President
Alton L. Wade

Brigham Young University
Hawaii Campus

March 21, 1989

Mr. LeGrees Daniels
Assistant Secretary for Civil Rights
United States Department of Education
400 Maryloan Avenue S.W.
Washington, D.C. 20202

RE: Notification of Brigham Young University-Hawaii Exemption from Certain Title IX Regulations

Dear Assistant Secretary Daniels:

The purpose of this correspondence is to provide the United States Department of Education with official notification that Brigham Young University-Hawaii, located in Laie, Hawaii (hereinafter referred to as "BYU-Hawaii") considers itself exempt from the application of 34 CFR Sections 106.21(c), 106.40, 106.57(b), 106.31, 106.36, 106.39 and 106.40(b)(4), to the extent described in this correspondence and not already exempted by previous Department of Education actions, which regulations are published pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 et seq., a federal statue prohibiting sex discrimination in educational programs. BYU-Hawaii expressly requests the Department to formally recognize that BYU-Hawaii is exempt from the applications of these sections because the provisions of each section are in conflict with religious teachings and tenets of the Church of Jesus Christ of Latter-day Saints (hereinafter occasionally referred to as "the Church"), a religious organization which sponsors and controls BYU-Hawaii.

As noted, BYU-Hawaii, a Utah non-profit corporation, is owned, operated and controlled by the Church of Jesus Christ of Latter-day Saints and is eligible for exemption from the regulations pursuant to 34 CFR Section 106.12. The Church's headquarters are located in Salt Lake City, Utah. The Church originally created BYU-Hawaii on March 11, 1970 and has since been continuously and ultimately responsible for its operation. The BYU-Hawaii Board of Trustees consists of persons appointed by the governing board of the LDS Church and over two-thirds of the BYU-Hawaii operating budget is derived directly from appropriations from the Church. While non-members of the Church are welcome to apply for admission as students and for employment, all students and employees are expected to live according to a behavioral standard that is rooted in the religious teachings of the Church.

In general terms, this standard requires one to abide by the standards of general Christian living taught by the Church; to be honest in all behaviour; to respect the personal and property rights of others; to obey the law of the land; to disavow the use of alcoholic beverages, tobacco, tea, coffee and illegal drugs; to observe prescribed, modest standards of dress and grooming; to abstain from sexual relaitons outside marriage; and to observe high standards of taste and decency. Members and non-members of the Church who refuse to accept and adopt these standards as their own are not eligible for admission as students or for employment at the University. Both historically and at present, over 90% of the BYU-Hawaii students and employees are members of the Church.

The controlling organization of BYU-Hawaii, the Church of Jesus Christ of Latter-day Saints, is a major international Christian religion having a fully developed theology, a well known history spanning two centuries and a world-wide membership presently numbering over six million. Its members believe the Church and its doctrine contain the fullness of the Gospel of Jesus Christ, restored by direct revelation from God to Joseph Smith, who was called as a prophet in the biblical sense in 1820. The governing board of the Church consists of a First Presidency of three, along with a Council of Twelve Apostles, all of whom are regarded by the Church membership as apostles and prophets in the biblical sense. While accepting the Bible as holy scripture, the Church regards the Book of Mormon as another testament of Christ and as holy scripture. In addition, the Church also accepts prophetic writings as scripture and regards the teachings of current Church leaders as religious doctrine. Central to the Church's theology is the view that, through the Atonement of Christ, all mankind may be saved by obedience to the laws and ordinances taught by Christ.

Within this general framework, the Church teaches not only the doctrine of individual eternal life, but also the doctrine that marriages performed by proper authority and subject to certain conditions are eternal in duration. Thus, the family unit is viewed as having high theological significance, and Church teachings about such matters as marriage, chastity, abortion, and the roles of husbands, wives and children are fundamental religious doctrines. The Church also teaches that certain distinctions based on gender, particularly as they relate to matters of family life, are both natural and religiously significant. At the same time, the Church has a remarkable record of encouraging all of its members, male and female, to obtain as much education as possible and to participate fully in the economic, political and social life of the communities in which they live.

The mission of BYU-Hawaii is essentially spiritual and educational. The University would not exist if it were not for the opportunity to fully and freely blend the teachings and influence of the Church within both the curriculum and the extracurricular environment on the campus.

