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MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

TO : Regional Civil Rights Directors
Regions I - X

DATE: FEB 19 1985

FROM : *AMS* Harry M. Singleton
Assistant Secretary
for Civil Rights

SUBJECT: Policy Guidance for Resolving Religious Exemption Requests

INTRODUCTION

Headquarters is in the process of clearing a backlog of requests for religious exemption from Title IX of the Education Amendments of 1972. I am referring these requests to the regional offices for initial staff work in obtaining further information, where necessary, and in preparing draft responses to the institutions.¹ You should draft letters to the institutions for my signature which either grant or deny the exemption, and, as letters are completed, forward them and the accompanying case files to Frederick T. Cioffi, Acting Director, Policy and Enforcement Service (PES). You should attempt to resolve these requests and forward your recommendations within 180 days of the date of this memorandum. PES will conduct a final review before these letters are submitted for my signature. For further instructions, see the section on "Procedure" below.

In addition to the guidance provided below, there are several attachments that will provide further assistance. At Tab A is a list of cases being returned to your particular region that are divided into three categories based on a preliminary review completed in headquarters. These categories indicate whether headquarters staff believe more information is needed for a determination, whether sufficient information is already provided or whether the institution need not have applied for an exemption. At Tab B is a copy of an attachment that accompanied the assurance of compliance forms routinely forwarded to all institutions in the 1970's. This attachment includes a statement of what constitutes "control" by a religious organization. The statement is included primarily for guidance and you should not assume a strict interpretation (see the subsection on "Control" below). At Tab C are three form letters that will assist in responding to these requests and ensure consistency among the regional offices. At Tab D are the case files for your particular region.

BACKGROUND

Section 106.12 of the Title IX regulation states that the regulation does not apply to institutions controlled by a religious organization where such application is not consistent with the religious tenets of the

¹Institution refers to the institution itself or to representatives of the institution.

organization. Institutions wishing an exemption are directed to submit a written request to the Assistant Secretary identifying the provisions of the Title IX regulation which are inconsistent with a specific tenet.

These instructions were also outlined on the HEW Form 639 Assurance of Compliance with Title IX that institutions were required to file for consideration for Federal financial assistance from the Department of Health, Education and Welfare. The assurance forms used by the Department of Education no longer contain a provision for claiming a religious exemption.

Headquarters received over 200 requests for religious exemption between 1975 and 1979. These requests specify several sections of the Title IX regulation from which institutions controlled by a religious organization have requested exemption. The sections most frequently specified are: § 106.21 regarding admissions (institutions want to remain single-sex); § 106.21(c), § 106.40, § 106.57 and § 106.60 regarding marital and parental status of students and employees; § 106.34 regarding access to course offerings (institutions offer courses training individuals for the priesthood, ministry or rabbinate only to men); and § 106.31(b)(5) regarding rules of appearance (this section was rescinded and deleted from the regulation in 1982).

Headquarters is forwarding 215 case files to the regional offices, of which: 126 have insufficient information to make a determination, 68 contain sufficient information, and 21 need not have been submitted. These figures are based on a preliminary review. The following discussion provides guidance in handling these requests.

POLICY

In submitting a request, an institution must name the religious organization that controls the institution and specify the tenets of that organization and the sections of the Title IX regulation that conflict. More than half of the original requests contained insufficient information. However, you should not conduct any investigative activity to determine whether the information already supplied by the institution is correct. Instead, any information provided by the institution should be accepted as fact. The form letters at Tab C contain qualifying language which protects OCR authority in the event that an institution has supplied erroneous information. Contacting the controlling organization to confirm either control over the institution or the tenets followed by the organization would be obtrusive. The following provides guidance for each element required for a complete request.

Control

The institution should indicate that it is controlled by a religious organization. This "control" was defined for institutions in a March 1977 version of the old HEW Form 639A (see Tab B). Approximately three institutions failed to provide any indication of which religion or church influences the institution. Some institutions indicated that they are

independently controlled and do not require faculty or students to be members of the particular religious organization affiliated with the institution. You will need to request more information from those institutions providing no information at all. However, you should accept as fact that an institution is controlled by a religious organization where the specific organization is named even when no information is provided on how that organization controls the institution. To reserve OCR authority, you should include the language contained in form letter two (see Tab C, form letter two, next to last paragraph). This paragraph indicates that in the event that OCR receives a complaint against the institution, and subsequent contact with the religious organization reveals that that organization does not control the institution, then OCR will rescind any exemption granted.

Tenets

OCR cannot question what institution representatives claim as their beliefs. Only where one tenet clearly contradicts another could OCR question the institution policies based on those contradictory tenets. (A preliminary review of the case files revealed no cases where tenets were contradictory.) Several institutions claim adherence to written references such as the Bible and quote sections as religious tenets or as support for religious tenets. I suggest that staff check these cited passages, if feasible and necessary, to determine that the written reference is cited or quoted correctly. Under no circumstances should OCR appear to be interpreting the Bible.

Unfortunately, many institutions have not been so clear regarding the tenets of the religious organization as to quote sections of the Bible. For example, many institutions have requested exemption from the marital and parental status sections of the regulation (§ 106.21(c), § 106.40, § 106.57, and § 106.60). Several of these institutions state only that these sections prevent them from screening students and employees whose behavior is not in accordance with the "Christian" or "biblical morals" followed by the institution. You should accept these very general tenets for those sections of the regulation regarding marital and parental status of students and employees (sections noted above) since the prohibitions in these sections are so specific. For all other sections of the regulation, which are more complex, you should require that institutions be more specific than to simply claim Christian or biblical morals as tenets.

In granting an exemption, OCR may reserve its authority by stating that the exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by the institution (see Tab C, form letter two, paragraph two). This permits a potential complainant an opportunity to dispute those tenets, at which time, OCR may contact the appropriate religious organization for an explanation of the practical application of tenets.

Regulations

The remaining information that institutions should specify in requests is the sections of the Title IX regulation from which they seek exemption. The vast majority of those institutions specifying sections requested

exemption from § 106.21(c), § 106.40, § 106.57, and § 106.60 regarding marital and parental status of students and employees. Many institutions also indicated that only men could be trained as religious leaders and requested exemption from § 106.34 regarding access to courses and certain employment sections since only men were allowed to teach these courses. In applying for these requests, some institutions realized that exemption would be needed from several sections of the regulation for one of its policies. However, most institutions did not. For example, if only men are permitted to teach a particular course that trains future religious leaders, institutions tended to request exemption from § 106.51, which generally prohibits sex discrimination in employment, but did not request exemption from § 106.53 (recruitment), § 106.55 (job classification and structure), or § 106.59 (advertising). Despite the fact that some of these requests call for exemption to sections that are not specified in the request letter, you should recommend an exemption only for those sections specified by the institution, with the following exceptions. If an institution has clearly erred in specifying the section of the Title IX regulation from which exemption was requested, or an exemption to general regulatory provisions will not suffice in addressing the policies or practices that the institution has clearly described, then you should determine which sections are the most appropriate and draft a letter for my signature including your recommendation.

Other Considerations

Many institutions were not specific in their request to the point of specifying a particular education program. For example, institutions providing courses that train only men as religious leaders have tended to ask for exemption to § 106.34 regarding access to courses. Institutions have not asked for exemption for only those courses training men, and often, the institution does not indicate what the courses are or how many related courses there may be. You may recommend an exemption for the entire section of the regulation and limit the exemption by stating that it is limited to the extent that complying with the regulation conflicts with the religious tenets of the organization (see Tab C, form letter two, paragraph two). Again, this language will reserve OCR authority and provide a potential complainant with the opportunity to dispute any claim that a discriminatory practice is in accordance with religious tenets.

Some of these institutions may not receive Federal funds. Over half of the requests are from institutions with less than 500 students, and approximately 17% have fewer than 100 students. Although most institutions probably have students in attendance who receive Department of Education student financial assistance, it is quite likely that some institutions receive absolutely no Federal money. For now, you should simply respond to the requests of the institutions. Attempting to determine funding for these mostly small schools, especially with Grove City² considerations, is not feasible administratively. Inasmuch as the institution initiated the correspondence, if an institution now refuses to correspond with OCR

²Grove City College v. Bell, ___ U.S. ___, 104 S. Ct. 1211 (1984).

while you are attempting to decide on an exemption recommendation, you should draft a letter for my signature informing the institution that OCR is closing the exemption request file. The only reason to correspond with the institution in the future is if OCR actually receives a complaint against the institution. OCR may determine jurisdiction at that time.

PROCEDURE

Below are specific procedures for handling requests with varying amounts of information.

Sufficient Information

Approximately one-third of the exemption requests contain sufficient information for a determination. You should review each file carefully and determine: 1) whether the institution has specified a controlling religious organization; 2) whether the religious tenets and institution practices described as based on those tenets would violate Title IX; and, 3) whether the sections of the regulation have been properly identified. You should then draft a letter to the institution for my signature which grants or denies an exemption. You should forward this draft recommendation to PES for final review. Also, you should include copies of the original request letter and the Title IX regulation in the package forwarded for my signature. You may use form letter two at Tab C as a guide.

Insufficient Information

Just over half of the exemption requests do not contain sufficient information for a determination. You should correspond with the institution and request whatever information is necessary. (You may use form letter one at Tab C as a guide.) In sending this request for more information, you should include copies of the original request and the Title IX regulation. Since these requests were submitted prior to 1980, institutions may not be aware that the regulation was recodified. You should not impose any time limits for returning this information. Upon receiving complete information, you should draft a letter to the institution, for my signature, granting or denying an exemption and forward it to PES for final review. If the institution refuses to provide the necessary information, you should document this position and draft a letter to the institution, for my signature, indicating that OCR is closing the exemption request file due to this refusal to supply sufficient information. You should submit this draft letter to PES for final review.

Request Unnecessary

Some institutions submitted a religious exemption request asking that they be allowed to limit admission to students of one sex. In some cases, these institutions are private undergraduate institutions which already have an exemption for admissions under § 106.15(e) of the Title IX regulation. If you determine this to be the case, you should draft a letter for my signature indicating that the institution need not have applied for an exemption. (You may use form letter three at Tab C as a guide. You should note that form

letter three is the only letter that includes a time limit. If institutions do not indicate within 60 days that they need an exemption to sections of the regulation other than undergraduate admissions, then OCR should close the exemption request file.) Again, you should include copies of the request letter and the Title IX regulation in the package forwarded to headquarters.

You should be careful in reviewing these files. Many of the requests from single-sex institutions are from professional schools which are not presently exempted and must submit a religious exemption request. Moreover, some private undergraduate institutions have asked for exemption from other sections of the regulation in addition to the admissions section. You should draft appropriate letters to these institutions and submit them to PES. If the request letter does not clearly indicate that the school is a private undergraduate institution, it will be necessary to check an education directory or contact the institution.

Approximately eight files contain form letters that were sent to institutions in 1980 informing the institution that an exemption request was unnecessary. Copies of these letters have been placed in the appropriate files. You should carefully review the file and determine if the form letter sent in 1980 was appropriate. If so, and there are no other materials in the file dated after the 1980 form letter, you may consider the file closed. However, if a careful review of the file indicates that the 1980 letter may not have disposed of all the issues, you should contact the institution to request the information you deem necessary, and then draft an appropriate letter.

FINAL RECOMMENDATIONS

I recommend that you exercise leniency in handling these requests and in making final recommendations for exemptions. These institutions make no secret of the religious tenets that influence the institution and potential faculty and students are aware of this influence upon joining the institution community. OCR authority will be reserved by using the properly worded conditions noted in the form letters (see Tab C). The vast majority of these exemption requests are between five and nine years old. You should avoid the appearance of demanding detailed, lengthy explanations of religious tenets, religious organization control and institution practices in order that OCR may decide on an exemption. You should also avoid imposing time limits for receipt of information. Only those institutions that need not have applied for a request have a time limit on contacting OCR. As indicated in Tab C, form letter three, final paragraph, if OCR does not receive notification that an institution needs exemption other than that indicated in the original letter, OCR will assume after 60 days that the institution has no need for an exemption and close the request file.

I have asked you to submit these letters to PES for final review so that headquarters may ensure accuracy and consistency in our responses to institutions. The form letters at Tab C will help ensure that letters drafted by the regional offices are consistent. You should be aware that many requests are form letters from institutions controlled by the same religious organization, but that the institutions controlled by the same organization are in several different OCR regions. It will be necessary for headquarters to ensure that our responses to these institutions are consistent.

It will be apparent when you review the requests for your region that responding to these institutions will involve applying common sense in addition to standard policy. You should attempt to draft an appropriate response even where requests have unfamiliar policy implications. However, if a substantial policy issue arises, you may choose to refer the issue to headquarters before attempting to draft a response. If you have questions regarding policy, you should submit them in writing to Frederick T. Cioffi, Acting Director, Policy and Enforcement Service. If you wish clarification regarding portions of this memorandum, you may contact Jeanette Lim, Chief, Postsecondary Education Branch, at FTS 732-1677.

