



*Celebrating 10 years of Equipping Servant Leaders for Life*

28 November, 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 am the President of Shepherds Theological Seminary in Cary, North Carolina. As such, I am the “highest-ranking official of this institution” and thus qualified to request a religious exemption under 34 C.F.R. § 106.12(b). In that capacity, I hereby request on behalf of the Seminary, the religious exemption from Title IX of the Education Amendments of 1972, which is provided for under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12; to wit, that the Department of Education’s Office for Civil Rights acknowledges that Shepherds Theological Seminary 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 Seminary’s freedom to respond to individuals in accordance with its religious convictions.

Shepherds Theological Seminary (STS) was founded in 2003 as a Christ-centered institution of higher education for students seeking a biblical education that is based on conservative evangelical doctrines and couched within the environment of a vibrant local church: Colonial Baptist Church campus, in Cary, North Carolina. As stated in our catalog, Shepherds Seminary exists to impact the world for Christ by equipping servant leaders for life and ministry by strategically shaping both intellect and character through biblical scholarship and personal mentoring. Shepherds offers various degree programs to meet the needs of students seeking professional competence in pastoral ministry and other ministry-oriented careers. We currently have graduates placed in 23 states and 9 countries. STS currently offers several degrees: a Diploma program, Master of Theological Studies, Master of Arts in Christian Ministry, Master of Arts (Biblical Literature and Languages), and Master of Divinity.

The school’s main campus is located in Cary, North Carolina on the campus of Colonial Baptist Church. In addition, Shepherds operates teaching sites on the campuses of

Emmanuel Baptist Church in Bryan, Texas and Laramie Valley Chapel in Laramie, Wyoming. The Seminary is accredited by the Commission on Accrediting of the Association of Theological Schools (ATS).

Shepherds Theological Seminary is authorized by the State of North Carolina to operate as a non-profit corporation exclusively for religious education purposes and is a non-profit corporation under the Internal Revenue Service Code of 1986, as amended, § 501c(3) and § 170©(2). It is governed by an independent Board of Directors, which is bound by approved Bylaws.

As stated in our published bylaws, the distinct purpose of Shepherds Theological Seminary is to establish, maintain and operate an institution for the biblical education and missionary training of Christian workers, and to provide training that will equip Christians to reflect the character of Jesus Christ and apply the truth of Christ's Word to everyday life. 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 Seminary strives to discern and unfold the implications of His preeminence in all things. To serve this end, the school seeks to appropriate the mind of Christ as the biblical perspective from which it operates and responds to reality. In attempting to make such a biblically-grounded frame of reference explicit and operative, the Seminary is committed to excellence in academic inquiry, and seeks to define all areas of the Seminary's structure and program according to this understanding of our purpose.

Shepherds Theological Seminary understands the Bible to be the infallible, written Word of God and affirms that our doctrinal positions as explained in our Doctrinal Statement provide the most adequate and comprehensive expression of the system of doctrine taught in the Bible. We base our philosophy of education on the theological certainty that the one true triune God has self-attestingly revealed Himself to mankind in the Christian Scriptures. The Seminary submits to the Bible and to these historic expressions of its doctrine and seeks to express positions that are in accord with those standards.

The Seminary, consistent with this historic understanding of the Holy Scriptures and our doctrinal standards, does not permit sexual activity outside marriage between one man and one woman and affirms every individual's biological gender as assigned by God at birth. Therefore, consistent with these standards, Shepherds Theological Seminary has developed statements that specifically address matters of marriage, sexuality, gender identity, sexual purity and biblical manhood and womanhood. These statements appear in our catalog, and in our policies of employee and student code of conduct. They are as follows:

#### Statement on Women in Ministry—Biblical Manhood and Womanhood

We believe that men and women were created in the image and likeness of God, equally blessed, and given dual responsibility over the created order (Gen 1:26-28). We believe the Bible teaches that as part of the created order, distinctions in masculine and feminine roles were ordained by God, with Adam's headship in marriage being established before the Fall (Gen 2:16-18; 21-24; 3:1-13; 1 Cor 11:7-9). As such, we are dedicated to the

biblical view of men and women and their relationship to each other in the home and church. Although men and women are spiritually equal in position before God, God has ordained distinct and separate functions for men and women in the church and home (1 Tim 2:11-12). We affirm that God has honored women with many ministry opportunities within the church, parachurch organizations and ministries, educational institutions and mission agencies, but has appointed men and men only to the authoritative teaching role of the elder/pastor position within the local church.

