



OFFICE OF THE PRESIDENT

12 December 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 Judson University ("Judson" or "the University") 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 the University, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

Judson University was formed out of the liberal arts component of the Northern Baptist Theological Seminary in 1963, incorporated as Judson Baptist College.¹ The college was named after Adoniram Judson, the first American protestant missionary sent abroad.² Judson is an evangelical Christian university which represents the Church at work in higher education.³ We strive to equip students to be fully developed, responsible persons who glorify God by the quality of their personal relationships, their work, and their citizenship within the community, the nation, and the world.⁴

The University is governed by a board of trustees whose members must be evangelical Christians and affirm the Judson Trustee Covenant.⁵ While not formally governed by any specific Baptist denomination, Judson is unequivocally a Baptist

¹ See http://www.judsonu.edu/About/History/Our_History/.

² *Id.*

³ See <http://www.judsonu.edu/faithidentity.aspx>.

⁴ *Id.*

⁵ Bylaws of Judson University, Article III, Section 2, p. 2.

institution, and is affiliated with the American Baptist Churches USA.⁶ The University bylaws state that the largest majority of the Board must be Baptist, and at least half of those individuals must be American Baptist.⁷ For several years, Judson has positioned itself as a pan-Baptist organization, and it has cooperative relationships with American Baptist Churches USA, Seventh Day Baptists, and the North American Baptists.⁸

The Board of Trustees Policy Manual affirms Judson's denominational identity with this statement: "Baptists are a diverse people with a common commitment to freedom of conscience, the truthfulness of Scripture, believer's baptism by immersion, religious liberty and separation of church and state, local church autonomy and the priesthood of all believers. This distinction guides our mission."⁹ Judson remains directly connected to Baptist churches, and the University still receives annual financial support from over 100 Baptist churches annually.¹⁰ Judson also continues to hold events and programs such as alumni receptions and student programs that reflect Baptist distinctives and values.¹¹

Additionally, the University affirms the following doctrines as articulated by the American Baptist Churches USA:

- That the Bible is the final authority and trustworthy for faith and practice. It is to be interpreted responsibly under the guidance of God's Holy Spirit within the community of faith;
- That the Church is a gathered fellowship of regenerated believers, a sign of the coming universal reign of God;
- That the freedom to respond to the Lordship of Christ in all circumstances is fundamental to the Christian gospel and to human dignity; and
- That witness to Christ is the ongoing task of every Christian and of every church.¹²

The Board of Trustees and the University 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, the University has developed the following position addressing gender identity (enclosed):

⁶ See Judson University Board Policy Manual at § 1.6.7, p. 8.

⁷ See Judson University Bylaws, Article III, Section 2, pp.1-2.

⁸ See <http://www.judsonu.edu/faithidentity.aspx>. See also College and University Covenant adopted by American Baptist Churches USA and Related Colleges and Universities; Affirmation of Relationship between North American Baptist Conference and Judson University; and Affirmation of Relationship between Seventh Day Baptist General Conference of USA & Canada, Ltd. and Judson College.

⁹ See Board Policy Manual at § 1.6.7; <http://www.judsonu.edu/faithidentity.aspx>.

¹⁰ See <http://www.judsonu.edu/faithidentity.aspx>.

¹¹ *Id.*

¹² See Judson University Board Policy Manual at §1.6.7, p. 8.

We believe God created people male and female in the womb (Psalm 139:13) and that one's birth sex determines the standard for Biblical behavior in lifestyle and sexual conduct for all persons who identify as transgender, transsexual, or practice such behaviors as cross dressing and other lifestyle behaviors.¹³

Judson will make institutional decisions in light of this policy regarding housing, student admission and retention, employment hiring and retention, and other matters.

As you know, the Department of Education's Office for Civil Rights (OCR) has issued a "Dear Colleague" letter jointly with the Department of Justice, which states that Title IX's prohibition on sex discrimination "encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status."¹⁴ That is, a school "must not treat a transgender student differently from the way it treats other students of the same gender identity."¹⁵

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.¹⁶ 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.¹⁷

Moreover, the resolution agreement¹⁸ between the Arcadia Unified School District and 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.¹⁹ It is thus reasonable to suppose that OCR believes that Title IX requires such responses.

