

# SOUTHEASTERN UNIVERSITY

26 October, 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 Southeastern 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 Southeastern University's freedom to act in accordance with its religious convictions. As President of Southeastern University, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

Southeastern University ("Southeastern" or "the University") was founded in 1935, and is a Christ-centered institution of higher education, "committed to equipping the next generation of leaders so that they can go into the world as influential servants in their careers and their communities."<sup>1</sup> Southeastern's mission is to equip students "to discover and develop their divine design to serve Christ and the world through Spirit-empowered life, learning and leadership."<sup>2</sup>

Southeastern is affiliated with the Assemblies of God denomination, affiliated with and sponsored by several Assemblies of God districts, and governed by a board that must include either an ordained Assemblies of God minister or a member in good standing of an

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<sup>1</sup> See <http://www.seu.edu/about/>.

<sup>2</sup> See <http://www.seu.edu/about/>.

Assemblies of God church from each sponsoring district.<sup>3</sup> Additionally, Southeastern requires that its President be either credentialed by the Assemblies of God or a member in good standing of an Assemblies of God church.<sup>4</sup>

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, Southeastern 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. In doing so, the University seeks to embody the following vision:

Southeastern University is anchored by Spirit-empowered education in a Christ-centered, student-focused learning community. Southeastern's global impact is marked by a deep commitment to transforming minds and engaging culture through the integration of faith, learning and service. Each student's divine design is nurtured and unleashed through the investment of faculty and staff, relationships within the community, the rigor of scholarship, diverse learning experiences and the discipline of spiritual formation, which propels students into a lifetime of serving the world in the Spirit of Christ.<sup>5</sup>

The Assemblies of God and Southeastern understand the Bible to be the infallible, written Word of God. In addition, both the Assemblies of God and the University<sup>6</sup> affirm that the Statement of Fundamental Truths of the General Council of the Assemblies of God provide the most adequate and comprehensive expression of the system of doctrine taught in the Bible. The Assemblies of God and the University submit themselves to the Bible and to these historic expressions of its doctrine and affirm positions that are in accord with those standards.

Therefore, consistent with these standards, Southeastern has developed a Human Sexuality Policy (enclosed). That statement provides in pertinent part as follows:

### **Biblical Foundations**

Our understanding of Human Sexuality is derived from the following biblical principles:

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<sup>3</sup> Southeastern University Bylaws, Article II, Section 1, and Article VII, Section 3.

<sup>4</sup> Southeastern University Bylaws, Article XII, Section 1.

<sup>5</sup> See <http://www.seu.edu/about/>.

<sup>6</sup> Southeastern University Bylaws, Article IV.

1. God created humans with an immutable gender of either male or female, in a purposeful and complementary design that together reflects God's own image and nature, and as relational beings—the only part of creation that God explicitly designed to have community with himself (Genesis 1:26). All other forms of community are designed to reflect this relationship between divinity and humanity (Hebrews 10:24-25; 1 Corinthians 12:14, Ephesians 5:25).
2. As a direct result of sin, the community between divinity and humanity was broken (Genesis 3:23-24). This brokenness has permeated all other relationships (Genesis 4:15). Human sexuality is not exempt from the marring effects of separation from the divine (Romans 1:21-23).
3. God's intention for human sexuality is for sexual intimacy to occur between one genetic male and one genetic female within the covenant of marriage (Genesis 2:18, 21-24; Hebrews 13:4).
4. All forms of sexuality outside of God's intention are a result of separation from God (1 Corinthians 6:13, 18-20) and are illegitimate moral options. In Scripture, several sexual behaviors are expressly forbidden, which include but are not limited to: fornication, adultery, incest, unnatural sexual intercourse, and homosexual acts (Exodus 20:14; Leviticus 18:7-23, 20:10-21; Matthew 5:27-28; Romans 1:20-27; 1 Corinthians 6:9; Galatians 5:19; Ephesians 4:17-19; Colossians 3:5).

Into this broken world, God sent himself in the form of his only begotten son, Jesus the Christ (John 1:1-3,14). Through his sacrifice, Jesus became the Way to restoration of the divine/human community (John 3:16). Until one has restored their relationship with God through his son Jesus, all other relationships—including human sexuality—will remain broken (John 14:6-7).