## Statement on Marriage and Sexual Purity

### Human Sexuality

We believe that sexual activity outside of a marriage between one man and one woman is sin. Any form of homosexuality, lesbianism, bisexuality, transgender, bestiality, incest, pedophilia, fornication, adultery, and pornography are sinful perversions of God's gift of sex. God has created us male and female, and He desires that we find joy and contentment in His design. (Genesis 2:24; Genesis 19:5, 13; Genesis 26:8–9; Leviticus 18:1–30; Romans 1: 26–29; 1 Corinthians 5:1; 6:9; 1 Thessalonians 4:1–8; Hebrews 13:4)

### Marriage

We believe that the term "marriage" has only one legitimate meaning, which comes from the Bible, and that is the joining of one man and one woman in a single, covenantal union. (Genesis 2:24; Mark 10:6–9; Romans 7:2; 1 Corinthians 7:10; Ephesians 5:22–23). Whenever there is a conflict between this institution's position and any new legal standard for marriage, the institution's Doctrinal Statement will govern our practices (Genesis 2:24; Mark 10:6–9; 1 Corinthians 7:10, Ephesians 5:22–23). We believe it is God's intention that those who enter marriage shall seek in mutual love and respect, to live, one man and one woman, in Christian fidelity as long as both shall live (Genesis 1:27; 2:24; Mark 10:9; Luke 16:18).

We believe that sexual activity is to be exercised and enjoyed only within the covenant relationship of marriage between one man and one woman, and that God has expressly condemned sexual intercourse outside of the marriage covenant. Any form of homosexuality, lesbianism, bisexuality, transgender, bestiality, incest, pedophilia, fornication, adultery and pornography are sinful perversions of God's gift of sex (Genesis 19:5, 13; 26:8–9; Leviticus 18:1–30; Romans 1:26–29; 1 Corinthians 5:1, 6:9; 1 Thessalonians 4:1–8; Hebrews 13:4).

### **Gender Relationships**

We believe that men and women are spiritually equal in position before God but that God has ordained distinct and separate functions for men and women in the home and the church. The husband is the head of his household, serving as a shepherd/leader in the home. Likewise, men are to hold the offices of authority in the church. Accordingly, only men are eligible for licensure and ordination by the church and qualified to exercise their authority by leading mixed adult worship services and adult Christian education classes. (Galatians 3:28; Colossians 3:18; 1 Timothy 2:8–15; 3:4–5, 12).

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.<sup>1</sup> And as you also know, the resolution agreement<sup>2</sup> 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 the sex to which they believe they belong.<sup>3</sup> 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 compliance with Title IX, as interpreted by ED OCR to reach transgender “discrimination,” would be inconsistent with the religious tenets of Shepherds Theological Seminary. For that reason, I am claiming on behalf of the Seminary, 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 should acknowledge that Shepherds Theological Seminary 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 Seminary’s freedom to respond to both transgender and homosexual individuals in accordance with its theologically-grounded convictions. In addition, based upon its Biblical stance regarding women in ministry, an exemption is also required in order for STS to fulfill its role in training students for ministry in churches that share its biblical views on the roles of men and women in ministry.

As you are also aware, the EEOC has begun openly declaring that the ban on “sex” discrimination in Title VII of the Civil Rights Act of 1964 also forbids discrimination on the basis of “sexual orientation.”<sup>4</sup> 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 these suppositions are correct, it appears as though compliance with Title IX, if interpreted by ED OCR to reach sexual orientation “discrimination,” would also be inconsistent with the theological commitment of Shepherds Theological Seminary. The Seminary, therefore, also claims an exemption on this basis out of an abundance of caution.

Shepherds Theological Seminary accordingly requests that your office acknowledge that this school is exempt from the sections of Title IX listed below and with any implementing regulations {to the extent they are interpreted to reach issues of women in ministry, gender identity or sexual orientation discrimination.

---

<sup>1</sup> 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.”)

<sup>2</sup> 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](http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> See [http://www.macon.com/2015/03/30/3668458\\_eecoc-issues-determination-letter.html?rh=1](http://www.macon.com/2015/03/30/3668458_eecoc-issues-determination-letter.html?rh=1)

- 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. § 106.42 (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 black ink, appearing to read "Stephen Davey", written over a circular scribble.

Stephen Davey, D.D.,  
President,  
Shepherds Theological Seminary