Attachments

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A

List of Religious Exemption Request Files for Region I - Boston

Files with Insufficient Information for a Determination - Further Information Must Be Requested (Tab C, Form Letter One)

None

Files with Sufficient Information for a Determination - Analyze and Draft Letter to Institution to be Signed by Assistant Secretary (Tab C, Form Letter Two)

1. Pope John XXIII National Seminary, MA
2. St. John's Seminary, MA

Files for Institutions that Need not Have Submitted Request - Analyze and Confirm; Draft Letter to Institution (If Necessary) to be Signed by Assistant Secretary (Tab C, Form Letter Three)

3. St. Thomas Seminary, CT
4. St. Hyacinth College and Seminary, MA
5. Saint Basil's College, CT
6. St. Alphonsus College, CT
7. College of Our Lady Of The Elms, MA

List of Religious Exemption Request Files for Region II - New York

Files with Insufficient Information for a Determination - Further Information Must Be Requested (Tab C, Form Letter One)

1. Saint Bernard's Seminary, NY
2. Seton Hall University, NJ
3. Wadhams Hall, NY
4. Concordia College, NY
5. Rabbinical Seminary of Munkacs, NY
6. Rabbinical Seminary of New Square, NY
7. Rabbinical Seminary Yeshivas Ch'san Sofer, NY
8. Rika Breuer Teachers Seminary for Girls, NY
9. Sara Schenirer Teachers Seminary, NY
10. Sh'or Yoshuv Rabbinical College, NY
11. Talmudical Academy of New Jersey, NJ
12. United Talmudical Academy, NY
13. Yeshivah Chofetz Chaim of Radun, NY
14. Yeshiva Kibbutz Tashbar, NY
15. Yeshivah Nachlas Haleviyim, NY
16. Yeshiva of Nitra Rabbinical College, NY
17. Yeshivath Zichron Moshe Rabbinical Seminary, NY
18. Hebrew Union College-Jewish Institute of Religion, NY branch
19. Derech Ayson Rabbinical Seminary/Yeshiva of Far Rockaway, NY
20. Kehilath Yakov Rabbinical Seminary, NY
21. Long Island Seminary of Jewish Studies for Women, NY
22. Mesivta of Eastern Parkway Rabbinical Seminary, NY
23. Mesivtha Tifereth Jerusalem of America, NY
24. Mesivta Torah Vodaath Rabbinical Seminary, NY
25. Mesivta Yeshiva Rabbi Chaim Berlin, NY
26. Mirrer Yeshiva Central Institute, NY
27. Ohr Kameir Theological College, NY
28. Yeshiva and Mesivta Ohr Yisroel, NY
29. P'nimia Teachers College, NY
30. Rabbinical College Beth Shraga, NY
31. Rabbinical College Kamenitz Yeshivah of America, NY
32. Rabbinical College of Long Island, NY
33. Mesivta Nachlas Yakov of K'hal Adas Yereim, NY
34. Rabbinical College of Sanz, NY
35. Rabbinical College of Queens, NY
36. Rabbinical Seminary of America, NY
37. Rabbinical Seminary M'kor Chaim, NY
38. Ayelet Hashachar Teacher's Seminary, NY
39. Rais Yaakov Seminary of Brooklyn, NY
40. Be'er Shmuel Talmudical Academy, NY
41. Belzer Yeshiva Machzikei Torah Seminary, NY
42. Beth Hatalmud Rabbinical College, NY
43. Beth Hamedrash Shaarei Yosher, NY

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- 44. Beth Jacob Hebrew Teachers College, NY
- 45. Central Yeshiva Beth Joseph Rabbinical Seminary, NY
- 46. Yeshiva Emek Halacha, NY
- 47. Beth Medrash Govoha, NY
- 48. Beth Rivkah Schools, NY
- 49. B'nai Torah Institute, NY
- 50. Rabbinical College Bobover Yeshiva, NY
- 51. Central Yeshiva Tomchei Tmimim Lubavitz, NY

Files with Sufficient Information for a Determination - Analyze and Draft Letter to Institution to be Signed by Assistant Secretary (Tab C, Form Letter Two)

- 52. The Jewish Theological Seminary of America, NY
- 53. Roberts Wesleyan College, NY
- 54. Antillian College, PR
- 55. St. Michael's Passionist Monastery, NJ
- 56. Christ the King Seminary, NY

Files for Institutions that Need not Have Submitted Request - Analyze and Confirm; Draft Letter to Institution (If Necessary) to be Signed by Assistant Secretary (Tab C, Form Letter Three)

- 57. Cathedral College of the Immaculate Conception, NY
- 58. Don Bosco College, NJ

List of Religious Exemption Request Files for Region III - Philadelphia

Files with Insufficient Information for a Determination - Further Information Must be Requested (Tab C, Form Letter One)

1. Northeastern Christian Junior College, PA
2. De Sales Hall School of Theology, MD
3. Immaculata College, PA
4. Westminster Theological Seminary, PA
5. The Reformed Presbyterian Theological Seminary, PA
6. Ner Israel Rabbinical College, MD
7. Talmudical Yeshiva of Philadelphia, PA

Files with Sufficient Information for a Determination - Analyze and Draft Letter to Institution to be Signed by Assistant Secretary (Tab C, Form Letter Two)

8. Appalachian Bible College, WV
9. United Wesleyan College, PA
10. Columbia Union College, MD
11. Ohio Valley College, WV
12. The Catholic University of America, DC
13. St. Charles Borromeo Seminary, PA
14. Baptist Bible College and School of Theology, PA

Files for Institutions that Need not Have Submitted Request - Analyze and Confirm; Draft Letter to Institution (If Necessary) to be Signed by Assistant Secretary (Tab C, Form Letter Three)

None

List of Religious Exemption Request Files for Region IV - Atlanta

Files with Insufficient Information for a Determination - Further Information Must Be Requested (Tab C, Form Letter One)

1. Campbell College, NC
2. Friendship Junior College, SC
3. David Lipscomb College, TN
4. Blue Mountain College, MS
5. LaGrange College, GA
6. Miami Christian College, FL
7. Mid-South Bible College, TN
8. Southeastern Bible College, AL
9. Alabama Christian College, AL
10. Bethune-Cookman College, FL
11. Carson-Newman College, TN
12. Gardner-Webb College, NC
13. Samford University, AL
14. Tennessee Temple College, TN
15. Belmont College, TN
16. Brescia College, KY
17. Alabama Lutheran Junior College, AL

Files with Sufficient Information for a Determination - Analyze and Draft Letter to Institution to be Signed by Assistant Secretary (Tab C, Form Letter Two)

18. Campbellsville College, KY
19. Johnson Bible College, TN
20. Lees Junior College, KY
21. Berea College, KY
22. Asbury College, KY
23. Ashbury Theological Seminary, KY
24. Central Wesleyan College, SC
25. Oakwood College, AL
26. Freed-Hardeman College, TN
27. Harding Academy, TN
28. Southeastern Christian College, KY
29. Cumberland College, KY
30. Chowan College, NC
31. Union University, TN

Files for Institutions that Need not Have Submitted Request - Analyze and Confirm; Draft Letter to Institution (If Necessary) to be Signed by Assistant Secretary (Tab C, Form Letter Three)

32. St. John Vianney Minor Seminary, FL
33. Seminary of St. Pius X, KY

List of Religious Exemption Request Files for Region V - Chicago

Files with Insufficient Information for a Determination - Further Information Must Be Requested (Tab C, Form Letter One)

1. Calvin Theological Seminary, MI
2. Trinity Christian College, IL
3. Grace Bible College, MI
4. Grand Rapids School of the Bible and Music, MI
5. Saint Mary's College, MN
6. Saint Mary's College, IN
7. The Saint Paul Seminary, MN
8. Sacred Heart Seminary College, MI
9. Lourdes College, OH
10. Circleville Bible College, OH
11. Michigan Christian College, MI
12. Concomia College, MI
13. Concordia Senior College, IN
14. Northwestern Lutheran Theological Seminary, MN
15. Brisk Rabbinical College, IL
16. Hebrew Union College-Jewish Institute of Religion, OH
17. Telshe Yeshiva, Rabbinical College of Telshe, OH

Files with Sufficient Information for a Determination - Analyze and Draft, Letter to Institution to be Signed by Assistant Secretary (Tab C, Form Letter Two)

18. Bethel College, IN
19. Trinity Evangelical Divinity School, IL
20. Wheaton College, IL
21. Dr. Martin Luther College, MN
22. Wisconsin Evangelical Lutheran Synod, WI (controls Dr. Martin Luther College in Minnesota)
23. Detroit Bible College, MI
24. Grace College and Grace Theological Seminary, IN
25. Bethany Lutheran College, MN
26. Marion College, IN
27. Andrews University, MI
28. Kettering College of Medical Arts, OH
29. The Cincinnati Bible Seminary, OH
30. Athenaeum of Ohio, OH
31. College of Saint Benedict, MN
32. Saint John's University, MN
33. Saint Mary of the Lake Seminary, IL
34. Grand Rapids Baptist College, MI
35. Cedarville College, OH

Files for Institutions that Need not Have Submitted Request - Analyze and Confirm; Draft Letter to Institution (If Necessary) to be Signed by Assistant Secretary (Tab C, Form Letter Three)

36. The Hebrew Theological College, IL
37. McCormick Theological Seminary, IL
38. Felician College, IL
39. Duns Scotus College, MI
40. Crosier Seminary, MN
41. Concordia College, MN
42. College of Mount St. Joseph on the Ohio, OH
43. Saint Francis de Sales College, WI

List of Religious Exemption Request Files for Region VI - Dallas

Files with Insufficient Information for a Determination - Further Information Must Be Requested (Tab C, Form Letter One)

1. Gulf Coast Bible College, TX
2. Southwestern Assemblies of God College, TX
3. Lubbock Christian College, TX
4. Dallas Theological Seminary, TX
5. University of Dallas, TX
6. Oklahoma Christian College, OK
7. Concordia Lutheran College, TX

Files with Sufficient Information for a Determination - Analyze and Draft Letter to Institution to be Signed by Assistant Secretary (Tab C, Form Letter Two)

8. Oral Roberts University, OK
9. Bartlesville Wesleyan College, OK
10. Southwestern Adventist College, TX
11. Harding College, Main Campus, AR
12. Crowley's Ridge College, AR
13. Notre Dame Seminary, LA
14. Louisiana College, LA
15. Southern Baptist College, AR
16. Baylor University, TX

Files for Institutions that Need not Have Submitted Request - Analyze and Confirm; Draft Letter to Institution (If Necessary) to be Signed by Assistant Secretary (Tab C, Form Letter Three)

17. St. Mary's Dominican College, LA

List of Religious Exemption Request Files for Region VII - Kansas City

Files with Insufficient Information for a Determination - Further Information Must Be Requested (Tab C, Form Letter One)

1. Mount Mercy College, IA
2. Divine Word College, IA
3. Grace College of the Bible, NE
4. Northwestern College, IA
5. Faith Baptist Bible College, IA
6. Union College, NE
7. Concordia Seminary, MO
8. Concordia Teacher's College, NE
9. St. John's College, KS
10. St. Paul's College, MO
11. St. Louis Rabbinical College, MO

Files with Sufficient Information for a Determination - Analyze and Draft Letter to Institution to be Signed by Assistant Secretary (Tab C, Form Letter Two)

12. York College, NE
13. Kenrick Seminary, MO

Files for Institutions that Need not Have Submitted Request - Analyze and Confirm: Draft Letter to Institution (If Necessary) to be Signed by Assistant Secretary (Tab C, Form Letter Three)

14. Cardinal Glennon College, MO

List of Religious Exemption Request Files for Region IX - San Francisco

Files with Insufficient Information for a Determination - Further Information Must Be Requested (Tab C, Form Letter One)

1. Biola College, CA
2. Chaminade College, HA
3. Dominican School of Philosophy and Theology, CA
4. Grand Canyon College, AZ
5. Loyola Marymount University, CA
6. Saint Patrick's Seminary, CA
7. Pacific Union College, CA

Files with Sufficient Information for a Determination - Analyze and Draft Letter to Institution to be Signed by Assistant Secretary (Tab C, Form Letter Two)

8. West Coast Bible College, CA
9. Ambassador College, CA
10. Pepperdine University, CA
11. St. John's Seminary, CA
12. Los Angeles Baptist College, CA

Files for Institutions that Need not Have Submitted Request - Analyze and Confirm; Draft Letter to Institution (If Necessary) to be Signed by Assistant Secretary (Tab C, Form Letter Three)

13. California Lutheran College, CA
14. Holy Family College, CA

List of Religious Exemption Request Files for Region X - Seattle

Files with Insufficient Information for a Determination - Further Information Must Be Requested (Tab C, Form Letter One)

1. Mt. Angel Seminary, OR
2. Ricks College, ID
3. St. Thomas Seminary, WA
4. Northwest Baptist Seminary, WA
5. Concordia College, OR
6. Lutheran Bible Institute, WA

Files with Sufficient Information for a Determination - Analyze and Draft Letter to Institution to be Signed by Assistant Secretary (Tab C, Form Letter Two)

7. George Fox College, OR
8. Walla Walla College, WA
9. Western Baptist Bible College, OR

Files for Institutions that Need not Have Submitted Request - Analyze and Confirm; Draft Letter to Institution (If Necessary) to be Signed by Assistant Secretary (Tab C, Form Letter Three)

None

TAB
B



Explanation Of

HEW FORM 639 A (3/77), ENTITLED "ASSURANCE OF COMPLIANCE WITH TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 AND THE REGULATION OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE IN IMPLEMENTATION THEREOF"

Section 901 of Title IX of the Education Amendments of 1972 provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Section 902 of Title IX authorizes and directs the Department of Health, Education, and Welfare (hereinafter the "Department") to effectuate the nondiscrimination requirements of section 901 by issuing rules, regulations, and orders of general applicability. Pursuant to section 902, the Department has issued 45 C.F.R. Part 86 (hereinafter, "Part 86") which became effective on July 21, 1975.

