



March 3, 2014

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

Re: St. Gregory's University's Request for Title IX Religious Exemption

Dear Ms. Lhamon:

I hereby request, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, that the Department of Education's Office for Civil Rights acknowledge that St. Gregory's University is exempt from Title IX of the Education Amendments of 1972 and its accompanying regulations, to the extent that they are interpreted to curtail the University's freedom to respond to transgender individuals in accordance with its religious convictions. As President of the University, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and thus qualified to seek these exemptions.

St. Gregory's University is a Catholic and Benedictine learning community committed to developing each student in mind, faith and character for a lifetime of meaningful work and service in a constantly changing world. Our identity as a Catholic institution is central to all that we do and teach at St. Gregory's.

In union with the teaching of the Catholic Church, St. Gregory's University holds that each person is a precious human being made in God's image and likeness, with a body and a soul. This dignity God bestowed upon our first parents as man and woman, as revealed in the Book of Genesis: "God created man in his image; / in the divine image he created him; / male and female he created them" (1:27).

As a Catholic institution, St. Gregory's University further maintains that the human person consists of a unity between body and soul or spirit. This biblical-based and long-held doctrine is reiterated in the *Catechism of the Catholic Church*, which serves as a compendium of official Catholic teaching. Paragraph 365 of the *Catechism* reads: "The unity of soul and body is so profound that one has to consider the soul to be the 'form' of the body; *i.e.*, it is because of its spiritual soul that the body made of matter becomes a living, human body; spirit and matter, in man, are not two natures united, but rather their union forms a single nature" (365).

The integration of soul and body in the human person described above is manifested in the divinely ordered genders of male and female, both of which share in equal dignity. The *Catechism*, echoing the Book of Genesis, emphasizes this: "Man and woman have been *created*, which is to say, willed by God: on the one hand, in perfect equality as human persons; on the other, in their respective beings as man and woman. 'Being man' or 'being woman' is a reality

which is good and willed by God: man and woman possess an inalienable dignity which comes to them immediately from God their Creator” (369).

Thus Catholic religious belief holds that human gender identity is established and ordered by God as a unity between soul and body and that it is manifested as male and female. The Catholic faith further teaches that human sexual identity is not determined by subjective individual choice but by objective divine design, and that persons are and remain members of the sex into which they physically were born. The policies of St. Gregory’s University as a Catholic institution reflect the above stated religious beliefs.¹

As you know, the Office for Civil Rights has not issued regulations or guidance explaining how an educational institution’s response to a transgender individual might violate Title IX and its accompanying regulations, though the Department of Education recently issued guidance on sexual violence prevention which incorporates discrimination based on “gender identity” as part of “sex discrimination” under the statute.² And as you also know, the resolution agreement³ between the Arcadia Unified School District and ED OCR (and the Department of Justice) requires that school district to permit transgender students to use the restroom, locker room, and living accommodations of their choice, and to participate in athletic programs as a member of the sex to which they believe they belong.⁴ It is thus reasonable to suppose that ED OCR believes that such responses are required by Title IX. It also reasonable to presume that your office interprets Title IX to impose gender identity non-discrimination obligations upon covered institutions in the employment context. To the extent these suppositions are correct, it appears as though compliance with Title IX, as interpreted by ED OCR to reach transgender “discrimination,” would be inconsistent with the religious tenets of St. Gregory’s.

However, under 20 U.S.C. §1681(a)(3) and 34 C.F.R. §106.12(a), this interpretation does not apply to St. Gregory’s: “This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.” Since the University is owned by the St. Gregory’s Abbey, a community of Catholic Benedictine monks, and since the University adheres to the tenets of Catholic faith and practice as required by *Ex Corde Ecclesiae – The Constitution for Catholic Universities*, St. Gregory’s University qualifies for this exemption.

St. Gregory’s University accordingly requests that your office acknowledge that it is exempt from Title IX and the following implementing regulations (to the extent they are interpreted to reach gender identity discrimination):

¹ See University Policy Regarding Human Sexuality, Gender Equity and Sexual Activity (enclosed).

² U.S. Department of Education, Questions and Answers on Title IX and Sexual Violence, *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> at 5 (“Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation.”)

³ Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division, *available at* http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf.

⁴ *Id.*

- 34 C.F.R. § 106.21 (admission)
- 34 C.F.R. § 106.22 (preference in admission)
- 34 C.F.R. § 106.23 (recruitment)
- 34 C.F.R. § 106.31 (education programs or activities)
- 34 C.F.R. § 106.32 (housing)
- 34 C.F.R. § 106.33 (comparable facilities)
- 34 C.F.R. § 106.34 (access to classes and schools)
- 34 C.F.R. § 106.36 (counseling)
- 34 C.F.R. § 106.37 (financial assistance)
- 34 C.F.R. § 106.38 (employment assistance to students)
- 34 C.F.R. § 106.39 (health and insurance benefits and services)
- 34 C.F.R. § 106.40 (marital or parental status)
- 34 C.F.R. § 106.41 (athletics) –
- 34 C.F.R. § 106.43 (standards for measuring skill or progress in physical education classes)
- 34 C.F.R. § 106.51-61 (relating to employment)

If you require anything further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Gregory Main". The signature is fluid and cursive, with a prominent initial "D" and a trailing flourish.

D. Gregory Main
President