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August 27, 2014

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

Re: Request for Title IX Exemption Pursuant to 34 C.F.R. 106.12

Dear Assistant Secretary Lhamon:

On behalf of Franciscan University of Steubenville ("Franciscan University"), I am writing pursuant to 34 C.F.R. § 106.12 to request an exemption for Franciscan University from certain aspects of Title IX of the Education Amendments of 1972, specifically from the Department of Education's interpretation of Title IX to encompass a prohibition of differential treatment on the basis of sexual orientation and gender expression, as more fully discussed below.

Franciscan University is a private institution of higher education located in Steubenville, Ohio which is owned and controlled by a religious organization of the Catholic faith, i.e. the Franciscan Friars of the Most Sacred Heart of Jesus, T.O.R. ("Franciscan Friars"). The Franciscan Friars founded Franciscan University in 1946.

Franciscan University is a passionately Catholic co-educational institution of higher education which follows the example of St. Francis of Assisi in finding its identity at the heart of the Catholic Church. Franciscan University 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.

As you know, Title IX of the Education Amendments of 1972 ("Title IX") prohibits "sex" discrimination in federally-funded educational programs. Title IX, as written, does not prohibit discrimination on the basis of sexual orientation or gender expression. Rather, the language of Title IX provides in part that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any educational program or activities."

29 U.S.C. Section 1681(a) (emphasis added)

One year, two years, three years

Request for Title IX Exemption Pursuant to 34 C.F.R. 106.12

The Arcadia Unified School District Case

On July 24, 2013, the Office for Civil Rights of the United States Department of Education (“OCR”) along with the Department of Justice (“DOJ”) issued a Letter and entered into a Resolution Agreement with a public school district in California (Arcadia Unified School District) in connection with a claim that the school district was discriminating against a middle school student based on sex by denying the student equal access to the school district’s education programs and activities because the student is transgender. More specifically, the complaint alleged that the school district prohibited the student (who was born female) from accessing facilities consistent with the student’s male gender identity, including restrooms and locker rooms at school, as well as sex-specific overnight accommodations at a school-sponsored trip to an off-site academic camp.

In the July 24, 2013 Letter accompanying the Resolution Agreement, OCR and DOJ stated that transgender students are protected from sex-based discrimination under Title IX. The Letter also stated that a gender transition is the experience by which a transgender person goes from living and identifying as one’s “assigned” sex to living and identifying as the sex consistent with one’s gender identity.

The Resolution Agreement in the *Arcadia* case explicitly states that “gender-based discrimination is a form of sex discrimination [under Title IX] and refers to differential treatment or harassment of a student based on the student’s sex, including *gender identity, gender expression, and nonconformity with gender stereotypes*, that results in the denial or limitation of education services, benefits, or opportunities.” (Emphasis added.)

The definitions in the Resolution Agreement in the *Arcadia* case also include, among others, the following:

“Sex assigned at birth” and “assigned sex” refer to the gender designation listed on one’s original birth certificate.

“Gender identity” refers to one’s internal sense of gender, which may be different from one’s assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student’s core identity.

“Transgender” describes an individual whose gender identity is different from the individual’s assigned sex. “Transgender boy” and “transgender male” refer to an individual assigned the female sex at birth who has a male gender identity. An individual can express or assert a transgender gender identity in a variety of ways, which may but do not always include specific medical treatments or procedures. Medical treatments or procedures are not considered a prerequisite for one’s recognition as transgender. For purposes of this Agreement, a “transgender student” is a student who consistently and uniformly asserts a gender identity different

from the student's assigned sex, or for which there is documented legal or medical evidence that the gender identity is sincerely held as part of the student's core identity.

"Gender transition" refers to the experience by which a transgender person goes from living and identifying as one's assigned sex to living and identifying as the sex consistent with one's gender identity. A gender transition often includes a "social transition," during which an individual begins to live and identify as the sex consistent with the individual's gender identity, with or without certain medical treatments or procedures.

Conflict with Franciscan's Catholic Mission and Identity

The interpretation of Title IX embodied in the *Arcadia School District* Letter and Resolution Agreement is diametrically opposed to Franciscan University's Catholic mission and identity and to the tenets of the Catholic Church, including deeply-held Catholic religious beliefs on human sexuality.

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, pursuant to Catholic theology, 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.

Requiring Franciscan University to comply with the doctrine embodied in the *Arcadia* Letter and Resolution Agreement would be contrary to and inconsistent with these fundamental tenets of the Catholic Church. It would also infringe Franciscan's right to carry out its religious mission and severely impair Franciscan's ability to express its distinctly Catholic message on human sexuality.

Franciscan, therefore, respectfully seeks an exemption from Title IX to the extent Title IX is interpreted as embodied by the *Arcadia* Letter and Resolution Agreement discussed above. If you should have any questions or need any further information in order to process this request for an exemption on behalf of Franciscan University of Steubenville, please do not hesitate to contact me. Thank you.

In Christ and St. Francis,



Fr. Sean O. Sheridan, TOR
President