



19 August 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 Oak Hills Christian 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 Oak Hills Christian College, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

Oak Hills Christian College ("OHCC" or "the College") was founded in 1946 as a Christ-centered institution of higher education, emphasizing Bible and ministry training. It is a ministry of Oak Hills Fellowship, Inc. ("OHF" or "the Fellowship"), which oversees two other ministries: Camp Oak Hills, and the Center for Indian Ministries.¹ The College is owned and governed by the Fellowship.² Within that ecclesiastical context, OHCC exists to provide post-secondary educational services to Christian students of various denominational backgrounds.³ OHCC's mission is "to provide biblically centered higher education which contributes to growth toward Christlikeness and prepares students for effective service in their homes, careers, churches, and communities."⁴

¹ See <http://www.oakhills.edu/about-ohcc/history>

² See <https://sites.google.com/a/oakhills.edu/oak-hills-legal-and-standard-documents/home/articles-of-incorporation>

³ See <http://www.oakhills.edu/about-ohcc/denominational-affiliation>

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. The College is committed to excellence in academic inquiry, and seeks to define all areas of OHCC's structure and program according to this understanding of its purpose.⁵

The Fellowship and OHCC — as one of its ministries — understand the Bible to be the infallible, written Word of God. In addition, both OHF and the College affirm that the Fellowship's Doctrinal Statement provides the most adequate and comprehensive expression of the system of doctrine taught in the Bible.⁶ The Fellowship 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 standards, the College affirms the Fellowship's Statement on Human Sexuality and Gender Identity (enclosed). That statement provides in pertinent part as follows:

We affirm that God's original and ongoing intent and action is the creation of humanity manifest as two distinct sexes, male and female. However, due to sin and human brokenness, our experience of our sex and gender is not always that which God the Creator originally designed. We further affirm God's capacity to heal and transform our brokenness. With this foundational understanding of creation, sin and redemption, we do not affirm the resolution of tension between one's biological sex and one's experience of gender by the adoption of a psychological identity discordant with one's birth sex. Nor do we affirm attempts to change one's given biological birth sex via medical intervention in favor of the identity of the opposite sex or of an indeterminate identity.

Our obligation before God is to love all persons, understanding such love in the context of the truth of God's Word. In that light, we will demonstrate

⁴ See <http://www.oakhills.edu/about-ohcc/mission-statement>

⁵ See <http://www.oakhills.edu/about-ohcc/mission-statement>; <http://www.oakhills.edu/about-ohcc/objectives>

⁶ See <http://www.oakhills.edu/about-ohcc/doctrinal-statement>, and Oak Hills Fellowship, Articles of Incorporation, Article IV, page 2 at <https://sites.google.com/a/oakhills.edu/oak-hills-legal-and-standard-documents/home/articles-of-incorporation>

civility and compassion as we engage in dialogue with others on these issues seeking to embody the gentle and patient love of Christ. "We believe that all human beings are made in the image of God and, therefore, have dignity and worth" (OHF Statement of Faith) even though we may disagree with some and even though some may come under discipline for violating Oak Hills' community standards for biblical living.

We will make institutional decisions in light of this policy regarding student admission and retention, housing, employment hiring and retention and other related matters.⁷

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."⁸ That is, a school "must not treat a transgender student differently from the way it treats other students of the same gender identity."⁹

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.¹⁰ 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.¹¹

Moreover, the resolution agreement¹² between the Arcadia Unified School District and OCR (and the Department of Justice) requires that school district to permit

⁷ See <https://sites.google.com/a/oakhills.edu/oak-hills-legal-and-standard-documents/home/ohcc-statement-on-human-sexuality-and-gender-identity>

⁸ 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>

⁹ *Id.* at page 2

¹⁰ *Id.*

¹¹ 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.")

¹² 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>

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.¹³ 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 nondiscrimination 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 OCR to reach transgender discrimination, would be inconsistent with the religious tenets of OHCC.

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 OHCC 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 College and the Fellowship, consistent with the Fellowship's understanding of the Holy Scriptures and doctrinal standards, affirms the following regarding sexual conduct:

We uphold the sanctity of marriage as God-ordained, a special union between a biological man and a biological woman, within which sexual relations are honored and affirmed by God. We have the conviction that all sexual unions outside of marriage as thus defined are sinful. In dealing with sexual sins outside of marriage, we must be attentive to Scripture and therefore consistent in applying Oak Hills' community policies to both heterosexual and homosexual situations.¹⁴

The College, in service to the Church, welcomes those of professed Christian faith who experience same sex attraction. But, it also affirms with the Fellowship that sexual activities with members of the same sex are sinful and are not to 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.¹⁵

¹³ *Id.*

¹⁴ See <https://sites.google.com/a/oakhills.edu/oak-hills-legal-and-standard-documents/home/ohcc-statement-on-human-sexuality-and-gender-identity>

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

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 the theological commitment of the College. The College, therefore, also seeks exemption on this basis out of an abundance of caution.

Lastly, the Fellowship and the College affirm the following Statement on the Sanctity of Human Life (enclosed):

We believe that all human life is sacred and created by God in His image. Human life is of inestimable worth in all its dimensions, including pre-born babies, the aged, the physically or mentally challenged, and every other stage or condition from conception through natural death. We are therefore called to defend, protect, and value all human life.¹⁶

OHCC 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 the Statement on the Sanctity of 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)
- 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)

¹⁶ See <https://sites.google.com/a/oakhills.edu/oak-hills-legal-and-standard-documents/home/ohcc-statement-on-the-sanctity-of-human-life>

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 "Steve Hostetter". The signature is fluid and cursive, with a large initial "S" and a long horizontal flourish at the end.

Steve Hostetter, Ph.D.

President, Oak Hills Christian College