

August 25, 2015

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: Request for Religious Exemption from Certain Applications of Title IX

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 John Paul the Great Catholic University (JPCatholic) 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 individuals in accordance with its religious convictions. As President of JPCatholic, I am the "highest ranking official of the institution," 34 C.F.R. § 106.12(b), and am thus qualified to seek these exemptions.

JPCatholic is a non-profit institution of higher education with its main campus in Escondido, California. John Paul the Great Catholic University was founded in 2003 as a visionary teaching institution focused on molding students into future media innovators and leaders who have a deep, personal knowledge of Jesus Christ.¹ JPCatholic is a university that is dedicated both to creativity, leadership, and entrepreneurship and to being faithfully Catholic – living the Gospel of Jesus.²

JPCatholic has a truly Catholic identity rooted in the purpose of proclaiming the Gospel, overcoming every separation between faith and life, and being a witness to the world on the Church's teaching on the sanctity of human life, marriage, family, and the right ordering of public life.³ The University exists to impact culture for Christ by forming students as creators and innovators in the intersections of media, business, and theology.⁴ This purpose is accomplished through senior, seasoned faculty teaching degree programs in communications media, business, and theology on the frontiers of applied learning.

¹ See <http://www.jpccatholic.com/about/about.php>.

² *Id.*

³ See <http://www.jpccatholic.com/about/cathu.php>.

⁴ See <http://www.jpccatholic.com/about/vision.php>.

JPCatholic's educational philosophy is grounded in the Catholic Church's teachings, sacred traditions, and Scripture.⁵ Every faculty member commits to harmony with Catholic Church teachings in speech and action, and the University expects all trustees, faculty, and staff to "celebrate the positive spiritual and entrepreneurial components of its mission and to eschew betraying or obstructing what the institution is striving to build."⁶

JPCatholic's vision is as follows: "[t]o graduate innovative and determined students who know and love Jesus, and boldly proclaim His Gospel in culture impacting fields."⁷ It articulates its mission as follows: JPCatholic's mission is "[t]o impact culture for Christ by forming students as creators and innovators, leaders and entrepreneurs at the intersections of media, business and theology, guided by the teachings of Jesus Christ as preserved by His Catholic Church."⁸

JPCatholic is founded on three core values that help shape University's mission and vision, which are stated, in relevant part below. JPCatholic strives to:

- **Put into action in our lives the teachings of Jesus Christ, being faithful to his word.** The Catholic commitment at JPCatholic is organically embedded in a total, active, and joyous life of faith. It aspires to dynamically develop the student's personal knowledge of and relationship with God through an ongoing and active prayer life, both personal and communal, and a thorough knowledge of scripture, thus leading to an active living of God's commandments.
- **Develop all students and staff spiritually, personally and intellectually.** JPCatholic recognizes that the student's vocation is intellectual development with the ultimate purpose of becoming a mature, productive, creative, and responsible citizen.
- **Put into practice within the university what we teach, by being innovative with our curriculum development, pioneering in our educational niche, and entrepreneurial in defining our future.** JPCatholic provides an education that emphasizes the integration of theory with practice, enhances the professional competence and ethical judgment of the student, and has a particular focus on innovation and entrepreneurship. JPCatholic, in its internal business processes and procedure, practices the very principles it teaches.⁹

On May 15, 2015, JPCatholic adopted a policy on human sexuality (enclosed). It reads in pertinent part as follows:

In accordance with the teachings of Jesus Christ as preserved by His Catholic Church, the JPCatholic community believes that God created all humans - male and female in His image and likeness and with equal

⁵ See <http://www.jpcatholic.com/about/fidelity.php>.

⁶ See <http://www.jpcatholic.com/about/fidelity.php>.

⁷ See <http://www.jpcatholic.com/about/vision.php>.

⁸ *Id.*

⁹ *Id.*

dignity, and that due to sin and human brokenness, our experience of our sex and gender is not always as God designed. In hope, we affirm God's capacity to heal and transform our brokenness. The JPCatholic policy on gender identity affirms that one's gender identity is based upon one's biological sex as defined by natural law, a naturally knowable and universally binding law of right and wrong, and holds firmly that any tension between one's biological sex and experience of gender identity should not be resolved through medical intervention or adoption of dress or practices of the opposite biological sex. Gender confusion, although not a new experience, is a human confusion in need of God's healing. Any policy in opposition to and betraying our mission and the teachings of the Catholic Church would harm the JPCatholic community. When individuals have questions about their gender identity, they are encouraged to approach any Priest on campus or in local parishes.¹⁰

All institutional decisions are made consistent with institutional policies, including this policy, and include student admissions and retention, housing, employment hiring and retention and all other matters.