### **Southeastern Human Sexuality**

In addition, Southeastern University supports the dignity of individual persons affirming their biological sex—understanding that any attempts to change one's God-given sexuality through elective sex-reassignment, transvestite, transgender, or nonbinary "genderqueer" acts or conduct is at odds with our biblical standards, denominational affiliation and consequently our code of conduct.

### **Our Commitment**

Therefore, we as a community commit to the following:

- a) We will make institutional decisions in light of the beliefs expressed in this policy, including but not limited to decisions regarding recruitment of faculty, staff, administrators and students, admissions and financial aid, terms and conditions of employment, curriculum and course offerings, and all student services.
- b) Because of our values surrounding modesty, sexual purity and safety, the university has had a single-sex housing and restroom policy for undergraduates since its inception, and we will continue to maintain this tradition.
- c) In regards to athletics, we will continue to support our biblical understanding of affirming an individual's biological sex as the basis for athletic competition.<sup>7</sup>

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>8</sup>

And as you also know, the resolution agreement<sup>9</sup> between the Arcadia Unified School District and ED 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.<sup>10</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

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<sup>7</sup> See Human Sexuality Policy.

<sup>8</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>9</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.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

<sup>10</sup> *Id.*

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

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 Southeastern 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 theologically-grounded convictions.

Additionally, the Assemblies of God, consistent with the historic understanding of the Holy Scriptures and our doctrinal standards have affirmed the following regarding homosexual conduct:

- The Assemblies of God defines marriage as the permanent, exclusive, comprehensive, and conjugal "one flesh" union of one man and one woman, intrinsically ordered to procreation and biological family, and in furtherance of the moral, spiritual, and public good of binding father, mother, and child. (Genesis 1:27-28; 2:18-24; Matthew 19:4-9; Mark 10:5-9; Ephesians 5:31-33); and
- The Assemblies of God affirms the sexual complementarity of man and woman and teaches that any and all same-sex sexual attractions are to be resisted. Consequently, believers are to refrain from any and all same-sex sexual acts or conduct, which are intrinsically disordered. (Genesis 1:27; 2:24; Matthew 19:4-6; Mark 10:5-9; Romans 1:26-27; 1 Corinthians 6:9-11).<sup>3</sup> In light of the Biblical view of its sinfulness, a practicing homosexual continuing in this sin would not be a fit candidate for ordination or membership in the Assemblies of God.<sup>11</sup>

The University, in service to the Church, welcomes those of professed Christian faith even as they experience same sex attraction. But, it also affirms with the Assemblies of God that sexual activities with members of the same sex are sinful and are not to be condoned as acceptable expressions of one's sexuality.<sup>12</sup> 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 on the basis of sexual orientation.<sup>13</sup>

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<sup>11</sup> See Assemblies of God August 2014 Statement on Homosexuality, Marriage, and Sexual Identity, available at [http://ag.org/top/Beliefs/position\\_papers/pp\\_downloads/pp\\_4181\\_homosexuality.pdf](http://ag.org/top/Beliefs/position_papers/pp_downloads/pp_4181_homosexuality.pdf).

<sup>12</sup> See Human Sexuality Policy.

<sup>13</sup> See <http://www.eeoc.gov/decisions/0120133080.pdf>.

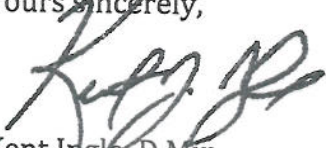
It is conceivable that the Department of Education's Office for Civil Rights could interpret Title IX of the Education Amendments of 1972 the same way. To the extent these suppositions are correct, it appears as though compliance with Title IX, if interpreted by ED OCR to reach sexual orientation discrimination, would also be inconsistent with the theological commitment of Southeastern. The University, therefore, also seeks exemption on this basis out of an abundance of caution.

Southeastern accordingly requests that your office acknowledge that Southeastern is exempt from Title IX and the following implementing regulations (to the extent they are interpreted to reach gender identity or sexual orientation 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.

Yours sincerely,



Kent Ingle, D.Min.  
President  
Southeastern University