



Office of the President

... Because Life is for Service

24 June 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 Appalachian Bible 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 Appalachian Bible College, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

Appalachian Bible College ("ABC" or "the College") was founded in 1950 as Appalachian Bible Institute by an independent Baptist church.¹ Appalachian Bible Institute was organized as a faith mission under Appalachian Bible Fellowship, Inc. ("ABF" or "the Fellowship"), a missionary agency.² The College is an agency of and is governed by the Fellowship.³ Within that context, the College exists to provide post-secondary educational services to independent fundamental Baptist and other Bible church communities.⁴ The

¹ See <https://abc.edu/about-abc/history.php>.

² See <https://abc.edu/about-abc/history.php>, and Appalachian Bible Fellowship Constitution and Bylaws, Article III, page 1.

³ See Appalachian Bible Fellowship Constitution and Bylaws, Article III, page 1; Appalachian Bible College Constitution and By-laws, Article IV, page 3.

⁴ See <https://abc.edu/about-abc/mission-and-doctrine.php>.

academics and guided Christian Service that nurtures Christ-like character leading to effectiveness in passionately serving the fundamental church community.”⁵

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 ABC’s structure and program according to this understanding of its purpose.⁶

The Fellowship and the College — as one of its ministries — understand the Bible to be the infallible, written Word of God. In addition, both the Fellowship 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.⁷ The Fellowship and the College submit themselves to the Bible and to these expressions of doctrine and seek to express positions that are in accord with those standards.

Therefore, consistent with those standards, the College has developed a Policy on Sexuality and Gender (enclosed). That statement provides in pertinent part as follows:

Appalachian Bible College, consistent with the policies of Appalachian Bible Fellowship, recognizes the Holy Scriptures as contained in the Old and New Testaments as the final authority for faith and practice. We affirm a commitment to a biblical worldview that honors the teachings of the Bible and seeks to glorify God and his Son and our Savior, Jesus Christ who is the creator of all things (John 1:3, Colossians 1:16). We affirm that God creates human life as two distinct sexes, male and female (Genesis 1:27). We recognize each individual as male or female based on their biological birth sex. We recognize that due to the entrance of sin, humans in their fallen condition may experience confusion and dissatisfaction as it relates to their sexuality and gender identity. We have compassion on those who struggle in identifying with their biological birth sex, or experience sexual attraction to those of their same sex. We affirm that God, through the grace of our Lord Jesus Christ, is able to bring healing and wholeness to those who desire to live within his design.

⁵ See <https://abc.edu/about-abc/mission-and-doctrine.php>.

⁶ See <https://abc.edu/about-abc/mission-and-doctrine.php>.

⁷ See <https://abc.edu/about-abc/mission-and-doctrine.php>; Appalachian Bible Fellowship Constitution and Bylaws, Article VIII, pages 6-8.

We affirm the need for acceptance of and submission to God's design for one's life which is indicated by the divinely bestowed biological sex. Adopting a psychological identity different from one's biological birth sex, or attempts to change the gender of one's body to an opposite sex, or an indeterminate sex, through medical treatments, is not appropriate.

Everything in our college handbook and policy book is to be interpreted through this policy including, but not limited to, housing, dress codes, use of bathrooms and locker rooms, hiring, and position descriptions.⁸

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."⁹ That is, a school "must not treat a transgender student differently from the way it treats other students of the same gender identity."¹⁰

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.¹¹ 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.¹²

Moreover, the resolution agreement¹³ between the Arcadia Unified School District and OCR (and the Department of Justice) required that school district to permit transgender students to use the restroom, locker room, and living accommodations of their choice, and

⁸ See Appalachian Bible College Policy on Sexuality and Gender. See also Appalachian Bible Fellowship Policy on Sexuality and Gender.

⁹ 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>.

¹⁰ *Id.* at page 2.

¹¹ *Id.*

¹² 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.").

¹³ 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 <sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

to participate in athletic programs as a member of the sex to which they believe they belong.¹⁴ 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 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 OCR to reach transgender discrimination, would be inconsistent with the religious tenets of ABC.

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 ABC 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, consistent with the Fellowship's doctrinal standards and policies,¹⁵ affirms the following regarding sexual conduct:

Appalachian Bible College believes that there are direct scriptural commands related to moral conduct, and that as a Bible college we should uphold those standards. The Bible restricts sexual activity to marriage between a man and a woman, that is, a biological male and biological female. Thus fornication, adultery, incest, sexual abuse of a minor, homosexuality, indecent exposure, sexual harassment, and other such activities are forbidden in order to protect purity of Christian testimony in this area (Genesis 2:24; Matthew 19:4-9; 1 Corinthians 6:9-10; Leviticus 18:7-23; Romans 1:20-27). A person associated with the college who admits to same sex attraction, but who agrees with the policies of Appalachian Bible College and demonstrates a commitment to the Biblical teaching that homosexual behavior is abhorrent, will be allowed to continue in the Appalachian Bible College community.¹⁶

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

¹⁴ *Id.*

¹⁵ See Appalachian Bible Fellowship Policy on Sexuality and Gender.