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

¹³ See Judson University Family Life Policy.

¹⁴ 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>.

¹⁵ *Id.* at p. 2.

¹⁶ *Id.*

¹⁷ 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.").

¹⁸ 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>.

¹⁹ *Id.*

context. To the extent these suppositions are correct, it appears as though compliance with Title IX, as interpreted by OCR to reach transgender discrimination, would be inconsistent with Judson's religious tenets.

For that reason, I request, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, that OCR acknowledge Judson's exemption from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to curtail Judson's freedom to respond to transgender individuals in accordance with its theologically-grounded convictions.

Additionally, consistent with historic understanding of the Holy Scriptures and our doctrinal standards, Judson states the following regarding sexual conduct:

Judson University affirms the position of the American Baptist Churches, USA and its 2005 General Board statement which states, "We are American Baptist, a biblical people who submit to the teaching of Scripture that God's design for sexual intimacy places it within the context of marriage between one man and one woman, and acknowledge that the practice of homosexuality is incompatible with Biblical teaching."²⁰

As a consequence of these Biblical standards, certain practices and behaviors are unacceptable in the Judson University community. These include but are not limited to extra marital sex (e.g. adultery, premarital sex); homosexual or bisexual behavior; inappropriate sexual intimacy; abortion; pornography; transgender, transsexual, or cross dressing; and immodesty of dress. We believe actively promoting any conduct contrary to these lifestyle standards which would disrupt community life is also unacceptable.²¹

The University, in service to the Church, welcomes people who experience same-sex attraction. But, the University 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 that the ban on sex discrimination in Title VII of the Civil Rights Act of 1964 also forbids discrimination based on sexual orientation.²²

It is conceivable that OCR 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 OCR to reach sexual orientation discrimination, would also be inconsistent with Judson's theological commitment. Judson, therefore, also seeks exemption on this basis out of an abundance of caution.

²⁰ See Judson University Family Life Policy.

²¹ See Judson University Board Policy Manual at §3.11, p. 25.

²² See <http://www.eeoc.gov/decisions/0120133080.pdf>.

Additionally, Judson seeks exemption from Title IX regulations prohibiting marital status discrimination, to the extent that these regulations apply to Judson's policies on marital separation and divorce:

Judson University affirms the standards and ideals of the Statement of Community Standards and upholds the sanctity of marriage and the family. All employees are expected to evidence those standards and live in a manner consistent with the Community Standards (3.11). In the event of a separation or divorce, if a person's behavior is not in violation of the Community Standards, the separation or divorce is not disruptive to campus life, the individual maintains a spirit of cooperation, and one's effectiveness as an employee is not diminished as determined by the administration, the separation or divorce may not require dismissal. The administration may reassign the employee within the University or, if circumstances warrant it, dismiss the employee.²³

Lastly, consistent with a biblical interpretation of the value of life, Judson provides 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 and contrary to the University's missional core and that of the American Baptist Churches, USA. We, therefore, prohibit all members of the Judson University community from promoting or participating in any act of, or related to, aborting a child whether such a child is pre-birth or post-birth. Judson University 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.²⁴

Judson accordingly requests that your office acknowledge that Judson is exempt from Title IX and the following implementing regulations (to the extent they are interpreted to reach gender identity or sexual orientation discrimination or to restrict Judson's freedom to enforce its policies on divorce and 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)

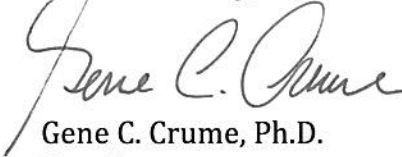
²³ See Judson University Board Policy Manual at §3.6.4, p. 23.

²⁴ See Judson University Family Life Policy.

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,

A handwritten signature in cursive script that reads "Gene C. Crume". The signature is written in black ink and is positioned above the printed name and title.

Gene C. Crume, Ph.D.
President