

OUR CATHOLIC MISSION

TRUTH AND FIDELITY IN CATHOLIC EDUCATION

WINTER 2023

PROTECTING RELIGIOUS FREEDOM

UNDERSTANDING THE
MINISTERIAL EXCEPTION

FIVE DEFENSES FOR
CATHOLIC EDUCATION

CATHOLIC STUDENT
POLICIES PROTECT
STUDENTS, EDUCATORS



Be Prepared

Most Catholic school administrators intuitively know that accepting federal funds usually comes with federal strings attached. In fact, I was recently told that even the classification as a religious non-profit is somehow an admission of receiving federal assistance! Therefore, Catholic school administrators and board personnel must understand how executive orders, public policies, and court rulings might affect their school's religious freedom. To that end, The Cardinal Newman Society offers numerous resources including our latest three-part webinar series on *Protecting Religious Freedom in Catholic Education*.

From this webinar series, we heard from legal experts on the front lines of today's legal battles about the multiple exceptions and exemptions Catholic schools can use to protect themselves from potential lawsuits.

The one that garners the most attention today is the ministerial exception. This exception says that if an employee is entrusted with religious functions, then the government cannot interfere with the

organization's employment policies and decisions. However, this is just one of the defenses and should not be considered a blanket defense for all cases. First Amendment protections, including the free exercise of religion and freedom of association, Church autonomy, the Religious Freedom Restoration Act, Title VII, and Title IX were other exemptions offered.

There are additional proactive measures a school can take. Having well-constructed and articulated foundational docu-

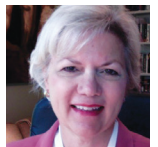
ments that express the religious nature of your school and how that religious nature is essential to the formation of school policies, operations, instructional practices, curriculum, and hiring, will also help protect you.

And finally, with the growing number of students identifying as transgender, it's important to have a student policy indicating how the school will respond should a student struggling with gender identity and its accompanying psychological and emotional confusion self-identify.

These are trying times for Catholic education, so please equip yourself with the resources we offer. Simply scan the QR code to see our valuable resource listing or feel free to email me.

Blessings!

DENISE DONOHUE, ED.D.,
vice president for educator resources
at The Cardinal Newman Society.
ddonohue@
cardinalnewmansociety.org



The following content is not to be regarded as legal advice. Catholic education leaders should consult their attorneys to ensure the best legal protection. We highly recommend the *pro bono* work of Alliance Defending Freedom, which helps educators prevent and fight lawsuits, and the Becket Fund for litigation. There are also firms that specialize in religious freedom issues: two that we have worked with and recommend are Cross Castle PLLC., and Eric Kniffin, a legal advisor to The Cardinal Newman Society.

Viva Cristo Rey

We Catholics often blame media and government for attacks on our morals and religious freedom. These threats are real. But can we also admit that our own weaknesses only heighten the danger?

If we take an honest look at the last 50 years, it's clear that infidelity and our failure to evangelize courageously have severely weakened the Catholic Church's influence in America. We've accommodated a sliding secular culture.

Meanwhile, Catholic elementary education has declined by more than two-thirds. That's not the result of persecution, as in the Soviet Union. *We did this.* And now we must defend what remains and rebuild.

The immediate response to today's growing threats to faithful Catholic education is vigorous assertion of our natural and First Amendment rights to religious freedom. Not only is it right to ensure clear and consistent Catholic policies in our schools and colleges, but religious freedom is winning in the courts.

Yet that response alone is too defensive. The larger solution to our troubles is—as it has always been—evangelization and conversion of our culture. And the best tool for evangelization is the very same institution that is under attack: Catholic education.

“IF WE COMPROMISE CATHOLIC EDUCATION, WE ABANDON CATHOLIC FAMILIES TO SECULAR CULTURE.”



It's frightening to think that today's generation of public-school students will one day take this nation even further down the road it is traveling today. They are taught that gender ideology is truth, abortion is a civil right, and marriage and family are anathema. They don't know how to reason well, and they aren't taught moral virtue.

Forming Catholic young people for truly human living and sainthood is as necessary as it ever was. Defending Catholic education preserves the Church's most important means of forming new

generations to know and love Christ.

But if we compromise Catholic education, we abandon Catholic families to secular culture. We surrender the very mission of the Church to evangelize the nations and bring them to salvation.

The Cardinal Newman Society stands with you in this fight to defend faithful Catholic education, as we have for three decades. We offer more resources for Catholic educators than at any other time, and more are coming. This is a fight we cannot lose.