Section 86.4 of Part 86 requires that every application for Federal financial assistance for any education program or activity shall, as a condition of its approval, contain or be accompanied by an assurance from the applicant satisfactory to the Director of the Office for Civil Rights (hereinafter the "Director") that each education program or activity operated by the applicant and to which Title IX of the Education Amendments of 1972 and Part 86 apply will be operated in compliance with Part 86.

Section 86.4 also provides that the Director will specify the form of the assurance required and the extent to which such assurance will be required of the applicant's subgrantees, contractors, subcontractors, transferees, or successors in interest. Under this authority, HEW Form 639 A, (3/77) has been specified as the form of assurance which shall apply to all recipients of and applicants for Federal financial assistance subject to the provisions of Title IX and awarded by the Department.

HEW Form 639 A, (3/77) constitutes a legally enforceable agreement to comply with Title IX and all of the requirements of Part 86. Applicants are urged to read Part 86 and the accompanying preamble. The obligation imposed by Title IX and Part 86 are independent of, and do not alter, the obligation not to discriminate on the basis of sex imposed by Title VII of the Civil Rights Act of 1964 (20 U.S.C. 2000e et seq.); Executive Order 11246, as amended; sections 799A and 855 of the Public Health Service Act (42 U.S.C. 295h-9 and 298b-2); and the Equal Pay Act (29 U.S.C. 206 and 206 (d))

PERIOD OF ASSURANCE

HEW Form 639 A, (3/77) is binding on a recipient for a period during which Federal financial assistance is extended to it by the Department. With respect to Federal financial assistance used to aid in the purchase or improvement of real or personal property, such period shall include the time during which the real or personal property is used for the purpose of providing an education program or activity. A recipient may transfer or otherwise convey title to real and personal property purchased or improved with Federal financial assistance so long as such transfer or conveyance is consistent with the laws and regulations under which the recipient obtained the property and it has obtained a properly executed HEW Form 639 A, (3/77) from the party to whom it wishes to transfer or convey the title unless the property in question is no longer to be used for an education program or activity or the Federal share of the fair market value of such property has been refunded or otherwise properly accounted for to the Federal government.

An applicant or recipient which has submitted an HEW Form 639 A, (3/77) to the Director need not submit a separate form with each grant application but may, if the information contained therein remains accurate, simply incorporate by reference, HEW Form 639 A, (3/77), giving the date it was submitted. On the other hand, a revised HEW Form 639 A, (3/77) must be submitted within 30 days after information contained in the submitted form becomes inaccurate, even if no additional financial assistance is being sought.

OBLIGATION OF RECIPIENT TO OBTAIN ASSURANCES FROM OTHERS

As indicated in Article III, paragraph 2, of the Assurance, if a recipient subgrants to, or contracts, subcontracts, or otherwise arranges with an individual, organization, or group to assist in the conduct of an education program or activity receiving Federal financial assistance from the Department or to provide services in connection with such a program or activity, the recipient continues to have an obligation to ensure that the education program or activity is being administered in a nondiscriminatory manner. (See 45 C.F.R. 86.31.) Accordingly, the recipient must take reasonable steps to ensure that the individual, organization, or group in question is complying with Title IX and Part 86. These steps may include, but do not necessarily require, obtaining assurances of compliance from such subgrantees, contractors, and subcontractors in the form of, or modeled on, the HEW Form 639A, (3/77). These steps to require, however, such activities as may be reasonably necessary to monitor the compliance of these subgrantees, contractors, or subcontractors, regardless of whether they have submitted assurances to the recipient. If a recipient is unable to assure itself that any contractor, subcontractor, subgrantee, or other individual or group with whom it arranges to provide services or benefits to its students and employees does not discriminate on the basis of sex as described in Part 86, the recipient may not initiate or continue contracts, subcontracts, or other arrangements with that individual or group or make subgrants to it.

ADMINISTRATIVELY SEPARATE UNITS

If an educational institution is composed of more than one administratively separate unit, a separate HEW Form 639 A, (3/77) may be submitted for each unit or one may be submitted for the entire institution. If separate forms are submitted, the administratively separate unit for which the form is submitted should be clearly identified in the first line of HEW Form 639 A, (3/77). An "administratively separate unit" is defined as a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution. See 45 C.F.R. 86.2(o).

STATE EDUCATION AGENCIES

State education agencies are generally not responsible for running pre-school, kindergarten, elementary or secondary programs. Such responsibility is generally left to local education agencies although some supervisory authority may be vested with the state education agency. Consequently, most state agencies should not check the boxes for "Pre-school," "Kindergarten," or "Elementary or Secondary" in Article I of HEW Form 639 A, (3/77). If the state agency runs special programs for the handicapped, including those on the pre-school, kindergarten, elementary, or secondary level, the box marked "Other" should be checked and the appropriate description inserted in the space provided.

Under Article III, paragraph 5, of HEW Form 639A, (3/77) a state education agency may be called upon from time to time to submit reports necessary to determine Title IX compliance by local education agencies within its jurisdiction. The form and content of such reports will be specified by the Director at the time the request is made.

RELIGIOUS EXEMPTION

Applicants or recipients which are educational institutions controlled by a religious organization are not covered by Part 86 to the extent that application of Part 86 would be inconsistent with the religious tenets of the controlling religious organization.

Section 86.12 of Part 86 requires an institution seeking an exemption to submit a written statement to the Director identifying the provisions of Part 86 which conflict with a specific tenet of the controlling religious organization. Such a statement must be signed by the highest ranking official of the educational institution claiming the exemption. An applicant or recipient claiming an exemption is not relieved of its obligations to comply with that portion of Part 86 not specified in its statement to the Director as being inconsistent with the tenets of the controlling religious organization.

Although 86.12 imposes no time restrictions when a recipient or applicant may claim an exemption, applicants or recipients are urged to make such claims when they initially submit HEW Form 639 A, (3/77) by checking the appropriate box in Article I of HEW Form 639 A, (3/77) and attaching thereto the statement required by 86.12(b). Such an approach will avoid misunderstandings on the part of both the Department and the applicant or recipient as to what, if any, action is required under Part 86.

An applicant or recipient will normally be considered to be controlled by a religious organization if one or more of the following conditions prevail:

- (1) It is a school or department of divinity; or
- (2) It requires its faculty, students or employees to be members of, or otherwise espouse a personal belief in, the religion of the organization by which it claims to be controlled; or
- (3) Its charter and catalog, or other official publication, contains explicit statement that it is controlled by a religious organization or an organ thereof or is committed to the doctrines of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.

The term "school or department of divinity" means an institution or a department or branch of an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects. (This definition is adopted from section 1201(1) of the Higher Education Act of 1965, P.L. 89-329.)

TAB
C

FORM LETTER ONE

Dear President _____:

The Office for Civil Rights of the Department of Education (OCR/ED) is in the process of clearing a backlog of requests for religious exemption from Title IX of the Education Amendments of 1972. Our records indicate that [institution name] filed such a request (copy enclosed) but there is no record that OCR adequately acknowledged your request. We have recently reviewed your request and have determined that we need further information to make a decision to grant an exemption. In order for this office to make a determination, an institution should provide the following information:

1. The name of the religious organization that controls the institution and a brief description of how the organization controls the institution.
2. A brief description of the religious tenets of the controlling organization that are followed by the institution.
3. The section number (and paragraph if applicable) of the Title IX regulation (copy enclosed) from which exemption is requested. The institution should indicate which tenet conflicts with which section of the regulation.

Please understand that OCR cannot presume to know the tenets followed by an institution because the name of the religion practiced by the controlling organization has been identified. Similarly, OCR cannot presume to determine from which section of the Title IX regulation an exemption is sought because the institution has clearly stated the tenets.

Your original request letter included sufficient information regarding [control, tenets, regs] but did not specify [control, tenets, regs]. If you wish this office to make a determination regarding a religious exemption, please indicate the [control, tenets, regs] and return the information to this office. If you no longer desire a religious exemption, please simply note your desire to withdraw the request so that we may close your request file.

Thank you for your cooperation. I regret the inordinate delay in responding to your original request. If you have any questions, please feel free to contact [names and numbers] of my staff.

Sincerely,

[Regional Director's Name]
Regional Civil Rights Director
[Region Number]
Office for Civil Rights

Enclosures

FORM LETTER TWO

Dear President _____:

The Office for Civil Rights of the Department of Education (OCR/ED) is in the process of clearing a backlog of requests for religious exemption from Title IX of the Education Amendments of 1972. Our records indicate that [institution name] filed such a request but there is no record that OCR adequately acknowledged this request.

We have recently reviewed your request (copy enclosed) in which you describe several policies practiced at [institution name] as consistent with the tenets of the religious organization that controls the institution. These policies would violate certain sections of the regulation implementing Title IX (copy enclosed) absent a religious exemption. You have supplied information in your request letter that establishes that the institution is controlled by a religious organization and that tenets followed by this organization conflict with specific sections of the Title IX regulation. Therefore, I am granting [institution name] an exemption to those sections of the Title IX regulation specified in your request letter [or appropriate sections]. The exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by the institution. [Institution name] is hereby exempted from the requirements of the following sections of the Title IX regulation: [list sections]. The basis for our decision to grant this exemption is discussed in further detail below.

Your letter indicates that [institution name] is controlled by [name of controlling organization]. The [organization] and the [institution name] practice the tenets of [summarize practice in one or two statements]. [Summarize institution's description of control by organization.] This relationship between the [controlling organization] and [institution] adequately establishes that [institution] is controlled by a religious organization as is required for consideration for exemption under § 106.12 of the Title IX regulation.

In your letter you indicate that [summarize any practices that faculty and students must be aware of and follow]. Thus, the institution practices the following:

1. [Briefly describe practice as its based on religious tenet.]

Based on the above principle, [institution name] has requested and is granted by this letter, exemption to:

[list sections of regulation pertinent to above principle and indicate what section of regulation covers - e.g. § 106.21(a), (b) and (c)(2) and (3) admission of students; inquiry regarding parental and marital status of potential students].

2. [Briefly describe practice as its based on religious tenet.]

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Based on the above principle, [institution name] has requested and is granted by this letter, exemption to:

[list sections of regulation pertinent to above principle and indicate what section of regulation covers].

3. Continue listing practices and tenets as necessary.

This letter should not be construed to grant exemption from any section of the Title IX regulation not specifically mentioned. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the institution are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, this exemption will be rescinded.

I hope this letter responds fully to your request. I regret the inordinate delay in responding to your original request. If you have any questions, please do not hesitate to contact me.

Sincerely,

Harry M. Singleton
Assistant Secretary
for Civil Rights
Office for Civil Rights

Enclosures

FORM LETTER THREE

Dear President _____:

The Office for Civil Rights of the Department of Education (OCR/ED) is in the process of clearing a backlog of requests for religious exemption from Title IX of the Education Amendments of 1972. Our records indicate that [institution name] filed such a request (copy enclosed) but we have no record that OCR adequately acknowledged this request. We have recently reviewed your request and have determined that your institution need not have applied for a religious exemption. The reasons for our determination are discussed below.

Subpart C of the Title IX regulation (copy enclosed) prohibits discrimination in the admission and recruitment of students. Section 106.15(e) of the Title IX regulation specifically exempts private undergraduate institutions from compliance with Subpart C. Based on the information provided in your letter (copy enclosed), you sought a religious exemption because your undergraduate education programs are limited to one sex. Under § 106.15(e), the exemption for limiting admissions is already provided.

The statutory exemption from the admission and recruitment provisions of Subpart C does not relieve the institution of its obligation to comply with the regulation as it relates to graduate or other programs. Should there be conflicts in this regard, it would be necessary to request exemption from specific provisions of the regulation which are deemed to be inconsistent with certain tenets of your religion.

If we do not hear from you within 60 days, we will assume that your institution has no need for a religious exemption and close your original request file. If you have any questions, please do not hesitate to contact me.

Sincerely,

Harry M. Singleton
Assistant Secretary
for Civil Rights
Office for Civil Rights

Enclosures

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MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

TO : Regional Civil Rights Directors
Regions I - X

DATE: AUG 2 1985

FROM : ~~W~~ Harry M. Singleton
Assistant Secretary
for Civil Rights

SUBJECT: Title IX Religious Exemptions

During the past several weeks, the Office for Civil Rights (OCR) has had formal and informal contacts with representatives of rabbinic institutions regarding OCR's requests for information involving religious tenets. The result of these contacts is a clarification of policy that may affect the religious exemption requests of institutions in your region.

