



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

December 7, 2020

Monsignor James P. Shea
President
University of Mary
7500 University Drive
Bismarck, ND 58504

Dear Monsignor Shea:

I write in response to your October 29, 2020, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested assurance of a religious exemption for the University of Mary (University), in North Dakota, from Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681.

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. *See* 34 C.F.R. § 106.12(b). 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. 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 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. You stated that "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." Your letter also states that the University requires "all University employees [to] commit to uphold and respect the University's Christian, Catholic and Benedictine identity," and that "[t]his commitment is documented at the time of hire and included in the annual appointments for employment issues each year." In addition, your letter states that "[i]n 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." Finally, your letter explains that pursuant to the University's bylaws, "[its] Christian, Catholic, and Benedictine identity and mission cannot be altered without approval of the Sisters."

Your letter claims exemption from certain provisions of Title IX and its implementing regulations "to 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."

In support of this request your letter provided two religious tenets that are set forth in the University's statement of faith. These include the following beliefs: "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)." Your letter further states that "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...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." Finally, your letter states that "[t]he Catholic faith also prohibits all forms of abortion and contraception."

Your letter states that, for the above reasons, the University is requesting an exemption from the following regulatory provisions to the extent that they are interpreted to conflict with the University's position on gender identity:

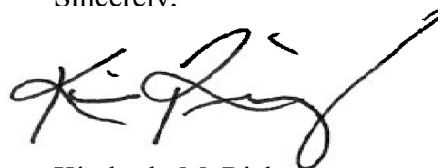
- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.22 (governing preference in admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31 (governing education programs or activities);
- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities);
- 34 C.F.R. § 106.34 (governing access to classes and schools);
- 34 C.F.R. § 106.37 (governing financial assistance);
- 34 C.F.R. § 106.40 (governing marital or parental status);
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.43 (governing standards for measuring skill or progress in physical education classes); and
- 34 C.F.R. §§ 106.51-61 (governing employment).¹

OCR recognizes that the University is exempt from these provisions to the extent that compliance 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 University, 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,



Kimberly M. Richey
Acting Assistant Secretary for Civil Rights

¹ The University also sought an exemption from 34 C.F.R. §§ 106.28 and 106.29. However, those sections do not currently exist.