OCM

PATRICK REILLY
is president and founder of
The Cardinal Newman Society.



Understanding the Ministerial Exception

Will the ministerial exception help protect your Catholic school or college?

Short answer: It depends on you.

Ever since the Supreme Court's rulings in *Hosanna-Tabor* (2012) and *Our Lady of Guadalupe School* (2020), the term “ministerial exception” has become common parlance for Catholic educators. But there is much about the exception that is misunderstood and remains undetermined. Benefitting from this powerful legal protection requires some effort to understand its intricacies.

One thing is certain: the ministerial exception depends on an employee's real and documented religious duties. When such duties are not obvious to a secular court—as they might otherwise be in the case of a priest, nun, or religious teacher—the determination of an employee's “ministerial” status may hinge on how clearly and convincingly an employer has defined a position and the strength of the institution's overall religious identity.

Powerful protection, limited scope

The ministerial exception is not found in any law or regulation.

It is a legal principle derived from the First Amendment's Free Exercise Clause, which bars government interference in religion. It also follows from the Establishment Clause, which forbids government to select religious leaders or set the criteria for their selection. Therefore, if an employee of a church or religious organization is deemed “ministerial” and sues for employment discrimination, a federal court will simply refuse to hear the case rather than risk unconstitutional entanglement with religion.

According to the Supreme Court in *Hosanna-Tabor*, federal courts must “ensure



that the authority to select and control who will minister to the faithful—a matter strictly ecclesiastical—is the church’s alone.” This is at the heart of America’s “first liberty,” the freedom of religion.

Although the ministerial exception clearly applies to clergy and women religious, in 2020 the Supreme Court affirmed that a Catholic school religion teacher is also a “minister” of the Catholic Church for legal purposes, because teaching the Catholic faith is a sacred duty. The Court considered a number of factors—job title, job description, religious activities, job qualifications, training—none of which, it said, is determinant in itself. Since then, other federal court rulings have applied the ministerial exception to bar claims by school leaders and guidance counselors as well as parish employees.

The ministerial exception is powerful, because it can protect Catholic schools and colleges from lawsuits over abortion, “gender identity,” or “sexual orientation.” It not only protects employers, but it also avoids the cost and publicity of a trial.

It is not, however, a perfect shield for Catholic education. Many legal experts doubt that it applies to every employee, such as support and maintenance staff, but it depends on their religious duties. If even a small portion of employees are not covered by the exception, then a Catholic school or college still needs clear and consistent policies that explain the institution’s religious obligations and help employees understand expectations, so that the institution can avoid lawsuits and claim other religious protections when a suit goes to court.

The ministerial exception also causes a serious dilemma for Catholic education: it leaves ministerial employees without any recourse to the courts in cases of discrimination based on race, sex, age, etc. A very important task for Catholic dioceses, schools, and colleges will be to

ensure fair solutions for employees, such as arbitration—but the arbiter must be familiar with and fully devoted to protecting the mission of Catholic education and upholding Catholic teaching.

Looking for answers

There are still many questions about the ministerial exception that remain unresolved by federal courts, such as:

- Does the exception prevent lawsuits related to all employment issues—hostile workplace, employee benefits, wage and hour policies—or only related to hiring and firing?
- What duties, other than teaching religion, qualify someone as a minister—and what portion of an employee’s job must be devoted to religious activity?
- Does the exception apply only to religion teachers or also to other teachers who are required to integrate the Catholic faith into their courses?
- Does the ministerial exception apply equally to higher education as to elementary and secondary education?
- Does the exception apply to support staff, if they are assigned religious duties and are selected according to religious criteria?

“THE MINISTERIAL EXCEPTION DEPENDS ON AN EMPLOYEE’S REAL AND DOCUMENTED RELIGIOUS DUTIES.”

Until these questions are answered, it will be important for Catholic schools and colleges to fight for every inch of protection under the ministerial exception. It would be dangerous to assume the ex-

ception’s broad scope until courts have affirmed it, but it would also be self-defeating to accept a narrow reading of the First Amendment.

Meanwhile, even outside these legal considerations, there is a lack of consistency among Catholic educators about the moral and religious responsibilities of teachers and other employees in service

to the mission of Catholic education. To help address this concern, The Cardinal Newman Society has just released *Policy Standards on Moral Expectations of Employees in Catholic Education*, our new recommended standards for employee policies in Catholic schools and colleges.

