

LAW OFFICES
MARCOUX ALLEN
MARCOUX, ALLEN, BOWER, NICHOLS & KENDALL, P.C.

145 SOUTH JACKSON STREET
POST OFFICE BOX 787
JACKSON, MICHIGAN 49204-0787

TELEPHONE (517) 787-4100

FAX (517) 787-9455

WILLIAM J. MARCOUX (RET.)
WILLIAM O. ALLEN (RET.)
JOHN H. SCHOMER (RET.)

OF COUNSEL

LAWRENCE L. BULLEN, P.C.
PHILIP M. MOILANEN, P.C.

AYMOND, LOZIER & ARORA, PLC
MARTIN G. LOZIER**
RAHUL ARORA

* LICENSED IN CALIFORNIA
** LICENSED CPA

DIANE Y. BOWER
WILLIAM B. NICHOLS, JR.
ROBERT T. KENDALL, III
THOMAS L. THOMPSON
BREE D. THURLBY
STEVEN D. RICK*
CHADWICK A. PERRINE
ANN ARBOR OFFICE:
BREE D. THURLBY
2020 HOGBACK ROAD, SUITE 9
ANN ARBOR, MICHIGAN 48105
TELEPHONE: (734) 677-3959
FAX: (734) 548-8280

June 3, 2014

Assistant Secretary Catherine Lhamon
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1100

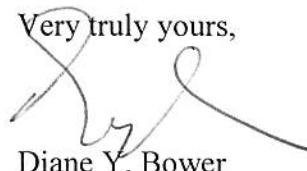
Re: Application for Recognition of Exemption from certain Title IX Regulations.

Dear Assistant Secretary Lhamon:

Enclosed is a letter from President Brent Ellis, the highest-ranking official at Spring Arbor University, requesting Title IX exemptions as explained in the letter. A copy of the letter is also being sent to the Cleveland OCR office, to the attention of Mr. Ted Wammes.

Please let me know if there is a need for anyone from the OCR to contact the Free Methodist Church during the course of reviewing Spring Arbor University's request, and I will provide the contact information for the Bishop who will respond on behalf of the Church.

Very truly yours,



Diane Y. Bower

DYB/mc
Enc.



SPRING ARBOR

UNIVERSITY

June 2, 2014

Assistant Secretary Catherine Lhamon
 U.S. Department of Education
 Office for Civil Rights
 400 Maryland Avenue, SW
 Washington, D.C. 20202-1100

Re: Application for Recognition of Exemption from certain Title IX Regulations.

Dear Assistant Secretary Lhamon:

As the highest-ranking official of Spring Arbor University's administration, I am making this application for recognition by the Office for Civil Rights of the Department of Education, that the University is exempt from compliance with certain Title IX regulations, under the religious exemption provided in 20 CFR 1681(a)(3). The particular regulations for which exemption is requested are:

- 34 CFR §106.31(b)(4) – regarding different rules of behavior, sanctions, or other treatment
- 34 CFR §106.21(b)(iii) – admissions; regarding prohibitions on the basis of sex
- 34 CFR §106.21(c) – admissions; regarding prohibitions based on marital and parental status
- 34 CFR §106.57 – pregnancy; regarding marital or parental status of employees
- 34 CFR §106.40 – pregnancy; regarding marital or parental status of students
- 34 CFR §§106.51(a) and 106.51(b)(6) – regarding discrimination in employment in leaves for pregnancy, childbirth, and termination of pregnancy, based on sex, including in regard to gender identity issues
- 34 CFR §106.32 – regarding housing
- 34 CFR §106.33 – regarding restrooms and locker rooms
- 34 CFR §106.41 – regarding athletics

In addition to being the President of Spring Arbor University, I am an ordained Free Methodist minister and former Pastor of a Free Methodist Church congregation. As a minister of

In addition to being the President of Spring Arbor University, I am an ordained Free Methodist minister and former Pastor of a Free Methodist Church congregation. As a minister of the Free Methodist Church, I am qualified to present the tenets of the Free Methodist Church which pertain to the matters addressed in this letter, and the religious beliefs of the University, which are reflected in its policies and practices.