Representatives of rabbinic institutions that filed for Title IX religious exemptions have indicated their belief that a request for religious tenets is a violation of the First Amendment. To avoid possible constitutional entanglements and expedite OCR's processing of these requests, OCR has clarified its policy to allow institutions to submit a statement of institution practices, as based on religious tenets, as sufficient for processing a request where information regarding the controlling organization and sections of the regulation is also provided.

Based on conversations with rabbinic institution representatives, it is not clear whether all institutions that may be affected by this policy clarification are controlled by the organizations that have been informed of this policy. Therefore, I am instructing you to send the attached letter to those institutions that are controlled by Jewish organizations and other institutions that refuse to provide religious tenets, and that have not provided sufficient information for processing their requests. You should attach to this letter a copy of the letter sent on July 19 to Rabbi Morris Sherer of Agudath Israel of America (copy attached). You should expedite the mailing of letters in order to meet the August 19 deadline for submitting religious exemption cases to headquarters. If you require an extension of this deadline, submit an extension request to Frederick T. Cioffi, Acting Director, Policy and Enforcement Service.

Attachments

Dear President _____:

The Office for Civil Rights (OCR) of the Department of Education recently forwarded a request for information to [institution name] and several rabbinic and other institutions. This request is part of OCR's effort to resolve a number of pending requests for religious exemption from Title IX of the Education Amendments of 1972.

In response to these requests, OCR received a letter dated April 16 from Agudath Israel of America (AIA) indicating its position that a request for religious tenets is constitutionally impermissible under the First Amendment of the United States Constitution. OCR recently responded to AIA outlining our responsibilities in granting religious exemptions under Title IX. Since OCR's position may affect your request for exemption, a copy of this letter is enclosed for your reference.

OCR recognizes the constitutional concerns in providing OCR with a description of religious tenets. If your institution is still interested in receiving a religious exemption, then we recommend that you submit a statement regarding religious tenets or institution practices that are based on religious tenets which you believe conflict with the regulation. This will enable OCR to act on your request by confirming that the correct sections of the Title IX regulation have been cited in your request letter. For example, a statement such as - based on our religious tenets, the institution admits only men - enables OCR to confirm that an exemption to 34 C.F.R. §§ 106.21, 106.22 and 106.23 regarding admissions and recruitment is necessary. Also, a statement indicating, for example, that based on religious tenets, only men are permitted to teach certain courses, enables OCR to take action on those sections of the Title IX regulation regarding employment that may be specified in your request letter. Without information regarding institution practices to confirm that the sections of the regulation cited in your request letter are accurate, any exemption granted by OCR would have little practical impact. OCR would be required to investigate any complaint filed against your institution, to the extent that your institution receives Federal financial assistance, if we cannot determine the accuracy of the exemption requested or subsequently granted.

I hope this letter and the enclosed copy of the letter to AIA clarify OCR's intent in issuing the information request and OCR's responsibilities in granting religious exemptions. If you have any questions, please feel free to contact me at [phone number].

Sincerely,

[Regional Director's Name]
Regional Civil Rights Director
Office for Civil Rights
Region [Number]

Enclosure



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

JUL 19 1985

Rabbi Morris Sherer
President
Agudath Israel of America
Five Beekman Street
New York, New York 10038

Dear Rabbi Sherer:

Thank you for your letters of April 16 and July 3 informing the Office for Civil Rights (OCR) of your position regarding OCR's recent requests for information that were sent to several rabbinic institutions. These requests for information are part of OCR's effort to resolve a backlog of requests for religious exemption from Title IX of the Education Amendments of 1972.

Your understanding of OCR's position, as stated in your July 3 letter, is correct. OCR will accept a statement of institution practices, as based on religious tenets, and as believed by the institution to conflict with specified sections of the Title IX regulation, as sufficient information for OCR to process a religious exemption request where information identifying the religious organization is also included. OCR is accepting an institution's statement of tenets or practices and information regarding the controlling religious organization as fact. The following should further clarify OCR's position.

OCR has received over 200 requests for religious exemption from Title IX. Over half of those requests did not supply sufficient information for OCR to make a determination regarding an exemption. A model letter was drafted to address these many religious exemption requests containing insufficient information and this letter was sent to several rabbinic and other institutions to expedite the processing of these backlogged requests.

OCR's responsibilities in granting religious exemptions include clarifying whether an institution has cited the correct sections of the Title IX regulation in its request letter. OCR has no intention of reviewing the legitimacy of tenets of any religious organization or determining how such tenets are best practiced in an institution's education program. You are correct in your understanding that OCR will not probe into the nature and doctrinal source of the underlying religious tenets.

In your letter of April 16, you indicated that the rabbinic schools "limit admission to male students." This brief statement is more information than was provided in the original form letter requests for religious exemption forwarded by the rabbinic schools. However, this short statement provides important information to OCR in acting on an exemption request. For example,

limiting admissions to men only based on religious tenets clarifies for OCR that an exemption is needed to 34 C.F.R. §§ 106.21, 106.22, and 106.23 regarding admissions and recruitment. Granting an exemption to §§ 106.21, 106.22 and 106.23 precludes the necessity for an exemption to § 106.31 (education programs and activities), § 106.32 (housing), or § 106.34 (access to courses). These three sections, in addition to the admissions and recruitment provisions, were specified in the form letter requests for exemption from the rabbinic schools.

I appreciate your concerns regarding constitutional entanglements in providing OCR with a description of religious tenets. Since your letters indicate that the rabbinic schools are still interested in receiving religious exemptions, I recommend that these schools submit a statement regarding institution practices that are based on religious tenets and that they believe conflict with the regulation. This would uphold the institutions' desire to ensure their rights under the First Amendment, enable OCR to meet its responsibilities in confirming that the correct sections of the regulation have been identified in the religious exemption request letters, and expedite OCR's processing of these requests. The language that you have suggested in your letter of July 3, that:

Our religious tenets require us to admit only male students to our education programs and to hire only male teachers for our educational programs. Accordingly, we seek exemption from the following regulations: . . .

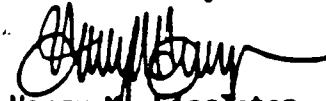
is sufficient. This language enables OCR to confirm that an exemption to 34 C.F.R. §§ 106.21, 106.22 and 106.23 regarding admissions and recruitment is necessary and, additionally, that an exemption to the several employment sections of the Title IX regulation cited in the religious exemption request letters from the rabbinic schools also is necessary. If OCR does not receive information regarding institution practices to confirm that the 13 sections of the regulation cited in the form letter requests for exemption are accurate, any exemption granted by OCR would have little practical impact. OCR would be required to investigate any complaint filed against an institution if OCR cannot determine the accuracy of the exemption requested or subsequently granted.

It is difficult to determine, based on your letters, why the rabbinic schools originally requested exemption from §§ 106.31, 106.32 or 106.34. However, I wish to clarify that if an institution presently admits or contemplates in the future admitting women on a limited basis to some programs or use institution housing on a limited basis (Title IX permits separate housing on the basis of sex), then the institution may wish to request exemption to these sections of the regulation. Otherwise, as noted above, if admissions to all programs are limited to men, then an exemption to the admissions and recruitment provisions precludes the need for exemption to §§ 106.31, 106.32 and 106.34.

Page 3 - Rabbi Morris Sherer

I hope this clarifies our intent in issuing these information requests and OCR's responsibilities in granting religious exemptions. If you have any questions, please feel free to contact Frederick Cioffi of my staff at 202-732-1635.

Sincerely,



Harry M. Singleton
Assistant Secretary
for Civil Rights

cc: Stanley Seidenfeld, Acting Regional Civil Rights Director, Region II
Dewey E. Dodds, Regional Civil Rights Director, Region III
Linda A. McGovern, Acting Regional Civil Rights Director, Region V
Jesse L. High, Regional Civil Rights Director, Region VII
Gilbert D. Roman, Regional Civil Rights Director, Region VIII

MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

OCT 11 1988

TO : OCR Senior Staff

FROM : William L. Smith
Acting Assistant Secretary
for Civil Rights

William L. Smith
(for)

SUBJECT: Title IX Religious Exemption Procedures and Instructions for
Investigating Complaints at Institutions with Religious Exemptions

Since the completion in 1985 of the project resolving 216 requests for religious exemption to Title IX of the Education Amendments of 1972, the Office for Civil Rights (OCR) has received approximately 55 religious exemption requests. Many of these requests were submitted subsequent to the March 22, 1988, passage of the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988) (Act). This memorandum restates OCR's procedures for addressing religious exemption requests and for conducting investigations at institutions that have been granted religious exemptions to Title IX.

Procedures

Under 34 C.F.R. § 106.12 of the Title IX regulation, institutions controlled by a religious organization are exempt from those sections of the regulation that conflict with the organization's religious tenets. Under § 106.12(b), "an educational institution which wishes to claim [an] exemption" should submit a written statement to the Assistant Secretary identifying the sections of the regulation that conflict with specific tenets. The regulation does not require that a religious institution submit a written claim of exemption, nor is an institution's exempt status dependent upon its submission of a written statement. Primarily, the written claim or "request" for exemption from an institution is a request for assurance from OCR of exemptions to certain sections of the regulation. The institution is responsible for stating its religious tenets or its practices as based on religious tenets in its request for exemption. OCR, in "granting" an exemption, primarily ensures that the institution has cited the correct sections of the regulation in its request. Otherwise, OCR clarifies which sections of the regulation are applicable to an institution's exemption request.

Since claims of religious exemption are to be submitted to the Assistant Secretary, exemption requests frequently are sent to Washington, D.C. Headquarters, in accordance with the instructions outlined in the February 19, 1985, policy guidance for resolving religious exemption requests (copy attached), forwards the requests to the appropriate regional offices. The regional offices obtain all information necessary to act on the exemption request and draft an appropriate response for the Assistant Secretary's signature.

The regional offices should continue to use the model language outlined at Tab C of the February 19, 1985, guidance, modifying the model language as appropriate. The regional offices are assigned to draft responses, because many institutions do not submit sufficient information initially for OCR to act on the request, and more information must be obtained. Additionally, in responding to a request, each regional office may become familiar with the institutions within the region that are exempt from sections of the regulation. When an institution has submitted insufficient information, the regional offices may request more information in writing or by telephone. However, whenever feasible, information should be obtained in writing. Any information that is obtained by telephone must be carefully recorded and placed in the exemption request file. In attempts to obtain additional information, the regional offices should avoid intrusive questions regarding religious tenets or questions about programs that are not related to the exemption request; OCR does not investigate an institution because it claims a religious exemption. Any questions should be directed at clarifying the applicability of regulation sections.

Once the regional office has completed a draft response, the draft response and all materials related to the request, including institution catalogs and any telephone memoranda, should be forwarded to the Policy and Enforcement Service in headquarters for review. This review enables headquarters staff to coordinate OCR's responses to institutions that are controlled by the same religious organization, but that are located in different OCR regions.

Many institutions submit a copy of the college catalog in support of their exemption requests. Catalogs simplify OCR's analysis, since they often contain information regarding the institutions' religious traditions and programs. Information commonly found in catalogs from religious institutions that may assist OCR includes the following:

1. a "doctrinal statement" with the notation that specific members of the institution community must espouse a personal belief in the religion or doctrinal statement - this is sufficient evidence that the institution is "controlled" by a religious organization under § 106.12(a) for purposes of claiming religious exemption (see Tab B, page 4 of the February 19, 1985, guidance);
2. catalogs often explain moral beliefs and may outline disciplinary measures for violating those beliefs - this may support a request for exemption to §§ 106.21(c), 106.40, 106.57, and 106.60 regarding the marital or parental status of students and employees and applicants for admission and employment;
3. requirements that only men may take courses training future ministers (this should be supported by a statement that only men may be ministers, in accordance with religious tenets, which may be in the catalog or the request letter) - this may support a request for exemption to § 106.34 regarding access to courses; and

4. requirements that only men may teach courses training future ministers and/or, in keeping with roles of men and women in the religious organization, only men may hold certain positions of authority at the institution - this may support a request for exemption to certain employment sections under Subpart E of the regulation.

OCR may not question what institution representatives claim as their religious beliefs, and should avoid any appearance of interpreting religious tenets. OCR's policy permits an institution to submit a statement of its practices, as based on its religious tenets, rather than a statement of its tenets (see the policy clarification memorandum on Title IX religious exemption requests issued August 2, 1985). For example, an institution's exemption request may state, "based on our religious tenets, only men are admitted to the institution." Such a statement enables OCR to identify the appropriate sections of the regulation to which the institution is exempt (§§ 106.21, 106.22, and 106.23 regarding admissions and recruitment in this example) and avoids the appearance of a Federal agency interpreting religious tenets, which could create potential conflicts under the First Amendment.

Many exemption requests submitted since the passage of the Act contain identical language in many portions of the letters, even though the letters are from institutions sponsored by several different religious organizations in all parts of the country. Some of the model language assumes incorrect interpretations of the Title IX regulation. The regional offices should draft responses that correct any erroneous statements made by institutions while minimizing remarks that may embarrass institution officials. For example, the model language suggests that 34 C.F.R. § 106.15(d) exempts private undergraduate and graduate programs from §§ 106.16 through 106.23. Section 106.15(d) exempts private undergraduate programs only from Subpart C of the regulation, in effect, §§ 106.21, 106.22, and 106.23 regarding admissions and recruitment. Sections 106.16 and 106.17 are not applicable to the institutions' concerns, and sections 106.18, 106.19, and 106.20 do not exist. Instead of stating in OCR's response that certain sections do not exist and others are not applicable, a statement that § 106.15(d) exempts private undergraduate institutions from §§ 106.21, 106.22, and 106.23 should clarify the correct interpretation of the regulation. Since the institutions generally are not requesting exemption to these sections (with the exception of the specific paragraph at § 106.21(c) regarding marital or parental status of applicants for admission), additional explanation that may prove embarrassing is usually not necessary.