Recommended practices

To increase the likelihood that courts will apply the ministerial exception to certain school or college employees, consider doing the following:

- Clearly tie employee duties to the Catholic mission of the school or college—not only the formation of students but also evangelization—and to any Church source or document that indicates the ministerial basis for the position.
- Ensure that job descriptions, employee contracts, performance reviews, etc. clearly identify religious duties associated with each employment position.
- Indicate ministerial status in employee titles when possible.
- Job qualifications and training should reflect the ministerial importance and nature of the position.
- Clearly communicate religious duties on job applications, during interviews, and in hiring communications.
- Promote and support ministerial activity through continuing education and training with emphasis on the Catholic mission of the school or college and employees’ religious duties.

These recommendations are drawn from The Cardinal Newman Society’s work with legal experts and our own study of the issue, but we are not legal professionals. Employers should not act without the counsel of an attorney who is familiar with First Amendment law.

OCM

PATRICK REILLY
is president and founder of
The Cardinal Newman Society.



“ This goes back to the beginning of Common Core and a number of conversations I had with Denise Donohue where I was observing that we didn’t have a solid Catholic alternative.

I challenged The Cardinal Newman Society to help provide Superintendents with resources and they have responded spectacularly.”

Fr. John Belmonte

Superintendent,
Diocese of Venice, FL



**THE CARDINAL
NEWMAN SOCIETY**
Promoting and Defending Faithful Catholic Education

CardinalNewmanSociety.org

Foundational Documents as Foundational Defense

All well-run organizations create a mission statement early in their formation to clearly articulate their purpose, means, and goals. Most don't realize that this important phase of creating the foundational documents—documents of incorporation, bylaws, vision, mission, and philosophy—can play a critical role should a school experience litigation, especially if it's a religious school or institution attempting to use their religious standing as their primary defense.

Creating ironclad, legal documents from the start is a good practice, but it's important for the school's Board to annually review, edit, and approve these documents, especially when legal rulings involving personnel in religious schools arise or when the school's religious standing may become compromised through receipt of federal or state funds.

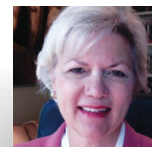
Courts rely on the educational institution's public presentation and its explanation of the necessity of its religious practices as foundational to their school policies when determining religious status.

The school's Articles of Incorporation and bylaws should reference its religious *affiliation* and *evangelistic and religious* character and how these are important to the school's educational outcomes. Reference can be made indicating the school operates under the auspices of the local Ordinary or, if not formally recognized as "Catholic," how it operates under the dictates of the tenets and practices of the Catholic faith. Reference in both cases to Church documents, such as the *Code of Canon Law*, the *Catechism of the Catholic Church*, *Ex Corde Ecclesiae*, and magisterial documents on education strengthen the school's religious position.

Job descriptions and requirements of Board members described in the school's by-laws should require adherence to the teaching and moral expectations of the Catholic Church in the same vein that employees of the school are to adhere to the teaching and moral expectations described for them in employee handbooks, witness statements, pre-employment and employment applications, and other contractual agreements.

Schools might consider the creation of a Statement of Faith to bolster their religious standing. These statements should include the school's theological foundation, the source for that foundation, and how this foundation directs the hiring, behavior, and practices of individuals within the school. It should also show how it affects the school's daily operations, culture, and standards for living and working at the school; how it directs the faculty in creating, maintaining, and protecting the religious purpose and mission; and how it directs the selection of instructional practices and programs. This Statement of Faith should also include reference to areas of contemporary controversy involving human sexuality issues and the repercussions for teaching, belief, and behavior in opposition to Church teaching. **OCM**

DENISE DONOHUE, ED.D.,
vice president for educator resources
at The Cardinal Newman Society.
ddonohue@cardinalnewmansociety.org





Five Defenses for Catholic Education

YOU'RE GOING TO COURT—
IT'S ALMOST INEVITABLE.

Hopefully, your Catholic school or college has done all it can to protect itself from legal threats. It has adopted clear and consistent policies and employment resources, explaining its devotion and obligations to your Catholic mission. It's done its best to avoid misunderstandings and head off lawsuits by students and employees.

But in today's secular and often hostile culture—in which even many Catholics seem confused about topics like abortion, contraception, marriage, sexuality, and gender—discrimination lawsuits are bound to happen. And their frequency is likely to increase in the coming years.

So how does Catholic education defend itself in court?

