

October 29, 2020

Kimberly Richey  
Acting Assistant Secretary of Education for Civil Rights  
Office of Civil Rights  
U.S. Department of Education  
Lyndon Baines Johnson Department of Education Building  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

Re: University of Mary Request for Title IX Religious Exemption

Dear Ms. Richey:

As President of the University of Mary in Bismarck, North Dakota, I request a religious exemption for the University from Title IX of the Education Amendments of 1972. I submit this request under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, which provide that Title IX “shall not apply to an educational institution which is controlled by a religious organization” to the extent that application would “not be consistent with the religious tenets” of the controlling organization. Specifically, this request is for an exemption from the Department’s regulations at 34 C.F.R. §§ 106.21, 106.22, 106.23, 106.28, 106.29, 106.31, 106.32, 106.33, 106.34, 106.37, 106.40, 106.41, 106.43, 106.51, 106.53, 106.55, 106.56, 106.57, 106.59, 106.60, and 106.61 to the extent they require the University to provide access to housing; comparable facilities such as bathrooms, locker rooms, and showers; athletic programs and other activity sponsored by the University based on an individual’s gender identity rather than their sex as assigned at birth.

### **Religious Control**

The University is a nonprofit Catholic, Benedictine community founded by the Sisters of Annunciation Monastery in Bismarck, based on values central to the *Gospel* and the *Rule of St. Benedict*. All of the University’s programs are infused with Christian, Catholic Benedictine values, and all University employees must commit to uphold and respect the University’s Christian, Catholic and Benedictine identity. This commitment is documented at the time of hire and included in the annual appointments for employment issues each year. In its official publications, the University openly proclaims that it is operated in the Benedictine tradition and that it offers a strong, vibrant community grounded in Christian, Catholic and Benedictine values. Under its bylaws, the University’s Christian, Catholic, and Benedictine identity and mission cannot be altered without approval of the Sisters.

### **Religious Tenets**

Our Sisters are adherents of the Catholic faith, and I am a Catholic priest of the Diocese of Bismarck. The Catholic faith teaches that the basis of morality is found in the natural order established by God. The Old Testament confirms that God created human beings in God’s own image, creating them both male and female (Genesis 1:27). And, like the rest of God’s creation, the sexual differences between male and female are pronounced “very good” (Genesis 1:31). In Catholic teaching, sexual identity is not a social construct but an objective fact rooted in an individual’s bodily nature as female or male. We strive to welcome, respect, appreciate, and love all persons, recognizing the fundamental dignity of each person as created in the image and likeness of God. This is important to us. And while the University readily accepts all individuals with compassion and sensitivity, it cannot encourage individuals to live or act in conflict with Catholic teaching. Furthermore, the Catholic faith clearly teaches that marriage is a life-long covenant between one man and one woman, that husbands and wives have equal dignity with complimentary roles,

and that sexual activity outside of the marriage bond (premarital or extramarital) is wrong. The Catholic faith also prohibits all forms of abortion and contraception.

Enclosed, as supporting documentation, is a *Statement of Inclusion and Human Sexuality*, approved in 2015 by the Executive Committee of the University's governing body, the Board of Trustees.

**Scope of Exemption**

On behalf of the University of Mary community, I assure you that we affirm the dignity of all persons. As Catholics, we are called and commanded to treat all people—including those whose beliefs and behaviors differ from the teachings of the Catholic Church—with charity and respect. We thus remain committed to making institutional decisions regarding admissions, employment, and other matters consistent with our Catholic and Benedictine values, including by continuing to welcome wholeheartedly those whose beliefs may differ from those of the Catholic Church. However, we must affirm and follow the teachings of the Catholic Church and provide an environment where Catholics and other community members who wish to do so are able to live by their Christian, Catholic, Benedictine beliefs and tenets. Therefore, we are not able to make accommodations based on gender identity for housing (34 C.F.R. § 106.32), use of restrooms, locker rooms, and comparable facilities (§ 106.33), participation on athletic teams (§ 106.41), or in other contexts where application of Title IX would not be consistent with the religious tenets of the University.

Thus, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, and based on the religious tenets of the University and its controlling organization, I request an official exemption from those regulations whose application would not be consistent with the University's religious tenets.

Please do not hesitate to contact me if you have any questions or require anything further.

Sincerely,

A handwritten signature in blue ink, reading "Msgr. James P. Shea". The signature is fluid and cursive, with a long horizontal flourish at the end.

Monsignor James P. Shea,  
President, University of Mary

7500 University Drive  
Bismarck, North Dakota 58504  
Tel. (701) 355-8100  
Email: [mgoebel@umary.edu](mailto:mgoebel@umary.edu)

**[Transmitted via Federal Express, via Fax to (202) 453-6012, and via email to [OCR@ed.gov](mailto:OCR@ed.gov).]**

## STATEMENT ON INCLUSION AND HUMAN SEXUALITY

Among the six Benedictine values of the University of Mary is hospitality. In Chapter 53 of the Rule of Saint Benedict, we read these words: “All guests who present themselves are to be received as Christ, for he is going to say, ‘I was a stranger, and you welcomed me.’ (cf. Matthew 25:35)”

As a Christian, Catholic, Benedictine university, we strive to welcome, respect, appreciate, and love all persons, recognizing the fundamental dignity of each person as created in the image and likeness of God. It is part of our mission to model and foster Christian, Catholic, and Benedictine conduct and virtue within our community.

The Catechism of the Catholic Church teaches that persons who experience same-sex attraction or identify as LGBT “must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided.” (¶ 2358) The University of Mary therefore condemns any and all direct or indirect intimidation or harassment of any person in regard to their sexuality. Such behavior is offensive, detestable, and an affront to human dignity. Catholic moral teaching also holds that all persons, whatever their experience of sexuality, are called to lives of chastity in accord with their vocation and their state of life. Neglect or failure to do so is likewise harmful to human dignity.

Because the Church has clearly and consistently taught that the only morally acceptable sexual activity is between a woman and a man within the context of marriage, some may wonder if those who experience same-sex attraction are somehow less deserving of love and respect. They are not.

The University of Mary upholds this twofold teaching with clarity and compassion. However, clarity is not to be confused with or result in actions that exclude, demean, or renounce anyone. Nor is compassion to be confused with or result in actions that endorse or excuse morally wrong behavior or activities.

We recognize that our approach may be in conflict with the practice or vision of the larger culture, as Christian beliefs have been in other times and places. We assert as fundamental to our mission the right to uphold Catholic teaching and administer according to it. We recognize that within our community there are individuals who identify as LGBT, and they are deeply valued. We grieve for any in the history of Mary College or the University of Mary who have been treated hurtfully. And because every one of our lives hold experiences of isolation, brokenness, and seeking, we renew our resolve to foster a healthy and life-giving experience of community for students, faculty, and staff, rooted in loving concern for one another.

Finally, as a university, we encourage the vigorous pursuit of truth and the free exchange of ideas; we further encourage members of our community to engage this issue with civility and mutual respect.

### Approved

*13 August 2015 by the Board of Trustees (EC)*