¹⁶ See Appalachian Bible College Policy on Sexuality and Gender.

on sex discrimination in Title VII of the Civil Rights Act of 1964 also forbids discrimination based on sexual orientation.¹⁷

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.

In accord with the Fellowship's policies¹⁸ and theological beliefs about gender roles, the College restricts some employment positions by sex:

Appalachian Bible College has determined that certain staff positions require a staff member to be a specific gender because of the requirements of their position descriptions. The following positions are determined to be in that category.

- The President of the College will be a male staff member.
- The Dean or Assistant Dean of Men will be a male staff member.
- The Dean or Assistant Dean of Women will be a female staff member.

Appalachian Bible College recognizes that the Holy Scriptures as contained in the Old and New Testaments provide guidelines for New Testament church ministry that support male leadership in certain positions of church leadership. This does not deny the clear teaching of the Scriptures that males and females have equal positions as children of God by faith in Jesus Christ (Galatians 3:26-28). Yet a distinction in function is evident. Overseers, otherwise called pastors or elders, are referenced as males (1 Timothy 3:1-2; Titus 1:5-6). There are specific statements that demonstrate a discrimination of roles in the church between men and women (1 Corinthians 14:34-35; 1 Timothy 2:11-12). In light of these teachings Appalachian Bible College deems it appropriate to only have males as chairs of programs that prepare students for certain leadership positions in church ministry.

The following staff positions are determined to be gender-specific.

- The chair of the Bible and Theology major will be a male staff member.
- The chair of the Pastoral Major will be a male staff member.

¹⁷ See <http://www.eeoc.gov/decisions/0120133080.pdf>.

¹⁸ See Appalachian Bible Fellowship Policy on Gender-Specific Staff Positions.

- The chair of the Youth and Family Major will be a male staff member.
- The chair of the Missions Major will be a male staff member.¹⁹

The College also seeks exemption from Title IX and its regulations to the extent that they curtail the College's freedom to fill these positions in accordance with its theological commitments.

Lastly, consistent with the Fellowship's policies²⁰, the College affirms the following in its Policy on Pregnancy (enclosed):

- A married female student or employee may continue at Appalachian Bible College during her pregnancy.
- An unmarried female student or employee who is pregnant through rape (including incest) will be allowed to continue as a student or employee but will not be housed in the residence hall in the semester in which her due date occurs.
- An unmarried female student or employee who is pregnant through other than rape will not be allowed to continue as a student or employee during her pregnancy. She must apply for readmission to return as a student.

Appalachian Bible College affirms the God-ordained worth of human life, from conception to death, confirmed by the uniquely bestowed image of God placed upon each human being (Genesis 1:27; Psalm 139:13-16; Jeremiah 1:5). Thus unborn life is as precious in the sight of God as a newborn child. The intentional termination of unborn life through abortive measures, whether surgical, pharmaceutical, physically abusive, or other means is an offense against God and is sinful.

- If a student or employee chooses to terminate a pregnancy it is in the best interest of that person and the college for them to leave the Appalachian Bible College community. If a student, this person will not be allowed to complete the current semester.²¹

ABC 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

¹⁹ See Appalachian Bible Fellowship Policy on Gender-Specific Staff Positions.

²⁰ See Appalachian Bible Fellowship Policy on Pregnancy.

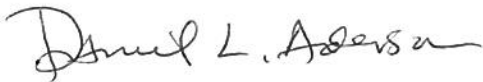
²¹ See Appalachian Bible College Policy on Pregnancy.

the College's freedom to apply and enforce its Policy on Gender-Specific Staff Positions and its Policy on Pregnancy):

- 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,



Daniel L. Anderson, Th.D.
President, Appalachian Bible College

Enclosures (8):

- Appalachian Bible Fellowship (ABF) Constitution
- Appalachian Bible College (ABC) Constitution
- Appalachian Bible Fellowship Policy on Sexuality and Gender
- Appalachian Bible College Policy on Sexuality and Gender
- Appalachian Bible Fellowship Policy on Gender-Specific Staff Positions
- Appalachian Bible Fellowship Policy on Pregnancy
- Appalachian Bible College Policy on Pregnancy
- Appalachian Bible College Policy on Gender-Specific Staff Positions