During The Cardinal Newman Society's recent three-part webinar series, *Protecting Religious Freedom in Catholic Education*, Luke Goodrich, a vice president and senior counsel at Becket Law, shared five key legal defenses available to Catholic educators. None is sufficient in itself, but together they offer powerful protection.

1. MINISTERIAL EXCEPTION

According to Goodrich, the ministerial exception bars federal courts from interfering in a church's choice of its ministers. Under the First Amendment to the U.S. Constitution, the government has no business telling a religious organization who's going to fill a "ministerial" role, including teaching the Catholic faith. If an employee of a Catholic school or college has substantial religious functions, the institution may be shielded from

that employee's discrimination lawsuit, according to the U.S. Supreme Court's rulings in *Our Lady of Guadalupe School vs. Morrissey-Berru* (2020) and *Hosanna-Tabor Evangelical Lutheran Church and School vs. EEOC* (2012). This likely does not apply to every employee.

2. TITLE VII RELIGIOUS EXEMPTION

Many employee lawsuits are filed under Title VII of the federal Civil Rights Act, which prohibits employment discrimination based on race, color, religion, sex, or national origin. Religious employers, however, are generally exempted from Title VII when they make employment decisions based on religion.

This is especially important following the U.S. Supreme Court ruling in *Bostock v. Clayton County* (2020), which re-

defined sex discrimination to include biases against “sexual orientation” and “gender identity.” To better qualify for the Title VII religious exemption, Catholic schools and colleges should give clear mission-centered reasons for their employment decisions—such as the necessity of ensuring faithful Catholic instruction and formation, a teacher’s willingness to teach Catholic doctrine regarding marriage and sexuality, and the importance of witnessing to Catholic moral teaching—without expressing personal approval or disapproval of an employee’s sexual or gender preferences and behaviors.

Title IX, the federal law that prohibits sex discrimination in schools and colleges that receive federal funds, also is being interpreted by the Biden administration to include “sexual orientation” and “gender identity.” But Title IX has an exemption that applies broadly to religious institutions. To defend against the Administration’s threats and lawsuits regarding athletics, restrooms, employment, and more, Catholic educators should be prepared to assert this exemption.

3. RELIGIOUS FREEDOM RESTORATION ACT

A near-unanimous Congress approved the Religious Freedom Restoration Act of 1993 to ensure that, even when the government has a “compelling public interest” to act in a way that impacts religious activity, it must do so in a manner that allows the greatest religious freedom. Courts have used RFRA to exempt religious organizations from federal laws—such as mandated insurance coverage for contraceptives—when the exemption does not substantially thwart the broad impact of the law.

Today some in Congress are trying to undermine RFRA. The proposed Equality Act, for instance, would remove RFRA as a protection for religious employers against the bill’s provisions regarding sexuality and gender identity. According to Goodrich, the Equality Act is a legalistic Trojan horse that would coerce both individuals and religious organizations into violating their religious beliefs.

4. CHURCH AUTONOMY

Federal courts prefer to resolve legal disputes by applying clear statutes rather than Constitutional claims, but Catholic educators should vigorously assert their freedom of religion. The Free Exercise and Establishment Clauses of the First Amendment guarantee the rights of religious organizations to control their internal affairs and make important internal decisions based on their religious beliefs. Because they are religious institutions, Catholic schools and colleges have the right and obligation to uphold Catholic teachings in their policies and practices. Because their mission is religious education, Catholic schools and colleges have the right and obligation to form the minds and souls of students in accord with Catholic beliefs, including moral teachings and Christian anthropology.

5. EXPRESSIVE ASSOCIATION

Beyond religious activity, the First Amendment protects free speech generally, including the right of expressive association. This means that the government cannot normally interfere with people gathering or otherwise associating to express opinion, even when that opinion may be unpopular. In *Boy Scouts of America v. Dale* (2000), the U.S. Supreme Court found that a non-religious organization was nevertheless permitted to establish membership requirements forbidding homosexuality. It is important that Catholic schools and colleges not only define their mission as the task

of education but also that they firmly state their purpose within the Church’s own mission of evangelization. Catholic schools and colleges are communities devoted to professing the Catholic faith and preaching the salvation found only in Christ. Catholic education, therefore, has the right of association, to express a shared belief and worldview.

ADDITIONAL STEPS

Goodrich encouraged Catholic educators to have a clear picture of the religious nature of the roles within their organization. Write down the specific duties for each position, articulate them during the hiring process, and incorporate them into training, supervision, and employee evaluations. Incorporate the Catholic faith into the teaching of every subject.

