



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

July 18, 2016

Jason K. Allen, Ph.D.
President
Midwestern Baptist Theological Seminary
5001 North Oak Trafficway
Kansas City, Missouri 64118

Dear Dr. Allen:

I write to respond to your March 31, 2016, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested a religious exemption for Midwestern Baptist Theological Seminary (Seminary) of Kansas City, Missouri from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.

Title IX and its implementing regulation at 34 C.F.R. § 106.12 provide that Title IX does not apply to an educational institution controlled by a religious organization to the extent that application of Title IX would be inconsistent with the controlling organization's religious tenets. Therefore, such educational institutions are allowed to request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law or regulation that conflict with those tenets.

In your request, you cite to your Academic Catalog, which states: "Midwestern Baptist Theological Seminary is an entity of the Southern Baptist Convention, serving as a community of learning for persons called to the ministry. The Seminary's primary source of support is the Southern Baptist Cooperative Program. The Seminary is governed by a board of 35 trustees elected by the Southern Baptist Convention with 7 trustees elected on a rotating basis each year. In accordance with the Program Statement for seminaries adopted by the Southern Baptist Convention in 1979, Midwestern is primarily a graduate professional school. It is accredited by the Association of Theological Schools and the Higher Learning Commission." According to your letter, the Academic Catalog further provides that "[a]s a prerequisite to admission, students must '[b]e able to enunciate a clear testimony of conversion to faith in Jesus Christ,' [and that] [a]ccepted students of the Seminary are 'expected to participate actively and regularly in a local church.'" Moreover, your letter explains that "the Seminary's faculty members are required to subscribe to the *Baptist Faith and Message, 2000*," a statement of faith adopted by the Convention in 2000 and are also "required to participate in a local Southern Baptist church,

teaching classes, serving as a deacon, or leading a congregation as an interim pastor.”

Your letter requests a religious exemption from the provisions of Title IX “where the law would prohibit discrimination on the basis of sexual orientation, gender identity (including but not limited to transgender status), marital status, or past and present practices regarding marriage, sex outside of marriage, or pregnancy, and compliance would conflict with the Church’s religious tenets.”

In support of this request, you explain that the Seminary “accepts the Scripture as the inspired and inerrant Word of God, and is compelled by the Scriptures to be faithful to the religious tenets articulated therein. These religious tenets are illuminated by the *Baptist Faith and Message, 2000*.” According to your letter, The Baptist Faith and Message, 2000 states that “It is God’s unique gift . . . to provide for the man and woman in marriage the framework for intimate companionship, the channel of sexual expression according to Biblical standards, and the means of procreation of the human race.” With regard to gender identity, your letter further states that God created people “male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God’s creation.” Finally, your letter explains that the Baptist Faith and Message, 2000 instructs that “Christians should oppose . . . all forms of sexual immorality, including adultery [and] homosexuality.”

You explain that it would not be consistent with the Convention’s religious tenets for the Seminary to comply with Title IX to the extent that it prohibits the Seminary from “[e]ngaging in recruiting, admissions, and financial assistance under a policy that called for the consideration of an applicant for admission’s sexual orientation, gender identity (including but not limited to transgender status), marital status, or past and present practices regarding marriage, sex outside of marriage, or pregnancy (these considerations collectively referred to hereafter as ‘Individual Characteristics’), and prohibited the Seminary from treating that person differently as a result of that consideration.” Moreover, you state that it would be inconsistent with the Convention’s religious tenets for the Seminary to be prohibited under Title IX “[f]rom subjecting students to rules of behavior, sanctions, or other treatment based on their Individual Characteristics,” or “[f]rom making all employment decisions . . . in a manner that takes into consideration the employee’s Individual Characteristics.”

You state that, for these reasons, the Seminary is requesting an exemption from the following regulatory provisions “where the law would prohibit discrimination on the basis of sexual orientation, gender identity (including but not limited to transgender status), marital status, or past and present practices regarding marriage, sex outside marriage, or pregnancy, and compliance would conflict with the Church’s religious tenets:”

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.22 (governing preferences in admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31 (governing education programs or activities);
- 34 C.F.R. § 106.32 (governing housing);

- 34 C.F.R. § 106.33 (governing comparable facilities such as restrooms and locker rooms);
- 34 C.F.R. § 106.34 (governing access to classes and schools);
- 34 C.F.R. § 106.36 (governing counseling and use of appraisal and counseling materials);
- 34 C.F.R. § 106.37 (governing financial assistance);
- 34 C.F.R. § 106.38 (governing employment assistance to students);
- 34 C.F.R. § 106.39 (governing health and insurance benefits and services);
- 34 C.F.R. § 106.40 (governing different rules based on marital or parental status of students);
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.43 (governing standards for measuring skill or progress in physical education classes);
- 34 C.F.R. § 106.51 (governing employment);
- 34 C.F.R. § 106.52 (governing employment criteria);
- 34 C.F.R. § 106.53 (governing recruitment of employees);
- 34 C.F.R. § 106.54 (governing compensation of employees);
- 34 C.F.R. § 106.55 (governing job classification and structure);
- 34 C.F.R. § 106.56 (governing fringe benefits);
- 34 C.F.R. § 106.57 (governing the consideration of marital or parental status in employment decisions);
- 34 C.F.R. § 106.58 (governing effect of State or local law or other requirements);
- 34 C.F.R. § 106.59 (governing advertising related to employment);
- 34 C.F.R. § 106.60 (governing pre-employment inquiries); and
- 34 C.F.R. § 106.61 (governing sex as a bona-fide occupational qualification).

The Seminary is exempt from these provisions to the extent that they prohibit discrimination on the basis of sexual orientation, gender identity, marital status, or past and present practices regarding marriage, sex outside marriage, or pregnancy and compliance would conflict with the controlling organization's religious tenets.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

Dr. Jason K. Allen – page 4

I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact me.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education