Life, which reads in pertinent part as follows:

We believe that life is a gift from God and must always be regarded as sacred. Because God created human beings in His image, all people share in the divine dignity. Abortion, euthanasia, and unethical human experimentation violate the God-given dignity of human beings...

The Wesleyan Church seeks to recognize and preserve the sanctity of human life from conception to natural death and is opposed to the use of induced abortion. Scripture seems to indicate [sic] that God sees each unborn as a person being formed in the womb with a purpose and a future in mind (Ps. 139). It also instructs us to be fervent in protecting those who cannot protect themselves (Prov. 31:8-9).

IWU accordingly requests that your office acknowledge that the University is exempt from Title IX and the following implementing regulations (to the extent they are interpreted to reach gender identity and/or sexual orientation discrimination, and to the extent they restrict the University's freedom to apply and enforce the Wesleyan Church's statement on the sanctity of 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)
- 34 C.F.R. § 106.41 (athletics)

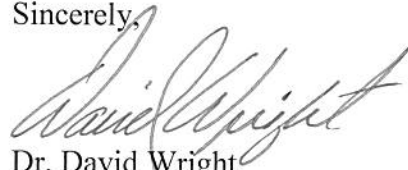
⁶ See <http://www.eeoc.gov/decisions/0120133080.pdf> (last visited Mar. 4, 2016)

Letter to Catherine Lhamon
March 18, 2016
Page 4 of 4

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.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Wright".

Dr. David Wright
President, Indiana Wesleyan University