Goodrich advises that school administrators clearly know Church teaching. He told the story of a Catholic school principal encouraging an employee to receive in vitro fertilization treatment, unaware that it violated Catholic Church teaching. This put the school in a bad legal position.

Catholic education leaders who were unable to register for this three-part webinar series but would like the video recordings can request them at (703) 367-0333 x128 or jmclain@cardinalnewmansociety.org.

OCM

JUSTIN MCCLAIN, marketing coordinator for educator resources. Jmclain@cardinalnewmansociety.org



ISTOCKPHOTO.COM/CHRIS RYAN

“ We started to expose how much formation is necessary, and that was something I didn't fully anticipate.

I am grateful for what The Cardinal Newman Society's website looks like today, the amount of resources, videos, documents, etc., all these things that weren't there just a few years ago. This is a huge blessing!”

Ms. Jill Annable

CEO/President,
West Catholic High School
Grand Rapids, MI



Maintaining Employee Policies

Those courageous Catholics who joined the largely Christian protests against racial segregation in the 1960s and cheered the Civil Rights Act—banning discrimination based on race, color, religion, sex, or national origin—surely never imagined the federal government’s abuse of nondiscrimination law to violate religious freedom.

But such is the threat Catholic education faces today from Congress and the Biden administration, accusing faithful Catholics of sex discrimination because of our beliefs about chastity and marriage. There is also an internal threat from Catholic school and college employees filing lawsuits to demand compromise on abortion, contraception, sexuality, and gender ideology.

The U.S. Supreme Court’s ruling in *Bostock v. Clayton Cty., Georgia* (2020) claims that “sexual orientation” and “gender identity” are protected under Title VII, the federal law concerning employment discrimination. The Biden administration is applying this interpretation to sex discrimination laws and regulations, including Title IX which applies to schools and colleges that accept federal funding. And many states and localities have done the same.



In addition, Congress recently approved the Respect for Marriage Act, mandating employer recognition of same-sex marriage and possibly affecting the nonprofit status of institutions that teach the sanctity of marriage between a man and a woman.

Although these laws are rather new, many federal court rulings in recent years concerning religious freedom have demonstrated that First Amendment protections remain strong for institutions that have clear and consistent policies tied directly to their religious missions. But

keeping policies vague and unstated to avoid confrontation while attempting creative solutions to problems on a case-by-case basis can allow courts to declare discrimination without applying religious exemptions.

One strong but limited defense available to Catholic education is the “ministerial exception,” which bars lawsuits from employees with substantial religious duties, including teaching religion. (See article on pages 4-5) There are other statutory and constitutional defenses that can be raised in court. (See article on 8-9)

Recommended practices

Below are some best practices that may help avoid employment disputes and clarify the mission of Catholic education for all employees.

- Document the religious mission and beliefs of the school in multiple foundational documents (articles of incorporation, by-laws, philosophy and vision statements), handbooks, employment contracts, websites, job descriptions, statements to accrediting agencies, statements to prospective and current faculty and students, etc., and articulate how that faith guides the school's educational mission.
- Ensure that the institution's nondiscrimination statement does not include "sexual orientation," "gender identity," or "religion" as protected categories. Declare the institution's Catholic identity and

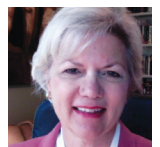
mission, and assert the institution's legal right to make employment and other decisions based on religion and morality.

- Make sure employment documents explain the Catholic nature of the institution and what that means for employees and the institution's priorities, and require employees to further the Catholic mission of evangelization and forming students.
- Adopt a statement of faith which clearly defines the religious beliefs of the institution and highlights areas of likely controversy, including sexuality.
- Ensure that employees are hired, instructed, and evaluated on their knowledge and teaching of the Catholic faith and their ability to further the institution's evangelical and catechetical mission, including particular religious requirements of each position.

