



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

January 19, 2021

Very Rev. Malachi Van Tassell, T.O.R., Ph.D., President
Saint Francis University
PO Box 600
Loretto, PA 15940

Dear President Van Tassell:

I write in response to your December 2, 2020 letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested a religious exemption for Saint Francis University (University) of Loretto, Pennsylvania, from certain provisions of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulations. Specifically, the University requests an exemption from Title IX to the extent that any Department of Education interpretation of Title IX "would encompass a prohibition of disparate treatment on the basis of gender identity or gender expression."

Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. Title IX and its implementing regulation at 34 C.F.R. § 106.12(a) provide that Title IX does not apply to an educational institution that is controlled by a religious organization to the extent that the application of Title IX would be inconsistent with the controlling organization's religious tenets. Therefore, such educational institutions may request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law or regulation that conflict with those tenets. The regulation at 34 C.F.R. § 106.12(c) sets forth the information that shall be sufficient to establish that an educational institution is controlled by a religious organization.

Your letter states that the University is a Catholic academic community of higher learning that is dedicated to providing its students with both a liberal arts education and career-oriented studies. You explain in your letter that the University was founded and animated by the Third Order Regular Franciscans. Your letter also explains that one of the distinctive goals of the University is to enable Franciscan values and the Catholic tradition to shape intellectual inquiry and decision-making, both on a personal and institutional level.

The University states that it is controlled by a religious organization. Specifically, the University states that it meets the following standards for demonstrating that it is controlled by a religious organization under 34 CFR § 106.12(c):

- (3) That the educational institution, in its charter or catalog, or other official publication, contains an explicit statement that it is controlled by a religious

organization or an organ thereof, or is committed to the doctrines or practices 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;

* * *

(5) That the educational institution has a published institutional mission that is approved by the governing body of an educational institution and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings; and,

* * *

(6) Other evidence sufficient to establish that an educational institution is controlled by a religious organization, pursuant to 20 U.S.C. 1681(a)(3).

In support of these statements, your letter explains that the University is a passionately Catholic co-educational institution that “follows the example of St. Francis of Assisi in finding its identity at the heart of the Catholic Church.” You also explain your belief that “Saint Francis embraces the teachings of Sacred Scripture, Sacred Tradition, and the Teaching Magisterium of the Catholic Church with a spirit of Christian humanism that relates all learning to Jesus Christ.”

In the University’s letter, the University states that the Department’s interpretation that “discriminating against a person based on their homosexuality or identification as transgender generally involves discrimination on the basis of their biological sex” is “diametrically opposed to Saint Francis University’s Catholic mission and identity and to the tenets of the Catholic Church, including deeply-held Catholic religious teachings and beliefs on human sexuality.”¹ Specifically, your letter states that,

Pursuant to fundamental Catholic theology, each person is a unity of body and soul made in the image and likeness of God. Because of this, man is obliged to regard his body as good and to hold it in honor since God has created it and will raise it up on the last day. Likewise, human beings are created male or female and every person’s body reveals his or her God-given sex/gender. These [tenets] of the Catholic Church are violated by manipulating one’s God-given sex or gender and/or by attempting to identify as the sex or gender opposite to one’s God-given sex/gender.

For the above reasons, the University requests an exemption from the following regulatory provisions to the extent that those provisions are interpreted to prohibit discrimination based on gender identity or gender expression:

- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities); and

¹ Letter of Notification, *In re Shelby County*, OCR Case No. 04-20-1409 (Aug. 31, 2020), <https://www2.ed.gov/about/offices/list/ocr/letters/20200831-letter-of-notification.pdf>. Your request erroneously refers to this document as a Resolution Agreement rather than a Letter of Notification.

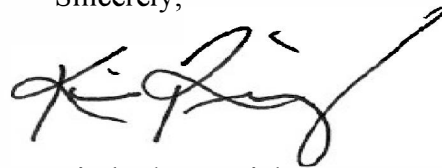
- 34 C.F.R. § 106.41 (governing athletics).

OCR recognizes that the University is exempt from these provisions to the extent that application of these provisions would not be consistent with the religious tenets of the controlling organization. *See* 34 C.F.R. § 106.12(a).

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. 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 recognized.

I hope this letter fully responds to your request. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly M. Richey". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Kimberly M. Richey
Acting Assistant Secretary for Civil Rights