

OHIO CHRISTIAN UNIVERSITY

May 14, 2015

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 Ohio Christian University (OCU) 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 respond to transgender individuals in accordance with its religious convictions. As President of OCU, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

OCU is a non-profit institution of higher education located in Circleville, Ohio. Ohio Christian University was founded in 1948, by an act of the Churches of Christ in Christian Union (CCCU), as Circleville Bible College with the purpose of training and educating clergy for the CCCU denomination.¹ With an on-going commitment to its founders' vision, Ohio Christian University, is preparing students to be world-impacting Christian servant leaders.² OCU prepares students to serve effectively in the Church and society through biblically-integrated education in the Wesleyan tradition that fosters critical and creative thinking, academic excellence, and professional competence. The University exists to develop in Christians a life-long love of learning, a passion for the Bible as the only infallible guide for Christian faith and practice, and a desire to demonstrate God's love to the world through selfless living.³ OCU faculty members are not only leaders in their fields, but have dedicated their lives to Christ and the pursuit of a Biblical worldview. Their commitment to students provides an excellent academic environment for the acquisition of both knowledge and wisdom.

An OCU education is guided by the school's Statement of Faith,⁴ which affirms the elements of the historic, Wesleyan-Holiness Christian faith and its relationship with the CCCU

¹ <https://www.ohiochristian.edu/about>; <http://www.cccuhq.org/ministries/what-we-do/ocu> ("Higher education is a key element of the ministry of The Churches of Christ in Christian Union.") The Churches of Christ in Christian Union continue to recognize OCU for ministerial training.

² <https://www.ohiochristian.edu/about/mission>

³ *Id.*

⁴ <https://www.ohiochristian.edu/about/faith>



denomination. CCCU doctrine is the bedrock of OCU's Statement of Faith. CCCU appoints at least one half of the University's governing board, plays a role in selecting the president and trustees, and provides the University financial support.

OCU is committed to developing students for leadership and service by following the University's core values: to be Christ-centered, biblically-based, student-oriented, ministry-motivated, leadership-focused, and academically excellent.⁵ From those values, OCU has adopted five University objectives that direct the implementation of the University's mission and vision.⁶ OCU students will be prepared to:

- Articulate a Christian worldview supported by a working knowledge of contrasting philosophies and religions.
- Confirm an understanding of a saving and sanctifying knowledge of God through Jesus Christ as Savior and Lord.
- Affirm the Bible as the only infallible guide for Christian faith and practice.
- Demonstrate God's love for humanity through a selfless life that seeks to reconcile the world to Christ.
- Demonstrate academic scholarship that creates a foundation for lifelong intellectual and professional development.
- Apply Bible-based moral values in their daily life.
- Practice a range of leadership skills and abilities.⁷

OCU states its vision is “[p]reparing world-impacting Christian servant leaders.” It articulates its mission as follows: “Ohio Christian University prepares students to serve effectively in the church and society by providing a holistic, Christ-centered, biblically integrated education in the Wesleyan tradition.”⁸

On August 28, 2014, OCU's Board of Trustees adopted a policy on sexuality and gender identity. It reads in pertinent part as follows:

Ohio Christian University's policy regarding sex, sexuality, and gender identity is grounded in the teachings of the Bible as understood in the University's doctrine and long-standing religious affiliation and status with the Churches of Christ in Christian Union which was established in the Wesleyan theological tradition. This policy is intended to address transsexualism, transgenderism, and broader related gender identity issues.

We recognize our obligation before God to love all persons, understanding such love in the context of the Bible, God's revealed truth. We affirm that God's original and ongoing intent and action is the creation of humanity

⁵ <https://www.ohiochristian.edu/about/mission>

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

manifest as two distinct sexes: male and female. We also recognize that due to sin and human brokenness, our experiential perception of our gender is not always that which God the Creator originally designed, and yet affirm further God's capacity to heal and transform our brokenness in keeping with His purposes and will.

OCU has also adopted the following lifestyle standards within the aforementioned policy:

Within the Biblical understanding of the act of mankind's creation, the Biblical description of the fall of mankind, and God's act of redemption, we do not support or affirm the resolution of a psychological identity discordant with one's birth sex. Similarly, we do not support or 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. As a Christian residential institution of higher learning we will respect those whose moral views diverge from ours, and seek to embody the gentle and patient love of Christ for all. We will, however, make institutional decisions in light of this policy regarding housing, student admission and retention, employment hiring and retention, and other matters.

In the employment context, OCU requires that all full-time employees must be active members of a local church and lead personal lives that reflect the teachings, example, and love of Jesus Christ.⁹

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, though the Department of Education recently issued guidance on sexual violence prevention which incorporates discrimination based on "gender identity" as part of "sex discrimination" under the statute.¹⁰ And as you also know, the resolution agreement¹¹ 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 living accommodations of their choice, and to participate in athletic programs as a member of their chosen sex.¹² It is thus reasonable to suppose that ED OCR believes that such responses are required by Title IX. It 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

⁹ http://www.ohiochristian.edu/sites/default/files/OCU_Employment_Application_1.pdf

¹⁰ 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.")

¹¹ 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.

¹² *Id.*

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compliance with Title IX, as interpreted by ED OCR to reach transgender “discrimination,” would be inconsistent with the religious tenets of OCU.

OCU 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 discrimination):

- 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)

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.

Very truly yours,



Dr. Mark A. Smith
President
Ohio Christian University