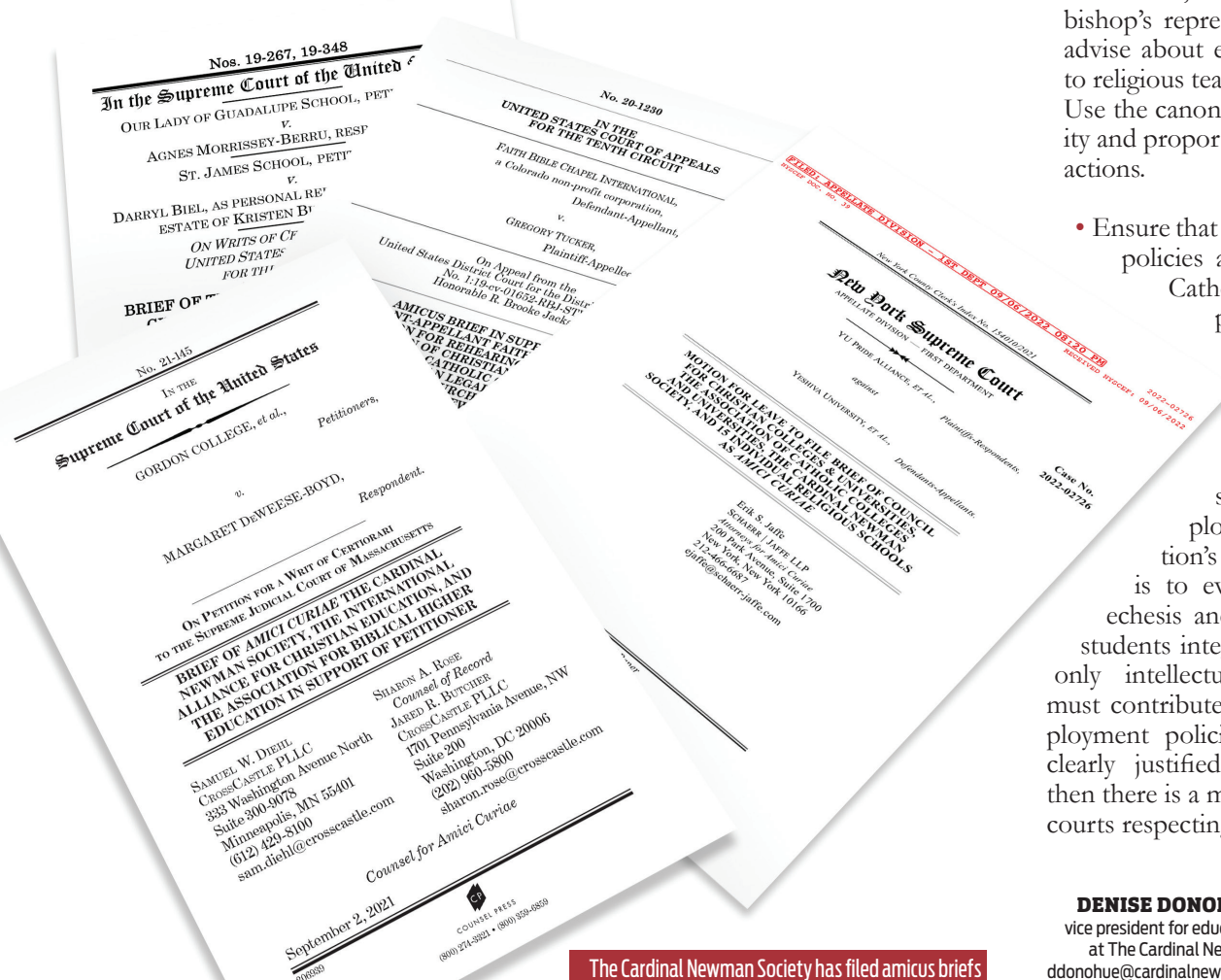
- Every employee should be expected to uphold certain moral standards, because every employee's witness impacts students. No employee should be in a same-sex union, which is a persistent and public scandal. See our newly released *Policy Standards on Moral Expectations of Employees in Catholic Education* at our website.
- Update job descriptions and employee evaluations to identify each position's connection to the religious mission of the institution and requirements for teaching, belief, and conduct.
- Provide scheduled in-service training and other faculty gatherings focused on the mission of Catholic education and the Church's moral teaching on human sexuality and other contemporary issues.
- Create a review committee composed of a member of the Board, school administrator, and clergy or religious (or bishop's representative) to review and advise about employee matters related to religious teaching, belief, or conduct. Use the canonical principle of graduality and proportionality for any remedial actions.
- Ensure that all employee benefits and policies are fully consistent with Catholic teaching and are not provided for same-sex unions.

The bottom line is that a Catholic school or college should be clear to employees about the institution's Catholic mission, which is to evangelize (including catechesis and conversion) and form students integrally to serve God (not only intellectually). Every employee must contribute to this mission. If employment policies reflect this and are clearly justified by Catholic teaching, then there is a much higher likelihood of courts respecting religious needs. **OCM**

DENISE DONOHUE, ED.D.,
vice president for educator resources
at The Cardinal Newman Society.
ddonohue@cardinalnewmansociety.org



The Cardinal Newman Society has filed amicus briefs defending the rights of Catholic educators in many key cases, including some at the Supreme Court.