Spring Arbor University is located in Spring Arbor, Michigan, and is the largest private, Christian evangelical University in the State of Michigan. A copy of the University's Statement of Faith is enclosed with this letter, as Item 1. The University was established in 1873, as 'Spring Arbor Seminary', and has been in continuous existence in Spring Arbor, Michigan, for more than one hundred and forty years. Over the course of its history, the University has evolved from Spring Arbor Seminary, to Spring Arbor Junior College, to Spring Arbor College, and in 2000, to Spring Arbor University.

The University is governed by and controlled by its Board of Trustees, the majority of whom must be members of the Free Methodist Church, as dictated by the University's Articles of Incorporation. A copy of the Articles is included with this letter as Item 2. The Trustees govern the University under the directives of Article II of the Articles, which provide in part:

"The object and purpose of the corporation hereby created, shall be to maintain, manage and carry on the aforesaid Institution of Learning under the patronage of the Free Methodist Church, and of persons supporting the same and the faith thereof...with a Board of Trustees of not more than thirty-five in number, fifty percent plus one of whom, at least, shall at all times, be members of said church, to receive, hold and manage all the property...in trust for the use and benefit of said University...and in trust for the interest and maintenance of said Church and its principles..."

For over one hundred years, the University's Articles have required that the controlling majority of the Trustees governing the University must be members of the Free Methodist Church. This results in the Free Methodist Church, through its members, having majority control over the University. The Bylaws of the University require, in Section 2, that of the fifty-percent plus one of the Trustees who must be members of the Free Methodist denomination, eight (two each) must be from the following four Free Methodist conferences: the Eastern Michigan Conference, the North Michigan Conference, the Southern Michigan Conference, and the Ohio Conference. The bylaws also require, in Section 8, that the President of Spring Arbor University must be a member of the Free Methodist Church. A copy of the University's Bylaws is enclosed with this letter, as Item 3.

In regard to the tenets of the Free Methodist Church, most of these tenets are codified in the Free Methodist Book of Discipline, which contains the doctrinal positions of the Church. The Book of Discipline is used by the University as a reference for behavioral and doctrinal standards expected of the University, its students, faculty, and other employees. The University also believes that the Bible is the true and reliable word of God, and follows Biblical principles in its policies and practices applicable to Christian education, and to its students and employees.

Among the teachings of the Bible and the tenets of the Free Methodist Church followed by the University, are that God created two sexes, male and female; that marriage is between one man and one woman; and that extramarital sex, premarital sex, and the practice of homosexuality are sinful behaviors, and therefore prohibited. (Book of Discipline, ¶3215; Genesis 2:27; Exodus 22:16-17; Deuteronomy 22:23-28; Leviticus 20:10-16.)

Spring Arbor University is dedicated to the promotion of the Christian religion not only locally, but throughout the world. In 2008, during the presidency of Dr. Charles Webb, the University began a global outreach program. The emphasis of the program is “globalization through the eyes of faith”. A copy of the Jackson Magazine article in which that program is featured, is enclosed with this letter as Item 4. The goal of Spring Arbor University is to spread the blessings and benefits of a Christ-centered education to individuals throughout the world.

When I became President of the University in 2013, I affirmed the University’s continuing dedication to providing our students with a solid Christian foundation as an essential part of their education. In my inaugural address, a copy of which is enclosed with this letter as Item 5, I emphasized that under my presidency, the University will remain committed to providing a Christ-centered evangelical education to our students. As I stated then, the important piece here is that we must take time to remind our students, and remind each other, of who we are in Christ. To speak truth and say this is who you are.

Dedication to the promotion of the Christian religion in its educational programs has always been an integral part of Spring Arbor University. The initial Articles of Incorporation, filed in 1873, state that the educational institution is being established based upon the belief that, “Religion, Morality, and Knowledge are essential to good government and the real happiness of mankind.” The University has a guiding concept which is referred to as the ‘Spring Arbor Concept’. The Concept evolved from the University’s continuing commitment to the integration of the Christian faith with the University’s role as an educational institution. The Concept states:

“Spring Arbor University is a community of learners distinguished by our lifelong involvement in the study and application of the liberal arts, total

commitment to Jesus Christ as the perspective for learning, and critical participation in the contemporary world.”