Investigations of Institutions With Religious Exemptions

Whenever a complaint is filed against an institution that has already been granted a religious exemption by OCR, the regional offices should carefully review OCR's letter granting the exemption and the institution's letter requesting the exemption to determine whether the complaint allegations fall within the exemption granted. The letters requesting and granting the exemption

will clarify the extent of the exemption. Reviewing general OCR records such as the religious exemption project report issued November 22, 1985, is not sufficient, since this report indicates only that an institution is exempt from a specific section, such as § 106.34 regarding access to courses, and does not explain the extent of the exemption. For example, if a complainant alleges that an institution with a religious exemption to § 106.34 does not provide women with access to advanced courses in chemistry, the regional office must determine whether the institution's exemption to § 106.34 addresses courses in chemistry by reviewing the letters requesting and granting exemption. If the regional office's review of the religious exemption file indicates that the exemption is only for those courses training future ministers, which are, based on religious tenets, limited to men, then the regional office must investigate the complainant's allegations regarding access to advanced chemistry courses.

Similar limitations apply to the exemptions granted to institutions for § 106.39 regarding health and insurance benefits and services and § 106.40(b)(4) requiring that pregnancy be treated as any other temporary disability under any student health insurance program (SHIP) offered by the recipient. Many institutions are exempt from §§ 106.21(c), 106.40, 106.57, and 106.60. These sections prohibit discriminatory treatment based on the marital or parental status of students and employees, and applicants for admission and employment. Generally, religious institutions maintain that these sections conflict with their religious tenets by prohibiting institutions from disciplining students or employees who are unmarried and pregnant.

OCR has received many SHIP complaints alleging that pregnancy is not being treated the same as any other temporary disability. A religious institution's exemption to §§ 106.39 and 106.40 based on religious tenets regarding unmarried pregnant students does not preclude an OCR investigation of a SHIP complaint. The institution must provide coverage for pregnancy in the same manner as it provides coverage for temporary disabilities for married students (no institution has claimed a conflict between religious tenets and the regulation regarding married pregnant students). If the institution offers a student health insurance plan that does not treat pregnancy in the same manner as other temporary disabilities for married students, then the institution is in violation of § 106.39 and § 106.40(b)(4). Insurance plans vary considerably and may include provisions for extra premiums for pregnancy coverage, limitations of four days of hospitalization for a normal pregnancy, a 30 day waiting period before pregnancy coverage becomes effective, etc. All of these provisions violate the Title IX regulation where pregnancy coverage differs from provisions regarding temporary disabilities, and religious institutions offering such plans are in violation of §§ 106.39 and 106.40 regarding married students, even though they may be exempt from §§ 106.39 and 106.40 regarding unmarried students.

Page 5 - OCR Senior Staff

Religious exemption requests continue to be controversial and should be given priority by the regional offices. OCR has assured members of Congress that OCR's processing of these requests will continue to be expeditious.

If you have questions or comments regarding this memorandum, or questions involving a particular request for an exemption, you may call Jeanette Lim at FTS 732-1645 or Valerie Bonnette at 732-1684.

Attachment

ASSURANCE OF COMPLIANCE WITH TITLE IX OF THE
EDUCATION AMENDMENTS OF 1972 AND THE
REGULATION ISSUED BY THE DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE IN
IMPLEMENTATION THEREOF

(PLEASE READ EXPLANATION OF HEW FORM 639 A (3/77)* BEFORE COMPLETING
THIS DOCUMENT)

Pursuant to 45 C.F.R. 86.4:

(Name of Applicant or recipient)
(address)
(city, state, zip code)
(identifying code-FICE, OE, or IRS)

(hereinafter the "Applicant") gives this assurance in consideration of and for purpose of obtaining Federal education grants, loans, contracts (except contracts of insurance or guaranty), property, discounts, or other Federal financial assistance to education programs or activities from the Department of Health, Education, and Welfare (hereinafter the "Department"), including payments or other assistance hereafter received pursuant to applications approved prior to the date of this assurance.

ARTICLE I - TYPE OF INSTITUTION SUBMITTING ASSURANCE.

A. The Applicant is (check the following boxes where applicable):

1. ☐ A state education agency.
2. ☐ A local education agency.
3. ☐ A publicly controlled educational institution or organization.
4. ☐ A privately controlled educational institution or organization.
5. ☐ A person, organization, group or other entity not primarily engaged in education. If this box is checked, insert primary purpose or activity of Applicant in the space provided below:

*HEW Form 639 A (3/77) This form supersedes HEW Form 639 (7/76). HEW Form 639 (7/76) submitted prior to this revision are valid and recipients need not submit a new assurance.

- B. ☐ Claiming a religious exemption under 45 C.F.R. 86.12(b).
 (If religious exemption is claimed, attach statement by highest ranking official of Applicant identifying the specific provisions of 45 C.F.R. Part 86 which conflict with a specific religious tenet of the controlling religious organization.)
- C. The Applicant offers one or more of the following programs or activities (check where applicable):
- | | |
|---|---|
| 1. <input type="checkbox"/> Pre-school | 6. <input type="checkbox"/> Undergraduate (including junior and community colleges) |
| 2. <input type="checkbox"/> Kindergarten | 7. <input type="checkbox"/> Vocational or Technical |
| 3. <input type="checkbox"/> Elementary or Secondary | 8. <input type="checkbox"/> Professional |
| 4. <input type="checkbox"/> Graduate | |
| 5. <input type="checkbox"/> Other (such as special programs for the handicapped even if provided on the pre-school, elementary or secondary level). If this box is checked, give brief description below: | |

ARTICLE II-PERIOD OF ASSURANCE. This assurance shall obligate the Applicant for the period during which Federal financial assistance is extended to it by the Department.

ARTICLE III-TERMS AND CONDITIONS. The Applicant hereby agrees that it will:

1. Comply, to the extent applicable to it, with Title IX of the Education Amendments of 1972 (P.L. 92-318), as amended, 20 U.S.C. 1681, 1682, 1683, and 1685 (hereinafter, "Title IX"), and all applicable requirements imposed by or pursuant to the Department's regulation issued pursuant to Title IX, 45 C.F.R. Part 86 (hereinafter, "Part 86"), to the end that, in accordance with Title IX and Part 86, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any education program or activity for which the Applicant receives or benefits from Federal financial assistance from the Department. (This assurance does not apply to sections 904 (proscribing denial of admission to course of study on the basis of blindness) and 906 (amending other laws) of Title IX, 20, U.S.C. 1684 and 1686.)

2. Assure itself that all contractors, subcontractors, subgrantees or others with whom it arranges to provide services or benefits to its students or employees in connection with its education program or activity are not discriminating on the basis of sex against these students or employees.

3. Make no transfer or other conveyance of title to any real or personal property which was purchased or improved with the aid of Federal financial assistance covered by this assurance, and which is to continue to be used for an education program or activity and where the Federal share of the fair market value of such property has not been refunded or otherwise properly accounted for to the Federal government, without securing from the transferee an assurance of compliance with Title IX and Part 86 satisfactory to the Director and submitting such assurance to the Department.

4. Submit a revised assurance within 30 days after any information contained in this assurance becomes inaccurate.

5. If the Applicant is a state education agency, submit reports in a manner prescribed by the Director under 45 C.F.R. 80.6(b) as to the compliance with Title IX and Part 86 of local education agencies or other education programs or activities within its jurisdiction.

ARTICLE IV-DESIGNATION OF RESPONSIBLE EMPLOYEE AND ADOPTION OF GRIEVANCE PROCEDURES. (Check the appropriate box.)

A. 1. () Pursuant to 45 C.F.R. 86.8, the Applicant has adopted grievance procedures and designated the following employee to coordinate its efforts to comply with Part 86 and has notified all of its students and employees of these grievance procedures and the following name, address and telephone number of the designated employee:

2. _____
(name of employee)
3. _____
(office address)
4. _____
(telephone number)

B. 1. () The Applicant is not presently receiving Federal financial assistance subject to Part 86 and, consequently, has not designated a responsible employee or adopted grievance procedures pursuant to 45 C.F.R. 86.8 but will do so immediately upon award of such assistance and will immediately notify the Director, its students and employees of the name, office address, and telephone number of the employee so designated.

ARTICLE V - SELF-EVALUATION. (Check the appropriate box.)

A. ☐ The Applicant has completed a self-evaluation as required by 45 C.F.R. 86.3(c) and has not found it necessary to modify any of its policies and practices or to take any remedial steps to come into compliance with Part 86.

B. ☐ The Applicant has completed a self-evaluation as required by 45 C.F.R. 86.3(c) and has ceased to carry out any policies and practices which do not or may not meet the requirements of Part 86 and is taking any necessary remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to such policies and practices.

C. ☐ The Applicant has not completed the self-evaluation required by 45 C.F.R. 86.3(c) but expects to have it completed by _____
insert date

D. ☐ The Applicant is not required to conduct a self-evaluation under 45 C.F.R. 86.3 since it did not receive any Federal financial assistance to which Part 86 applies prior to July 21, 1976.

Date: _____

(Insert name of Applicant)

By

(This document must be signed by
an official legally authorized
to contractually bind the Applicant.)

(Insert title of authorized official.)

Explanation Of

NEW FORM 639 A (3/77), ENTITLED "ASSURANCE OF COMPLIANCE WITH TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 AND THE REGULATION OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE IN IMPLEMENTATION THEREOF"

Section 901 of Title IX of the Education Amendments of 1972 provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Section 902 of Title IX authorizes and directs the Department of Health, Education, and Welfare (hereinafter the "Department") to effectuate the nondiscrimination requirements of section 901 by issuing rules, regulations, and orders of general applicability. Pursuant to section 902, the Department has issued 45 C.F.R. Part 86 (hereinafter "Part 86") which became effective on July 21, 1975.

Section 86.4 of Part 86 requires that every application for Federal financial assistance for any education program or activity shall, as a condition of its approval, contain or be accompanied by an assurance from the applicant satisfactory to the Director of the Office for Civil Rights (hereinafter the "Director") that each education program or activity operated by the applicant and to which Title IX of the Education Amendments of 1972 and Part 86 apply will be operated in compliance with Part 86.

Section 86.4 also provides that the Director will specify the form of the assurance required and the extent to which such assurance will be required of the applicant's subgrantees, contractors, subcontractors, transferees, or successors in interest. Under this authority, NEW Form 639 A (3/77) has been specified as the form of assurance which shall apply to all recipients of and applicants for Federal financial assistance subject to the provisions of Title IX and awarded by the Department.

NEW Form 639 A (3/77) constitutes a legally enforceable agreement to comply with Title IX and all of the requirements of Part 86. Applicants are urged to read Part 86 and the accompanying preamble. The obligation imposed by Title IX and Part 86 are independent of, and do not alter, the obligation not to discriminate on the basis of sex imposed by Title VII of the Civil Rights Act of 1964 (29 U.S.C. 2000e et seq.); Executive Order 11246, as amended; sections 799A and 865 of the Public Law 93-415 Service Act (42 U.S.C. 295h-9 and 295b-2); and the Equal Pay Act (29 U.S.C. 206 and 206 (c)).

PERIOD OF ASSURANCE

HEW Form 639 A, (3/77) is binding on a recipient for a period during which Federal financial assistance is extended to it by the Department. With respect to Federal financial assistance used to aid in the purchase or improvement of real or personal property, such period shall include the time during which the real or personal property is used for the purpose of providing an education program or activity. A recipient may transfer or otherwise convey title to real and personal property purchased or improved with Federal financial assistance so long as such transfer or conveyance is consistent with the laws and regulations under which the recipient obtained the property and it has obtained a properly executed HEW Form 639 A, (3/77) from the party to whom it wishes to transfer or convey the title unless the property in question is no longer to be used for an education program or activity or the Federal share of the fair market value of such property has been refunded or otherwise properly accounted for to the Federal government.

An applicant or recipient which has submitted an HEW Form 639 A, (3/77) to the Director need not submit a separate form with each grant application but may, if the information contained therein remains accurate, simply incorporate by reference, HEW Form 639 A, (3/77), giving the date it was submitted. On the other hand, a revised HEW Form 639 A, (3/77) must be submitted within 30 days after information contained in the submitted form becomes inaccurate, even if no additional financial assistance is being sought.