University of Mary Wins Six-Year Fight for Religious Freedom

By standing firmly in the truth, the University of Mary in Bismarck, N.D., has provided a model of courage that should be emulated across Catholic education. Last month, the Newman Guide-recommended college emerged victorious from a six-year court battle defending against a federal rule that would have violated the University's Catholic identity.

"This is all a profound relief," University of Mary President Msgr. James Shea told The Cardinal Newman Society. The University "did not take this course of action lightly and [was] under no illusions that it was a trivial matter to challenge a powerful agency... But we felt we had no choice."

In 2016, the University joined the Sisters of Mercy, Sisters of Mary of the Presentation, Diocese of Fargo, and State of North Dakota in a lawsuit to defend against the Obama administration's "transgender rule," which requires medical facilities to perform "sex reassignment" procedures and allows no religious exemption. The rule also compels recipients of grants from the Department of Health and Human Services (HHS) to cover "sex reassignment" procedures, abortion, and sterilization in their employee health insurance plans. Although the rule was vacated briefly under the Trump administration, it was restored by the Biden administration.

It's the insurance requirement that di-

rectly impacts the University of Mary, which has received more than \$1 million in HHS grants to train nurses to improve rural healthcare in North Dakota. The University's health-related programs—in nursing, physical therapy, occupational therapy, speech and language pathology, radiologic technology, respiratory therapy, exercise science, athletic training, and social work—are among its most important contributions to the community and to Catholic education.

"The integrity of our mission as a Catholic university is so important to us at the University of Mary," Msgr. Shea told us, "and we have been painstaking and intentional in crafting our policies and plans so that we can sincerely welcome and serve all persons while also defending our resolve to conduct the University and all of its activities in accord with Catholic teaching."

But the "transgender rule" would have forced the University to provide immoral health benefits to its 360 employees, which "would constitute impermissible material cooperation with evil," according to the University's lawsuit filed by Becket Fund attorneys.

Thanks to last month's ruling, the University is now exempted from the rule. The appeals court found that the federal government violates the Religious Freedom Restoration Act (RFRA) when its policy infringes upon the conscience

rights of religious organizations without making a reasonable effort to avoid conflicts with the First Amendment.

One especially exciting aspect of the ruling is that religious freedom was upheld despite the Supreme Court's 2020 *Bostock* ruling, finding that "sex discrimination" in employment matters includes "sexual orientation" and "gender identity." Since employee health benefits fall within that scope, December's ruling gives hope that RFRA will continue to be an effective protection for Catholic organizations—as long as Congress does not undermine or repeal RFRA, as many Democrats have been trying to do.

The Biden administration has up to 90 days to appeal the case to the U.S. Supreme Court. However, the Administration chose not to appeal a similar district court ruling in August 2022.

Meanwhile, the Biden administration has proposed the HHS Sec. 1557 rule, a broader regulation likely to go into effect soon. It will mandate coverage for "gender affirming" surgeries, cross-sex hormones, puberty blockers for children as young as 12, and more in every employer's health plans, while again requiring "gender reassignment" surgeries in hospitals. If Catholic educators fight this new rule in court, the University of Mary case gives hope that they too will succeed in protecting their precious mission.





Catholic Student Policies Protect Students, Educators

In faithful Catholic education, we don't just teach skills, facts, and figures. We strive for "integral Christian formation," helping students know, love, and serve God in this life and enjoy eternity with Him in the next. Our student policies, therefore, should promote virtue and holiness.

The formation in Catholic education is integral because it engages the whole student as a unity of mind, body, and spirit. We cultivate the human power of reason, train the will for moral action, and order the passions toward true goodness. We

don't adopt harmful practices, and we don't permit harmful behaviors.

Our formation is Christian, because it embraces the dignity of every student as made in the image and likeness of God, called to communion with Him through redemption in Jesus Christ.

This agitates modern sensibilities. Today, families are constantly exposed to the rhetoric of division and resentment inspired by critical race theory, DEI (diversity, equity, and inclusion), and gender ideology. Some consciously adopt these non-Catho-

lic worldviews, while others succumb over time to the unrelenting pressure of media and entertainment, especially on the internet and social media. They may even sue Catholic educators to force changes that compromise Catholic teaching and prevent true Catholic formation.