Spring Arbor University also has a mission statement which provides:

“Spring Arbor, an evangelical Christian university affiliated with the Free Methodist Church, is committed to excel in liberal arts, professional, and graduate studies. Through the influence of an affirming academic community where a faculty of Christian scholars integrates faith with experiential learning, students develop intellectually, grow as persons, and are challenged by the call to vibrant Christian service.”

The University also emphasizes Christian principles of religion in its community and campus life. The Community Covenant requires students and employees to follow the Code of Conduct established by the University. The University incorporated the Christian standards of behavior directed by Biblical principles and the tenets of the Free Methodist Church, as the framework for the Code of Conduct. Students are required to attend chapel regularly, and must take and pass Christian Perspective courses such as COR 100 and COR 200, in order to graduate from the University. Among other things, students and employees are prohibited from drinking, smoking, using tobacco and illegal drugs, cohabitation, engaging in pre-marital or extra-marital sex, and homosexual activity. The Student Handbook, the Employee Handbook, and the Faculty Handbook contain provisions regarding expected Christian behavioral standards. The University may impose sanctions for behavior which is not in keeping with these standards, including dismissal from the University or termination of employment.

Based upon the University’s Articles of Incorporation and Bylaws, which are followed in practice by the Board of Trustees, the University is under the control of the Free Methodist denomination through the Church members who serve as Trustees and have the majority voice on the Board, and through the President of the University, who must be a member of the Free Methodist Church. In 2004, the University was granted a Bona Fide Occupational Qualification exemption by the State of Michigan’s Department of Civil Rights, which recognizes the University as a Christian religious entity. The BFOQ granted to Spring Arbor University provides that the University can require its faculty and administration employees to be Christians, and to adhere to the University’s standards of Christian behavior for its employees. A copy of the BFOG received from the Michigan Department of Civil Rights is enclosed with this letter as Item 6.

In keeping with the religious tenets of the Free Methodist Church which prohibit cohabitation, and the University’s Christian religious principles and practices in regard to that prohibition, students are separated on the basis of sex in regard to housing, living arrangements,

restrooms, and locker rooms. The University has male-only and female-only residence halls and other housing, with rules in place which regulate access to residence halls and housing by members of the opposite sex. To the extent Title IX regulations would require the University to allow males and females to reside in the same housing, to visit within the housing of the opposite sex without restrictions, to allow an unmarried male and female to live together, or to allow a person with gender identity issues to be treated as a member of the sex which they have assigned to themselves in regard to the above categories, such behavior would be against the religious principles of the University and the tenets of the Free Methodist religion, as it is cohabitation, which is a sin.

The tenets of the Free Methodist religion also prohibit homosexual activity, and adhere to the requirement of heterosexuality. (§3331, Free Methodist Book of Discipline). The University has deeply-held religious beliefs, based upon Biblical principles and the Book of Discipline, which do not allow for any sexuality, other than heterosexuality. The University also believes, based upon Biblical principles, that a person cannot change their birth gender. Based upon its religious beliefs, it is the University's position that a person who self-identifies as the opposite sex cannot reside with individuals who are of the sex with which that person identifies. This is true whether or not the person has undergone surgery or hormonal treatment to assume the physical characteristics of the opposite sex. Such a living arrangement would be deemed to be cohabitation, and under the religious tenets of the Free Methodist Church and the University's Christian religious principles and practices, it would be sinful behavior.

Similarly, a person who self-identifies as the opposite sex, but who has expressed an attraction to members of their birth sex, would not be permitted to engage in dating or sexual activity with a person of their birth sex, because this behavior is considered to be homosexual in nature, based upon the University's religious beliefs. The University is requesting that the OCR recognize an exemption for the University from 34 CFR 106.31(b)(4), so that the University may apply different rules of behavior, sanctions, or other treatment in matters involving gender identity issues.

An individual who identifies as being of the opposite sex from their birth gender also would not be permitted to play on the athletic teams of the sex which was opposite from their birth gender. An exemption in regard to 34 CFR 106.41 is therefore also being requested. A requirement that individuals be treated in keeping with their self-identified gender, rather than their birth gender, would be inconsistent with the University's religious beliefs and the tenets of the Free Methodist Church.