OBLIGATION OF RECIPIENT TO OBTAIN ASSURANCES FROM OTHERS

As indicated in Article III, paragraph 2, of the Assurance, if a recipient subgrants to, or contracts, subcontracts, or otherwise arranges with an individual, organization, or group to assist in the conduct of an education program or activity receiving Federal financial assistance from the Department or to provide services in connection with such a program or activity, the recipient continues to have an obligation to ensure that the education program or activity is being administered in a nondiscriminatory manner. (See 45 C.F.R. 86.31.) Accordingly, the recipient must take reasonable steps to ensure that the individual, organization, or group in question is complying with Title IX and Part 86. These steps may include, but do not necessarily require, obtaining assurances of compliance from such subgrantees, contractors, and subcontractors in the form of, or modeled on, the HEW Form 639A, (3/77). These steps to require, however, such activities as may be reasonably necessary to monitor the compliance of these subgrantees, contractors, or subcontractors, regardless of whether they have submitted assurances to the recipient. If a recipient is unable to assure itself that any contractor, subcontractor, subgrantee, or other individual or group with whom it arranges to provide services or benefits to its students and employees does not discriminate on the basis of sex as described in Part 86, the recipient may not initiate or continue contracts, subcontracts, or other arrangements with that individual or group or make subgrants to it.

ADMINISTRATIVELY SEPARATE UNITS

If an educational institution is composed of more than one administratively separate unit, a separate HEW Form 639 A, (3/77) may be submitted for each unit or one may be submitted for the entire institution. If separate forms are submitted, the administratively separate unit for which the form is submitted should be clearly identified in the first line of HEW Form 639 A, (3/77). An "administratively separate unit" is defined as a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution. See 45 C.F.R. 86.2(c).

STATE EDUCATION AGENCIES

State education agencies are generally not responsible for running pre-school, kindergarten, elementary or secondary programs. Such responsibility is generally left to local education agencies although some supervisory authority may be vested with the state education agency. Consequently, most state agencies should not check the boxes for "Pre-school," "Kindergarten," or "Elementary or Secondary" in Article I of HEW Form 639 A, (3/77). If the state agency runs special programs for the handicapped, including those on the pre-school, kindergarten, elementary, or secondary level, the box marked "Other" should be checked and the appropriate description inserted in the space provided.

Under Article III, Paragraph 5, of HEW Form 639A, (3/77) a state education agency may be called upon from time to time to submit reports necessary to determine Title IX compliance by local education agencies within its jurisdiction. The form and content of such reports will be specified by the Director at the time the request is made.

RELIGIOUS EXEMPTION

Applicants or recipients which are educational institutions controlled by a religious organization are not covered by Part 86 to the extent that application of Part 86 would be inconsistent with the religious tenets of the controlling religious organization.

Section 86.12 of Part 86 requires an institution seeking an exemption to submit a written statement to the Director identifying the provisions of Part 86 which conflict with a specific tenet of the controlling religious organization. Such a statement must be signed by the highest ranking official of the educational institution claiming the exemption. An applicant or recipient claiming an exemption is not relieved of its obligations to comply with that portion of Part 86 not specified in its statement to the Director as being inconsistent with the tenets of the controlling religious organization.

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Although 86.12 imposes no time restrictions when a recipient or applicant may claim an exemption, applicants or recipients are urged to make such claims when they initially submit HEW Form 639 A, (3/77) by checking the appropriate box in Article I of HEW Form 639 A, (3/77) and attaching thereto the statement required by 86.12(b). Such an approach will avoid misunderstandings on the part of both the Department and the applicant or recipient as to what, if any, action is required under Part 86.

An applicant or recipient will normally be considered to be controlled by a religious organization if one or more of the following conditions prevail:

- (1) It is a school or department of divinity; or
- (2) It requires its faculty, students or employees to be members of, or otherwise espouse a personal belief in, the religion of the organization by which it claims to be controlled; or
- (3) Its charter and catalog, or other official publication, contains explicit statement that it is controlled by a religious organization or an organ thereof or is committed to the doctrines of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.


The term "school or department of divinity" means an institution or a department or branch of an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects. (This definition is adopted from section 1201(1) of the Higher Education Act of 1965, P.L. 89-329.)

MEMORANDUM

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UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

TO : Kenneth A. Mines
Regional Civil Rights Director
Region V

DATE: MAR 9 1981

FROM:  Harry M. Singleton
Assistant Secretary
for Civil Rights

SUBJECT: Saint John's University (05-83-2038)

Attached is a copy of a letter I have sent to counsel for Saint John's University concerning the above-referenced case. As described in the letter, the University has provided sufficient information to enable OCR to grant a religious exemption from Title IX for the University's general practice of preferring monks of Saint John's Abbey in employment. Also, with respect to the employment of male, but not female, faculty members, for the position of faculty resident in the dormitories for male undergraduate students when monks are not available for this position, the University is entitled to use sex as a bona fide occupational qualification for the position of faculty resident in its single sex dormitories.

Please take immediate action on the above-referenced complaint consistent with the decisions set forth in the attached letter. I am also attaching for your information a memorandum prepared by the Policy and Enforcement Service that explains in more detail the legal rationale for the decisions set forth in the letter.

Attachments



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

MAR 9 1984

Mr. Kevin J. Hughes
Hughes, Thoreen and Sullivan
Attorneys and Counsellors at Law
808-1/2 Saint Germain Street
Post Office Box 1187
Saint Cloud, Minnesota 56302-1187

Dear Mr. Hughes:

This is in response to your recent letter supplementing information provided in the 1976 request by the Chancellor of Saint John's University of Collegeville, Minnesota, for a religious exemption from the Education Department's Title IX regulation for certain employment practices. Your letter and the supporting documentation provided information on two employment issues raised in connection with a recent Title IX complaint against the University (No. 05-83-2038): (1) the University's practice of preferring, in employment, members of Saint John's Abbey, the religious community that owns and controls the University; and (2) the University's policy of hiring for the position of faculty resident in the dormitories for male undergraduate students, male, but not female, faculty members when monks of Saint John's Abbey are not available to fill the position. As explained below, (1) the University is entitled to a religious exemption from the Title IX regulation for its practice of preferring monks of Saint John's Abbey in employment, and (2) under Title IX the University may use sex as a bona fide occupational qualification for the position of faculty resident in the dormitories for male undergraduate students.


The Office for Civil Rights (OCR) has on file a request made by the Chancellor of Saint John's University in 1976 for a religious exemption from Title IX that indicated that Saint John's University is an educational institution controlled by a religious organization and that "one tenet under which the University is operated is that as many members of Saint John's Abbey as possible be active in the University; that Saint John's considers itself exempt from compliance under Title IX as to those persons." The information included with your letter clarified that the University is requesting an exemption from the provisions of the Title IX regulation pertaining to employment in order to permit the University to prefer monks of Saint John's Abbey in employment, and that the application of the Title IX regulation to the employment of members of Saint John's Abbey would be inconsistent with the religious tenets of Saint John's Abbey. This is sufficient information to determine that the University has complied fully with the requirements of § 106.12 of the Title IX regulation on this issue, and the University is hereby granted an exemption from the Title IX regulation with respect to its employment practices that favor members of Saint John's Abbey.

In connection with OCR's review of the request filed by the University Chancellor in 1976, it was noted that there was a second request for a religious exemption from Title IX in connection with admissions and employment practices at the University's School of Divinity, which was described as a seminary for the preparation of men for ordination to the priesthood of the Roman Catholic Church. OCR's files indicate that no response was provided by OCR to this submission. Therefore, this is to state for the record that to the extent that the above stated conditions continue to exist, the University is entitled to an exemption from Title IX with respect to admissions and employment practices at the School of Divinity.

The second issue discussed in your letter concerned the University's practice of hiring for the position of faculty resident in the dormitories for male undergraduate students, male, but not female, faculty members when a member of Saint John's Abbey is not available to fill the position. On the basis of the information provided, I have determined that because the University is entitled to provide separate living facilities on the basis of sex in accordance with Section 907 of the Education Amendments of 1972, the University is entitled to use sex as a bona fide occupational qualification for the position of faculty resident in its single sex living facilities pursuant to § 106.61 of the Title IX regulation.

I have instructed the Chicago Regional Office to take action on the complaint referenced above in accordance with the determinations stated herein.

Sincerely,



Harry M. Singleton
Assistant Secretary
for Civil Rights

cc: Kenneth A. Mines, Regional Civil Rights Director, Region V

MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

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TO : W. Lamar Clements
Acting Regional Civil Rights Director
Region IV

DATE: FEB 18 1986

FROM : Alicia Coro *Alicia Coro*
Acting Assistant Secretary
for Civil Rights

SUBJECT: Policy Guidance Request for Oakwood College, Alabama
OCR Complaint No. '04-85-2078

You have requested guidance on whether the Office for Civil Rights (OCR) has jurisdiction to investigate a complaint alleging that Oakwood College is in violation of 34 C.F.R. § 106.40(a) and (b)(4) regarding its student health insurance policy. The College's student health insurance policy does not treat pregnancy or related conditions as any other temporary disability, as is required by 34 C.F.R. §§ 106.39 and 106.40(a), (b)(1) and (4). Oakwood College, which is controlled by the Seventh-day Adventist Church, was granted a religious exemption to 34 C.F.R. §§ 106.21(c), 106.40 and 106.57 by letter of September 3, 1985.

You have not provided any information regarding Federal financial assistance awarded to Oakwood College. Consequently, the discussion below addresses only the issue of whether the religious exemption granted to the institution alleviates the College's responsibility for ensuring that any student health insurance it offers treats pregnancy as any other temporary disability. However, a determination of jurisdiction over the health insurance plan must be made prior to any additional investigation. This determination should follow the guidance set forth in the November 22, 1985, memorandum from Harry M. Singleton to the Regional Directors entitled "Jurisdiction to Investigate Complaints Involving Student Health Insurance" (attached).

In its request for religious exemption (letter of August 6, 1985, attached), Oakwood College explains that, "sexual relations before marriage is a sin Therefore, if an unmarried employee or student were to become involved in such a relationship which resulted in pregnancy we could not permit the parties (male and female) to remain employed at or enrolled in our institution." By letter of September 3, 1985, Oakwood College was granted an exemption to 34 C.F.R. § 106.40 so that the institution would not be required to permit the participation of unmarried pregnant students in its education program, a practice which would conflict with its religious tenets. However, the institution was not granted a religious exemption for practices that do not conflict with its religious tenets. As stated in the September 3 letter, the exemption granted "is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by the institution." The College has made no statement or suggestion that the

presence of students or employees who are married and pregnant conflicts with any tenets of the religious organization controlling the institution. Therefore, the religious exemption granted to Oakwood College does not extend to the College's treatment of students who are married and pregnant.

The College's insurance program, in which students are required to participate, covers temporary disabilities, but specifically excludes coverage of pregnancy and certain related conditions. Therefore, the College's insurance program discriminates against married pregnant students, an action for which the College has no exemption. Thus, to the extent that Oakwood College offers an insurance program that does not provide that pregnancy be treated as any other temporary disability for married students, the College's student health insurance program violates 34 C.F.R. §§ 106.39 and 106.40(a), (b)(1) and (4).

You should attempt to determine whether OCR has jurisdiction to investigate this complaint without contacting the institution. However, if it becomes necessary to contact the institution to determine jurisdiction, you should provide the College with an explanation for OCR's actions in this complaint. I recommend using the language in paragraphs three and four above, with appropriate modifications. You should inform institution representatives that they may contact Jeanette Lim at (202) 732-1645 for a further explanation of the scope of the institution's religious exemption.

If you determine that OCR has jurisdiction to investigate this case, you might inquire whether Oakwood College admits married students. Some institutions applying for religious exemption to 34 C.F.R. § 106.40 indicated in the explanations of the exemption requests that married students were not admitted. If Oakwood College does not enroll married students, then there would be no violation.

Attachments

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

SEP 21 1988

Dear College and University Presidents:

The Office for Civil Rights (OCR) in the Department of Education has responsibility for the enforcement of Title IX of the Education Amendments of 1972. Title IX and its regulation prohibit discrimination on the basis of sex in educational programs or activities that receive or benefit from Federal financial assistance.

This letter is to inform you of a potential area where your institution may be in violation of Title IX. This area concerns the provisions of certain student health insurance plans which do not provide coverage for pregnancy on the same basis as coverage for other temporary disabilities. It is important that your legal staff review any student health insurance plans offered under the auspices of your institution to determine whether they comply with Title IX. OCR is prepared to offer technical assistance to your institution to bring any student health or accident insurance policies that you offer into compliance with Title IX.

The recent Civil Rights Restoration Act of 1987 broadened the terms "program or activity" to include most activities of educational institutions receiving Federal financial assistance, including student health insurance that is offered by many colleges and universities. Title IX and its regulation do not require any institution to offer health or accident insurance to its students. But, if recipients of Federal financial assistance do offer such insurance, the policies must comply with the nondiscrimination requirements of Title IX. Many student health insurance policies either exclude maternity care or offer maternity care at an increased premium. Both provisions treat pregnancy different from other temporary disabilities and violate the Title IX regulation.

Two major provisions of the regulation, enclosed for your reference, define the basic responsibilities of educational institutions that offer health or accident policies to their students (34 C.F.R. §§ 106.39 and 106.40). Recipients of Federal financial assistance that offer health and/or accident insurance policies may not discriminate on the basis of sex in the benefits. Pregnancy, childbirth, false pregnancy, termination of pregnancy (excluding abortion) and recovery therefrom must be treated in the same manner and under the same policies as any other temporary disability. Examples of temporary disabilities are illnesses such as pneumonia, surgery such as appendectomies, or broken legs. Thus, excluding pregnancy benefits or charging a higher premium when other medical situations are not treated in that manner violates Title IX.