In the employment context, both applicants and existing faculty are required to affirm their commitment to live in harmony with JPCatholic's fidelity to the Catholic Church's teachings in speech and action.¹¹

As you know, the Office for Civil Rights (OCR) 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.¹² And as you also know, the resolution agreement¹³ between the Arcadia Unified School District and OCR (and the Department of Justice) requires the 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 their chosen sex.¹⁴

It is thus reasonable to suppose that OCR believes that Title IX requires such responses. It is also reasonable to presume that OCR interprets Title IX to impose gender identity non-discrimination obligations upon covered institutions in the employment context. To the extent

¹⁰ See John Paul the Great Catholic University Policy on Human Sexuality at 1-2.

¹¹ See <http://www.jp catholic.com/about/fidelity.php>.

¹² 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.")

¹³ 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.

¹⁴ *Id.*

these suppositions are correct, it appears as though compliance with Title IX, as interpreted by OCR to reach transgender “discrimination,” would be inconsistent with the religious tenets of JPCatholic.

For that reason, I request, under 20 U.S.C. § 1681(a)(3) and 34 C.F.R. § 106.12, that OCR acknowledge that JPCatholic 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 JPCatholic’s freedom to respond to transgender individuals in accordance with its theologically-grounded convictions.

Additionally, JPCatholic affirms the following with respect to marriage and sexual conduct:

In accordance with the teachings of Jesus Christ as preserved by His Catholic Church, the JPCatholic community believes that marriage is between one man and one woman for life. Chastity is required of all individuals not joined in a sacramental marriage between one man and one woman. When individuals have questions about their sexual orientation, they are encouraged to approach any Priest on campus or in local parishes.¹⁵

As you are aware, the EEOC has begun openly declaring that the ban on “sex” discrimination in Title VII of the Civil Rights Act of 1964 also forbids sexual orientation discrimination.¹⁶ It is conceivable that OCR could interpret Title IX of the Education Amendments of 1972 the same way. To the extent these suppositions are correct, it appears as though compliance with Title IX, if interpreted by OCR to reach sexual orientation “discrimination,” would also be inconsistent with the theological commitment of JPCatholic. JPCatholic, therefore, also seeks exemption on this basis out of an abundance of caution.

Lastly, JPCatholic affirms Catholic teachings on the sanctity of life as articulated in the Catechism of the Catholic Church. Consistent with these teachings, JPCatholic’s Policy on Human Sexuality provides the following summary of our beliefs regarding the sanctity of human life:

In accordance with the teachings of Jesus Christ as preserved by His Catholic Church, the JPCatholic community acknowledges God’s call to love all persons in the context of God’s revealed truth, and is committed to being a community that values human dignity. In agreement with the Catechism of the Catholic Church, we affirm that “human life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person – among which is the inviolable right of every innocent being to life” (Catechism of the Catholic Church 2270). Those who have had an abortion, aided in an abortion or used

¹⁵ See Policy on Human Sexuality at 2.

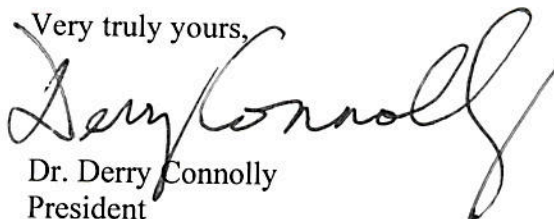
¹⁶ See http://www.macon.com/2015/03/30/3668458_eec-issues-determination-letter.html?rh=1.

contraceptive devices, all of which are grave offenses, are encouraged to obtain forgiveness and be reconciled with God and the Catholic Church through the Sacrament of Reconciliation which is readily available on and off-campus.¹⁷

JPCatholic accordingly requests that your office acknowledge that the University is exempt from Title IX and the following implementing regulations (to the extent they are interpreted to reach gender identity or sexual orientation discrimination, and to the extent they restrict JPCatholic's freedom to apply and enforce its Policy on Human Sexuality):

- 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)

Thank you in advance for your consideration. I look forward to hearing from you soon. If you require anything further, please do not hesitate to contact me.

Very truly yours,

Dr. Derry Connolly
President
John Paul the Great Catholic University

¹⁷ See Policy on Human Sexuality at 1.