Employment of an individual who identifies as being of the opposite sex from their birth gender, and who expresses that identification through behavior and/or dress is against the religious beliefs of the University, on the same basis and for the same religious reasons as set

forth above, regarding students with gender identity issues. Employees are considered to be representatives of the University, and are required to model appropriate Christian behavior. A male employee who announced himself to be female, or who adopted the appearance of a female, would not be modeling appropriate Christian behavior acceptable to the religious beliefs of the University, nor would a female employee who announced herself to be a male, or who adopted the appearance of a male.

The Free Methodist Book of Discipline acknowledges the ethical difficulties involved in matters such as gender identity. The Book of Discipline refers to these issues as bioethical dilemmas and directs that Biblical principles should be applied to such issues. In paragraph ¶3215, the Book of Discipline states that such complex bioethical issues “involve religious and moral values, as well as medical and legal realities. Therefore Christians may not determine their rights and privileges only by the permissiveness of the state and the possibilities of safe medical procedures.” The Book of Discipline directs that Biblical principles should be applied to such bioethical issues, including gender identity issues. In keeping with the doctrine of the Free Methodist Church and the University’s religious beliefs, the University applied Biblical principles and adopted a policy in 2013 in respect to gender identity issues and other issues related to sexuality. A copy of the University’s policy on sex, sexuality, and gender identity is enclosed with this letter as Item 7.

It is the University’s position, based upon its religious beliefs taken from Biblical principles and the Doctrine of the Free Methodist Church, that a person cannot change his or her birth sex. Although they may undergo surgery or hormone treatments to alter their physical characteristics, only the outward appearance is changed. Thus a student identifying as the opposite sex, rather than their birth sex, would not be permitted to live in University housing with individuals of the self-assigned sexual identity of that person, or to play on athletic teams, share restrooms, or use locker rooms with individuals of the self-assigned sexual identity of that person. That person also would not be eligible for employment with the University.


Based upon the Christian religious beliefs of the University and the tenets of the Free Methodist Church, the University is requesting exemption on religious grounds from Title IX, regulations §§106.32 (housing), 106.33 (restrooms and locker rooms) and 106.41 (regarding athletics), to allow the University religious freedom to discriminate on the basis of sex, including gender identity, and sexual orientation, in regard to housing and living arrangements, restrooms, locker rooms, and athletics, and from §106.31(b)(4), regarding different treatment and sanctions. In regard to employment and gender identity, the University is requesting exemption on religious grounds from §§106.51(a), which prohibits discrimination in employment and employment decisions on the basis of sex.

The University's Christian religious beliefs, which are based upon the Bible and the tenets of the Free Methodist religion, also prohibit elective abortion, pre-marital sex, extra-marital sex, and homosexual behavior, for students and employees. Application of the OCR's interpretation of Title IX regulations §§106.21(b)(iii), 106.21(c), 106.40, 106.51(a), 106.51(b)(6), 106.57, 106.31(b)(4), and 106.32 to the University, would result in such situations as the University being required to retain pregnant unmarried employees or employees who elect to terminate their pregnancy, to admit pregnant unmarried students, to retain unmarried students who elect to terminate their pregnancy, to allow unmarried students of the opposite sex to live together, to retain pregnant, unmarried students and to allow them to live in University housing, and to allow homosexual students to live together, all of which the University cannot do, because it would be inconsistent with the religious beliefs, policies, and values of the University, and the religious tenets of the Free Methodist Church.

Enforcement of the above regulations in respect to Spring Arbor University would require that the University not discriminate in discipline, admissions, hiring, and employment decisions, in matters such as employment leaves for pregnancy, childbirth, and elective termination of pregnancy, or on the basis of pre-marital sex, unmarried pregnancy, extra-marital sex, or homosexual activity. As with the other regulations for which exemption is sought, requiring Spring Arbor University to allow such situations to exist at the University would be inconsistent with the religious tenets of the Free Methodist Church and the Christian religious beliefs, policies, and values adhered to and practiced by the University.

Spring Arbor University is requesting an exemption from the specific Title IX regulations referenced in this letter, so that the University may discriminate on religious grounds in regard to its students and employees, in keeping with its religious beliefs and the tenets of the Free Methodist religion, as set forth in this request. If you have any questions, or if additional information is required, please do not hesitate to contact me.

Very truly yours,



Dr. Brent Ellis, President
Spring Arbor University

DYB/mc
cc. Mr. Ted Wammes
enc.: seven