You should also understand that the regulation does not apply to an education institution which is controlled by a religious organization to the extent that application of the regulation would not be consistent with the religious tenets of the organization. If an educational institution wishes to claim an exemption, it may do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution identifying the provisions of the regulation which conflict with a specific tenet of the religious organization.

If your institution offers a policy, you may wish to examine it to ensure that the policy treats pregnancy and related conditions in the same manner that it treats other disabilities. If you would like assistance from OCR in examining your plan or bringing it into compliance, contact the regional office nearest you. A list of regional offices, their addresses and phone numbers is enclosed.

Sincerely,



LeGree S. Daniels
Assistant Secretary
for Civil Rights

Enclosures

PERTINENT TITLE IX REGULATORY PROVISIONS

34 C.F.R. §§ 106.39 and 106.40

§ 106.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

§ 106.40 Marital or parental status.

(b) Pregnancy and related conditions.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy [excluding abortion] and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

DEPARTMENT OF EDUCATION

REGIONAL CIVIL RIGHTS DIRECTORS

REGION I -- Massachusetts, Maine, Connecticut,
New Hampshire, Rhode Island, Vermont

Dr. Thomas J. Burns
Regional Civil Rights Director
Office for Civil Rights, Region I
Department of Education
J.W. McCormick Post Office and Court
House Building Room 222, 01-0061
Boston, MA 02109-4557
617-223-1154

REGION II -- New York, New Jersey, Puerto Rico,
Virgin Islands

Mrs. Paula D. Kuebler
Regional Civil Rights Director
Office for Civil Rights, Region II
Department of Education
26 Federal Plaza - 33rd Floor
Room 33-130, 02-1010
New York NY 10278-0082
212-264-5180

REGION III -- Pennsylvania, Delaware, District of
Columbia, Virginia, Maryland,
West Virginia

Robert A. Smallwood
Regional Civil Rights Director
Office for Civil Rights, Region III
Department of Education
3500 Market Street, -Room 6300, 03-2010
Philadelphia, PA 19101-3326
215-596-6772

REGION IV -- Georgia, Alabama, Florida, Kentucky,
Mississippi, North Carolina,
South Carolina, Tennessee

Mr. Jesse L. High
Regional Civil Rights Director
Office for Civil Rights, Region IV
Department of Education
P.O. Box 1705, 04-3010
Atlanta, GA 30301-1705
414-331-2954

Region V -- Illinois, Indiana, Michigan, Minnesota,
Ohio, Wisconsin

Kenneth A. Mines
Regional Civil Rights Director
Office for Civil Rights, Region V
Department of Education
4 State Street, Room 700C, 05-0410
Chicago, IL 60605-1202
312-886-3456

REGION VI -- Texas, Louisiana, New Mexico
Oklahoma, Arkansas

Mr. Taylor D. August
Regional Civil Rights Director
Office for Civil Rights, Region VI
Department of Education
1200 Main Tower Building
Room 2260, 06-5010
Dallas, TX 75202-9998
214-767-3951

REGION VII -- Kansas, Missouri, Nebraska,
Iowa

Ms. Judith E. Banks
Regional Civil Rights Director (Acting)
Office for Civil Rights, Region VII
Department of Education
10220 N. Executive Hills Blvd., 8th Floor
P.O. Box 901381, 07-6010
Kansas City, MO 64190-1381
816-891-8026

REGION VIII -- Colorado, Montana, North
Dakota, South Dakota,
Utah, Wyoming

Dr. Gilbert D. Roman
Regional Civil Rights Director
Office for Civil Rights, Region VIII
Department of Education
Federal Office Building
1961 Stout Street - Room 342, 08-7010
Denver Colorado, CO 80294-3608
303-837-5695

REGION IX -- California, Arizona, Nevada,
Hawaii, Guam, Trust Terri-
tories of the Pacific
Islands, American Samoa

Mr. John E. Palomino
Regional Civil Rights Director
Office for Civil Rights, Region IX
Department of Education
221 Main St., 10th Fl., Rm. 1030, 09-8010
San Francisco, CA 94105-1925
415-227-8040

REGION X -- Washington, Alaska, Idaho,
Oregon

Mr. Gary D. Jackson
Regional Civil Rights Director
Office for Civil Rights, Region X
Department of Education
2901 3rd Avenue, Room 100, 10-9010
Seattle, WA 98121-1042
206-442-1635

UNITED STATES
DEPARTMENT OF EDUCATION
OFFICE OF PUBLIC AFFAIRS
(202) 732-4576



NEWS

MEDIA UPDATE

ATTENTION: EDUCATION EDITOR

September 20, 1978

A review of current programs and projects at the
U.S. Department of Education. Use upon receipt.

CONTACT: Rodger Murphey (202) 732-4574

ITEM. CIVIL RIGHTS OFFICE TO HOLD CONFERENCE ON SEX
DISCRIMINATION IN STUDENT HEALTH PLANS -- The U.S. Education
Department's Office for Civil Rights (OCR) will host a
conference on September 22 to clarify legal requirements for
student health insurance plans at colleges, universities and
other postsecondary institutions.

OCR has received many complaints under provisions of Title IX
of the Educational Amendments of 1972 which prohibit sex
discrimination in federally assisted programs and activities.
Representatives of these complaints indicate that many
colleges and insurance carriers are unaware of current
requirements of the law. Since the passage of the Civil Rights
Restoration Act, student health policies in postsecondary
institutions are subject to the laws enforced by OCR.

Representatives from national associations and the insurance
industry have been invited to the conference. Among the
subjects to be discussed are health insurance coverage of
students and related questions. The Attorney General
enforcer of the Civil Rights Restoration Act, and religious
and education leaders will also be present.

Assistant Secretary for Civil Rights Lucille S. Daniels is
conducting the conference to provide technical assistance to
postsecondary institutions. She said "OCR is able to reach a
greater number of institutions through technical assistance
than through compliance reviews. In addition to holding the
conference, I am writing to presidents of more than 3,300
postsecondary institutions outlining their responsibilities
under Title IX of the Education Amendments of 1972 in providing
student health plans."

The conference will begin at 10 a.m. September 22, at
500 L St. S.W., Washington, D. C. in the 5100 corridor
conference room.

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MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

TO : Regional Civil Rights Directors
Regions I - X

JUN 8 1988

FROM : Terence J. Pell *T. J. Pell*
Deputy Assistant Secretary
for Policy

SUBJECT: Student Health Insurance Policy Cases

Non Responsive

m3

2. Religious Exemption

Regional offices should also be aware that there may be some interaction between the abortion neutral provision of the Act and the religious exemption provisions of the Title IX statute and regulation. During an investigation, a recipient that is controlled by a religious organization should be apprised of its option of claiming a religious exemption if anything in the Title IX statute or regulation is not consistent with the religious tenets of the recipient's controlling religious organization. If the recipient requests a religious exemption, the regional office should process the religious exemption request before completing the investigation and issuing a letter of finding.

Non Responsive

From: Dyson, Lisa
Sent: Wednesday, February 28, 2007 7:17 AM
To: PLG File Folder
Subject: Response - (b)(6)

-----Original Message-----

From: Butler, Connie
Sent: Friday, December 08, 2006 12:29 PM
To: (b)(6)
Subject: Email to OCR regarding Wrestling

(b)(6)

Dear Mr. (b)(6)

This is in response to your email inquiry, dated October 13, 2006, to the U.S. Department of Education (Department), Office for Civil Rights (OCR). As I understand your inquiry, you asked whether OCR has jurisdiction over private schools

Non Responsive

OCR is responsible for enforcing, among other civil rights statutes, Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq., and its implementing regulations at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in programs or activities receiving Federal financial assistance from the Department. Private elementary and secondary schools are subject to the civil rights laws enforced by OCR, including Title IX, if the private schools receive a grant of Federal financial assistance. However, Title IX does not apply to an educational institution controlled by a religious organization to the extent a requirement of the Title IX regulation would not be consistent with a religious tenet of such organization. 34 C.F.R. §106.12(a).

Non Responsive

Non Responsive

The information provided in this reply is general in nature and should not be read as an advisory opinion with regard to your particular situation. A finding of discrimination in violation of the Title IX is highly fact-specific, requiring a case-by-case inquiry.

I hope this information is of assistance. Thank you for contacting us.

Sincerely,

Jan D. Gray
Program Legal Group
Office for Civil Rights
U.S. Department of Education

From: OCR
Sent: Tuesday, November 27, 2007 8:51 AM
To: (b)(6)
Subject: Response - (b)(6) 07-021159 Clarification on Exemptions --Sigma Alpha Omega Christian Sorority)

(b)(6)

Dear Ms. (b)(6)

This is in response to your email dated November 14, 2007, to the U.S. Department of Education (Department), Office for Civil Rights (OCR). Your email requests information regarding the process for obtaining an exemption from Title IX of the Education Amendments of 1972 (Title IX) for your social sorority that is also a Christian organization, Sigma Alpha Omega Christian Sorority, or direct you to the appropriate office. You indicate that the director of student organizations at the University of West Georgia (University) informed you that you must obtain a Title IX exemption to become official at the University. You do not identify which Title IX provisions your organization is seeking an exemption from or if it is controlled by a religious organization. In addition, a review of your sorority web site does not indicate that it controlled by a religious organization.

OCR is responsible for enforcing, among other civil rights statutes, Title IX, 20 U.S.C. §1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit recipients of Federal financial assistance from discriminating on the basis of sex in education programs or activities. Under Title IX and the implementing regulation, the membership practices of social fraternities and sororities are specifically excluded from coverage if (1) the active membership consists primarily of students in attendance at institutions of higher education, and (2) the fraternity or sorority is exempt from taxation under the Internal Revenue Code. 34 C.F.R. § 106.14(a). Professional fraternities and sororities and service and honor societies, on the other hand, are subject to the requirements of Title IX and may not exclude members on the basis of sex. 34 C.F.R. § 106.31(b)(7).

A university may request documentation of a social sorority's exemption because a university receiving Federal financial assistance is responsible for ensuring that any program or activity operated by the university is in compliance with Title IX. Program or activity is broadly defined to include, among other things, all operations of a college or university receiving Federal financial assistance including any organization recognized as part of the extracurricular activities of the university. In addition, even if a private organization does not constitute an operation of the college or university, under Title IX, a recipient may not provide significant assistance to any organization that discriminates on the basis of sex. 34 C.F. R. § 106.31(b)(6). Thus, for example, to ensure its compliance with Title IX, a university may need to obtain information to determine whether the membership practices of a social sorority meet the regulatory requirements for a Title IX exemption if the social sorority excludes individuals from membership on the basis of sex.

The Title IX regulation does not provide a process for an organization to obtain a determination that its membership practices are exempt from Title IX because it is a social sorority or fraternity. OCR may, however, make the determination that an organization is a social fraternity or sorority on a case-by-case basis when investigating a recipient of Federal financial assistance for Title IX compliance. In order to distinguish social fraternities and sororities from professional, service and honorary fraternities and sororities, OCR asks, among other things, the following questions:

- (1) Is the organization's membership limited to persons pursuing or having interest in a particular field of study, profession or academic discipline?
- (2) Is the membership limited to individuals who have a high level of achievement in scholarship or any other endeavor?
- (3) Are the members permitted to hold membership in other fraternities or sororities at the same level of education?

An affirmative answer to any of these questions may be evidence that the organization may be professional, service, or honorary in nature and not a social fraternity or sorority for Title IX purposes. Other questions also may be probative in a given case and all of these determinations are made by OCR on a case by case basis during the course of an investigation.

In the alternative, the Title IX regulation at 34 C.F.R. § 106.12 states that the regulation does not apply to institutions controlled by a religious organization where such application is not consistent with the religious tenets of the organization. Institutions wishing an exemption are directed to submit a written request to the Department's Assistant Secretary for Civil Rights naming the religious organization that controls the institution and identifying the provisions of the Title IX regulation that are inconsistent with a specific tenet. Please note that the regulation does not require that a religious institution submit a written claim of exemption, nor is an institution's exempt status dependent upon its submission of a written statement. Primarily, the written claim or "request" for exemption from an institution is a request for assurance from OCR of exemptions to certain sections of the regulation. The institution is responsible for stating its religious tenets or its practices as based on its religious tenets which it believes conflicts with the regulation in its request for an exemption. OCR, in "granting" an exemption, primarily ensures that the institution has cited the correct sections of the regulation in its request. Otherwise, OCR clarifies which sections of the regulation are applicable to an institution's exemption request.

I hope this information has been helpful to you. Thank you for contacting us.

Program Legal Group
Office for Civil Rights

(b)(5)

**Nondiscrimination
in
Employment
Practices
in
Education**

U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202-1328

August 1991

INTRODUCTION

The Office for Civil Rights, Department of Education, prepared this pamphlet for the general public and for education agencies and institutions that have programs or activities that receive Federal financial assistance. Among the education recipients of Federal funds are approximately 16,000 local education systems; 3,200 colleges and universities; 50 state education agencies, their subrecipients, and vocational rehabilitation agencies, and the education and vocational rehabilitation agencies of the District of Columbia and of all American territories and possessions. The pamphlet summarizes the requirements pertaining to employment practices contained in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973.

