

From: Gregory S. Baylor
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Subject: Written Comment: Title IX Public Hearing (Religious Exemption Regulation)

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To Whom It May Concern:

My name is Gregory S. Baylor, and I serve as Director of Alliance Defending Freedom's Center for Religious Schools.

The Center's mission is to defend and advance the religious freedom of faith-based educational institutions. My ADF colleagues and I have represented countless religious schools in religious liberty matters, including many involving Title IX's religious exemption. To illustrate, ADF assisted scores of institutions in obtaining from the Department an assurance of their possession of the exemption following the Department's May 2016 "Dear Colleague" letter summarizing "a school's Title IX obligations regarding transgender students."

All of my clients hold that every individual is created in the image of God and thus has inherent dignity and is entitled to respect. They treat students and employees experiencing gender dysphoria and same-sex attraction with compassion and understanding. They customarily maintain standards of conduct for students and employees that reflect their religious beliefs about marriage, sexual morality, and the distinction between the sexes. Those standards are potentially in conflict with certain understandings of Title IX.

On behalf of our clients, ADF urges the Department to maintain the existing version of its regulation interpreting and applying Title IX's religious exemption, found at 34 C.F.R. § 106.12. The regulation correctly clarifies that an institution need not seek assurance of its possession of the exemption from the Assistant Secretary for Civil Rights. *Id.* at § 106.12(b). It may do so for the first time in response to a Title IX charge. This interpretation is consistent with—indeed, required by—the relevant statutory language.

The regulation also correctly clarifies how a religious institution may establish that it is controlled by a religious organization. *Id.* at § 106.12(c). The regulation embodies the proper understanding of the statutory language. Potential alternative interpretations, under which "independent" or non-denominational schools might be denied the exemption, would raise serious constitutional problems. And there is no defensible policy justification for treating "independent" schools worse than denominationally connected ones.

We appreciate the opportunity to provide input, and thank you for your consideration of our comments.

Gregory S. Baylor



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