Of course, all this presents opportunities for us to present the Gospel and God's loving plan for His children. As educators, we don't shrink from proclaiming this message. Instead, we take up our role in the Church's mission of evangelization.

One way to counter the ever-pressing culture is to produce and implement truly Catholic policies related to student formation and student conduct. The clarity of such policies and their consistent implementation will not only avoid conflicts and lawsuits but will give the school or college strong credibility when claiming rights of religious freedom.

Start with Admissions

To conduct a review of your student policies, a logical place to start is admissions. Sharing the mission and vision of a school and its accompanying behavioral expectations in introductory meetings can greatly reduce the likelihood of moral confusion, sinful behavior, or future scandal. In cases of students struggling with same-sex attraction or gender dysphoria, policies should ensure attendance is an option if and only if the student is open to formation aligned with Christian anthropology and does not promote or overtly express disordered inclinations.

Human Sexuality Policies

Human sexuality policies can help guide school operations and interactions with students and all members of the educational community. These policies should explain that the institution will relate to all persons according to their biological sex at birth and maintain appropriate distinctions between males and females, especially in matters of facilities use, athletics teams, uniforms, and nomenclature.

Catholic educators teaching about human sexuality should ensure that all materials and instruction are carefully vetted for fidelity to Church teachings, taught by qualified and committed Catholics, and targeted to the appropriate age and developmental stage of the student. These materials should be shared in advance with parents, giving them ample time to withdraw their child from the program should they so choose.

Also included in these policies should be a prohibition against advocating for moral behavior at odds with Catholic Church teaching or participating in activities that tend to encourage immoral behavior.



Athletics

Policies related to athletics are also critically important, as sports uniquely involve the whole person—mind, body, and spirit. In addition, while sporting activities often cast the broadest net for interaction and are highly valued in our culture, we have seen how they can be distorted to promote a disintegration of the mind, body, and spirit. These are most evident in today's gender-ideology-fueled controversies. Catholic education sports policies must be articulated to address these concerns.

Policies should guard against exploitation or idolatry related to the body and protect the body not only from physical injury but also from any attack on its physical, spiritual, and psychological integrity.

Policies should also ensure that all personnel and players are formed in a Christian and virtue-based approach to sport. Introducing virtues such as justice, with its emphasis on fair play and respect, or temperance, with its emphasis on modesty and self-control in action and speech,

especially in moments of pain and tension provides lessons carried far beyond the playing field.

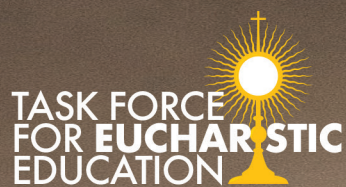
The benefits derived from well-written student policies are increasing. Not only do they help form a Christian community by setting clear expectations for student conduct, but they also differentiate Catholic education from secular options, all too willing to adopt the moral whims of the day. In this aspect, policies are tools of evangelization.

If you've procrastinated writing or refreshing your school policies, delay no longer! Clear Catholic policies will serve as pillars supporting your claim to religious freedom when a lawsuit arrives.

OCM

DAN GUERNSEY, ED.D., is a 30-year veteran of Catholic education and currently the Principal of the Donahue Academy in Ave Maria, Fla. He is a senior fellow at The Cardinal Newman Society.
dguernsey@cardinalnewmansociety.org





www.eucharisticeducation.org

JOIN THE TASK FORCE FOR EUCHARISTIC EDUCATION

A recent survey showed that nearly seven-in-ten Catholics believe that the bread and wine used at Mass are mere symbols of the body and blood of Jesus. However, the survey also found that most of those same Catholics do not know what the Catholic Church teaches regarding transubstantiation.

This is why The Cardinal Newman Society is launching the Task Force for Eucharistic Education—an initiative to help solicit, identify, and promote inspiring efforts by Catholic schools, homeschools, colleges, and individuals to help revive Eucharistic understanding and devotion.

We want you to participate! All you have to do is visit www.eucharisticeducation.org and share the projects you or your school are engaging in, including academic conferences, research, publications, formative student programs, liturgies, prayer, videos, or any other ideas.

If you have any questions,
contact Bob Laird at 703-367-0333 x 103
or blaird@cardinalnewmansociety.org



**THE CARDINAL
NEWMAN SOCIETY**
Promoting and Defending Faithful Catholic Education

www.eucharisticeducation.org