Title VI protects people from discrimination on the basis of race, color, or national origin in any program, or activity receiving Federal financial assistance; Title IX prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance; and Section 504 prohibits discrimination on the basis of handicap in programs or activities receiving Federal financial assistance.

The Department of Education (ED), Office for Civil Rights (OCR), is responsible for enforcing Federal civil rights requirements in programs or activities that receive assistance from ED; however, with certain exceptions, OCR refers individual complaints of employment discrimination under Title VI and Title IX to the Equal Employment Opportunity Commission.

ED issued regulations for each of the above three statutes. Each regulation includes a description of requirements concerning employment practices. State or local laws that conflict with the employment provisions or any other provisions of these regulations cannot be used as an excuse for noncompliance.

This pamphlet summarizes the employment requirements of the ED civil rights regulations. For copies of the regulations or additional information, write or telephone the OCR regional office that serves your state or territory. Also contact the appropriate OCR regional office if you wish to file a discrimination complaint against a recipient education agency or institution, their subrecipients, or vocational rehabilitation agencies; or the education or vocational rehabilitation agencies of the District of Columbia or of the territories or possessions of the United States. The addresses and telephone numbers of the regional civil rights offices are included at the back of the pamphlet.

NONDISCRIMINATION IN EMPLOYMENT UNDER TITLE VI

Title VI of the Civil Rights Act of 1964 protects people from discrimination based on race, color, or national origin in employment and employment practices in programs or activities receiving Federal financial assistance, where the primary purpose of the Federal assistance is employment or where the discriminatory practice has an impact on program beneficiaries.

The ED regulation for Title VI forbids employment discrimination in two distinct situations. First, where the primary purpose of the Federal assistance is to provide employment, the recipient may not discriminate on the basis of race, color, or national origin against applicants for employment or employees in that program. For example, Title VI prohibits discrimination against applicants for or participants in "work-study" programs that receive Federal assistance.

Second, where the primary purpose of the Federal assistance is not to provide employment, discrimination against employees or applicants for employment is prohibited by Title VI when the discriminatory practice results in discrimination against the program beneficiaries, usually students.

The ED regulation for Title VI encompasses, but is not limited to, recruitment, advertising, employment, layoffs, firing, upgrading, demotions, transfers, rates of pay and other forms of compensation, and uses of facilities. The regulation applies to all employment decisions and actions made directly by ED recipients, as well as those made indirectly through contractual arrangements or other relationships with organizations such as employment agencies, labor unions, organizations providing or administering fringe benefits, and organizations providing training and apprenticeship programs.

The Civil Rights Act of 1964 also contains Title VII, which deals more comprehensively than Title VI with employment. Title VII is administered nationally by the Equal Employment Opportunity Commission (EEOC). Unlike Title VI, Title VII covers only employment discrimination, and includes employment by every kind of employer, not just recipients of Federal financial assistance. However, Title VII coverage is limited to employers of 15 employees or more. Under Government-wide procedures, OCR refers many employment complaints to EEOC for investigation and potential conciliation.

Also, unlike Title VI, Title VII's coverage includes religion and sex discrimination. Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin in employment. For additional information regarding Title VII, contact your local EEOC office.

NONDISCRIMINATION IN EMPLOYMENT UNDER TITLE IX

Title IX of the Education Amendments of 1972 protects people from discrimination on the basis of sex in employment and employment practices in education programs or activities receiving Federal financial assistance.

The prohibition on discrimination in employment in the ED regulation for Title IX encompasses, but is not limited to, recruitment, advertising, hiring, upgrading, tenure, firing, rates of pay, fringe benefits, leave for pregnancy and childbirth, and participation in employer-sponsored activities. The regulation applies to all employment decisions by ED recipients, whether made directly or indirectly through contractual arrangements with referral agencies, labor unions, organizations providing or administering fringe benefits, or others.

Selected requirements of the regulation are summarized below.

Compensation

Under Title IX, recipients of Federal financial assistance cannot establish or enforce policies that result in unequal compensation to employees on the basis of sex in jobs that require equal skill, effort, and responsibility, and that are performed under similar conditions.

Employment Tests

An employment test that screens out people on the basis of sex may not be used unless the test is shown to validly predict successful performance in the position in question, and alternative tests are shown to be unavailable.

Pre-employment Inquiries

The regulation makes a distinction between inquiries about marital status and inquiries about gender. Marital status inquiries are prohibited. Inquiries about gender are permissible when they are made equally for both sexes and are not used for discriminatory purposes. For example, it is permissible to ask the sex of applicants to develop "applicant flow data" to monitor equal employment opportunity.

Marital or Parental Status

Federal recipients, under Title IX, may not establish or enforce policies concerning the current or potential marital or parental status of employees or applicants. Also, recipients may not differentiate on the basis of sex over whether a person is the head of a household or the principal wage earner in a family.

Title IX requires recipients to treat pregnancy and related conditions the same as other temporary disabilities. This includes the granting of leave, payment of disability income, accrual of seniority, and the provision of other benefits and services. For example, a pregnant woman must be given the same benefits and rights provided a man who temporarily leaves work due to a broken arm. However, if a temporary disability plan does not cover elective procedures, then an institution need not cover, for example, elective surgery.

Title IX neither requires nor prohibits an employer from providing or paying for any benefit or service, including the use of facilities, related to an abortion. The law does not permit a penalty to be imposed on any person because she is seeking or has received any benefit or service related to a legal abortion.

Sex as a Bona-fide Occupational Qualification

Recipients may engage in action otherwise prohibited by Title IX if sex is shown to be a bona-fide occupational qualification for a job. For example, recipients may consider an applicant's sex when hiring for a position in a locker room or toilet facility used only by one sex.

Religious Exemption

Under the Title IX regulation, an institution that is controlled by a religious organization is exempt from those sections of the regulation that are inconsistent with the religious tenets of the organization. Institutions may, under the religious exemption provision, fill certain employment positions on the basis of sex, if this practice is consistent with the tenets of the institution's controlling religious organization. For example, some institutions, recognized by OCR as exempt from certain employment sections of the Title IX regulation, have hired male religious leaders to teach classes training future religious leaders.

NONDISCRIMINATION IN EMPLOYMENT UNDER SECTION 504

The Department of Education Section 504 regulation prohibits discrimination against qualified handicapped persons in all employment-related decisions and actions in federally assisted programs. The prohibition of discrimination in employment in the Section 504 regulation includes, but is not limited to, recruitment, hiring, promotion, award of tenure, layoff and rehiring, rates of pay, fringe benefits, leave, job assignment, training, and participation in employer-sponsored activities.

A qualified handicapped person is any individual with a handicap who, with reasonable accommodation, can perform the essential functions of a job. The employment prohibitions of the Section 504 regulation apply to decisions and actions made

directly by recipients, as well as those made indirectly through contractual arrangements or other relationships with organizations such as employment agencies, labor unions, organizations providing or administering fringe benefits, and organizations providing training and apprenticeship programs.

Under the Section 504 regulation:

- Reasonable accommodation may include making facilities used by employees accessible to and usable by individuals with handicaps, job restructuring, modifying work schedules, acquiring new or modifying existing equipment, or providing a reader for a blind person or an interpreter for a deaf person.
- If a recipient can demonstrate that an accommodation would impose undue hardship on the operation of its program, it is not obligated to provide the accommodation.
- A recipient excused from providing an accommodation may not discriminate against a handicapped applicant or employee who is able and willing to make his or her own arrangements to provide the accommodation.
- Recipients are obligated to make reasonable accommodation only to the known mental and physical limitations of an otherwise qualified handicapped person.

Other selected requirements of the regulation are summarized below.

Employment Tests

Recipients may not use employment tests or criteria that screen out qualified handicapped persons unless the test scores or criteria are shown to be job related, and alternatives are shown to be unavailable. Recipients must select and administer tests to ensure that the results reflect the applicant's or employee's ability, job skills or other factors the test is designed to measure, rather than the person's impaired sensory, manual, or speaking skills, except where those skills are the factors the test is designed to measure.

Pre-employment Inquiries and Medical Examinations

Recipients may not make pre-employment inquiry as to whether an applicant is handicapped, or about the extent of a handicap, unless the recipient is taking remedial action to correct the effects of past discrimination, voluntary action to overcome limited program participation by individuals with handicaps or affirmative employment action under Section 503 of the Rehabilitation Act.¹ In each instance, the recipient must inform

¹ Section 503 requires Federal contractors to take affirmative action to hire, place, and advance qualified handicapped persons.

the applicant of the primary purpose and voluntary nature of the inquiry, and that the information provided will be kept confidential.

Recipients may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions; and, after an employer has made a conditional offer of employment, a medical examination may be required, provided all entering employees are subjected to a medical examination and provided the results are not used in a discriminatory manner.

Alcoholics and Drug Addicts

The term "handicapped person" includes alcoholics and drug addicts when the person's condition substantially limits a major life activity. However, any individual whose current use of alcohol would prevent that person from performing the duties of a job or whose employment would constitute a direct threat to property or the safety of others would not be a "qualified handicapped person" entitled to the protection of Section 504.

The term "handicapped person" also does not include an individual who is currently engaging in illegal use of drugs. However, a person undergoing treatment for drug addiction could, if he or she is no longer using drugs, be considered a "handicapped person."

HOW TO FILE A DISCRIMINATION COMPLAINT WITH OCR

Anyone who believes that an educational institution that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, handicap, or age may file a complaint with OCR. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group.

A complaint must be filed within 180 calendar days of the date of the alleged discrimination, unless the time for filing is extended by OCR for good cause. Prior to filing a complaint with OCR against an institution, a potential complainant may want to find out about the institution's grievance process and use that process to have the complaint resolved. A complainant is not required by law to use the institutional grievance procedure before filing a complaint with OCR. If a complainant uses an institutional grievance process and also chooses to file the complaint with OCR, the complaint must be filed with OCR within 60 days after the last act of the institutional grievance process.

For further assistance in filing a complaint, contact the OCR

regional office that serves the state in which the alleged discrimination occurred. A list of regional offices and states is provided at the end of this pamphlet.

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
REGIONAL CIVIL RIGHTS OFFICES**

**Region I
Connecticut, Maine, Massachusetts,
New Hampshire, Rhode Island,
Vermont**

Office for Civil Rights, Region I
U. S. Department of Education
J. W. McCormack Post Office and
Courthouse, Room 222, 01-0061
Boston, MA 02109-4557
(617) 223-9667 TDD (617) 223-9695

**Region II
New Jersey, New York, Puerto Rico,
Virgin Islands**

Office for Civil Rights, Region II
U. S. Department of Education
75 Park Place, 14th Floor
New York, NY 10007
(212) 264-4633 TDD (212) 264-9464

**Region III
Delaware, District of Columbia,
Maryland, Pennsylvania, Virginia,
West Virginia**

Office for Civil Rights, Region III
U. S. Department of Education
3535 Market Street
Room 6300, 03-2010
Philadelphia, PA 19104-3326
(215) 596-6787; TDD (215) 596-6794

**Region IV
Alabama, Florida, Georgia,
North Carolina, South Carolina,
Tennessee**

Office for Civil Rights, Region IV
U. S. Department of Education
Post Office Box 2048, 04-3010
Atlanta, GA 30301-2048
(404) 331-2954; TDD (404) 331-7236

Region V
Illinois, Indiana, Michigan, Minnesota,
Ohio, Wisconsin

Office for Civil Rights, Region V
U. S. Department of Education
401 South State Street
Room 700C, 05-4010
Chicago, IL 60605-1202
(312) 886-3456; TDD (312) 353-2540
CLEVELAND (216) 522-4970

Region VI
Arkansas, Louisiana, Mississippi,
Oklahoma, Texas

Office for Civil Rights, Region VI
U. S. Department of Education
1200 Main Tower Building
Suite 2260, 06-5010
Dallas, TX 75202-9998
(214) 767-3959; TDD (214) 767-3639

Region VII
Iowa, Kansas, Kentucky, Missouri,
Nebraska

Office for Civil Rights, Region VII
U. S. Department of Education
10220 North Executive Hills Blvd
8th Floor, 07-6010
Kansas City, MO 64153-1367
(816) 880-4202; TDD (816) 374-6461

Region VIII
Arizona, Colorado, Montana,
New Mexico, North Dakota,
South Dakota, Utah, Wyoming

Office for Civil Rights, Region VIII
U S Department of Education
Federal Building, Suite 310, 08-7010
1244 Speer Boulevard
Denver, CO 80204-3582
(303) 844-5695; TDD (303) 844-3417

Region IX
California

Office for Civil Rights, Region IX
U. S. Department of Education
Old Federal Building
50 United Nations Plaza,

Room 239, 09-8010
San Francisco, CA 94102-4102
(415) 556-7000; TDD (415) 556-6806

Region X

**Alaska, Hawaii, Idaho, Nevada, Oregon, Washington, American
Samoa, Guam, Trust Territory of the Pacific Islands**

Office for Civil Rights, Region X
U. S. Department of Education
915 Second Avenue
Room 3310, 10-9010
Seattle, WA 98174-1099
(206) 220-7880; TDD (206) 220-7907

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