Below described are the Title IX regulatory provisions for which BYU-Hawaii has identified a recognized exemption together with an explanation of the religious tenets upon which the exemption is based. For purposes of making these requests, BYU-Hawaii is proceeding on the basis (1) that these requests for religious exemption do not limit BYU-Hawaii'is rights subsequently to claim additional religious exemptions as these come to light and subsequently to claim a broader free exercise right before a judicial body; (2) that "religious tenets" in Title IX's religious exemption includes practical and specific religious teachings by duly constituted authority; (3) that BYU-Hawaii's good faith claims about the existence and meaning of religious doctrine are entitled to a presumption of validty; and (4) that governmental agencies should not assume the role of determining the nature and meaning of religious doctrines. (See generally United States Department of Education Memorandum dated February 19, 1985 regarding "Policy Guidance for Resolving Religious Exemption Requests," to Regional Civil Rights Directors by Harry M. Singleton, Assistant Secretary for Civil Rights, Department of Education, and United States vs. Ballard, 322 U.S. 78 (1944).

1. Sections 106.21(c), 106.40 and 106.57(b) - BYU-Hawaii claims exemption from these regulations to the extent that they prohibit certain inquiries into or actions based upon the marital or parental status of the pregnancy or termination of pregnancy or present or prospective students of employees. The Church which sponsors BYU-Hawaii teaches strict adherence to the highest Christian standards of sexual morality on the same basis for both sexes, as indicated above.

2. Section 106.31 - BYU-Hawaii claims exemption from this section to the extent that it interferes with the operation of extracurricular student activities in organizations sponsored by the Church. Specifically, there exist on campus numerous student congregations (called "Wards" according to the Church nomenclature) organized and maintained through the ecclesiastical channels of the sponsoring Church. Whether these organizations choose to have activities or sub-organizations exclusively for men or for women is clearly a matter of Church organization and should therefore be exempt.

3. Section 106.32 - BYU-Hawaii claims exemption from this regulation to the extent that it interferes with the University's policy of requiring sex-segregated housing by off-campus landlords as a condition of being given approval to house BYU-Hawaii students. The regulations allows sex-segregated housing when provided by the recipient, but it appears to prohibit such segregation in off-campus housing. The teachings of the sponsoring Church regarding sexual morality and marriage are inconsistent with housing arrangements in which single students share the same facilities. For this same reason, the University claims the right under its religious exemption to separate students in BYU-Hawaii-approved housing on the basis of sex and to regulate this separation by designating separate buildings or wings of buildings (and not merely separate apartments), as exclusive to one sex, both on and off campus.

4. Section 106.36 - BYU-Hawaii claims exemption from this regulation to the extent it may inhibit its teachers or counselors from discussing and advising students concerning the ways in which marriage may be compared to career choices or with respect to other questions arising concerning the planning by students of their educational or career plans. The sponsoring Church teaches that marriage and childbearing are significant religious obligations and that mothers naturally have greater involvement, especially in the rearing of younger children. These teachings indicate the need to allow room for some difference between counseling for men and counseling for women.

5. 34 CFR Section 106.39 and Section 106.40(b)(4) - The Office for Civil Rights (OCR), U.S. Department of Education has interpreted these regulations to require the University to offer, if offered at all, student health insurance policies which treat pregnancy the same as any other temporary disability in order to be in compliance with the regulations. By requiring the University to treat pregnancy as any other temporary disability with respect to single students would compel BYU-Hawaii's direct and/or indirect approval and support of premarital sex and abortion. The Church teaches as fundamental doctrine that righteous individuals must abstain from sexual relations outside of marriage and, except in rare cases, must not participate in nor obtain an abortion.

With respect to pregnancy related conditions of married women, the application of the regulations as to BYU-Hawaii is not abortion neutral, but rather has the practical impact on application to encourage abortion and to financially discriminate against those institutions, such as BYU-Hawaii, which promote the religious belief that in most cases full term delivery is the only morally acceptable resolution of pregnancy. For example, insurance premiums paid by other colleges and universities not sharing the LDS beliefs on abortion will probably not increase substantially upon the extension of disability coverage to pregnancy because students at these universities may elect to terminate the pregnancy through an abortion (costing several hundred dollars) while students at BYU-Hawaii will be required, according to LDS religious tenets, to deliver the baby full term costing several thousand dollars. As a result, the impact of the law is not abortion neutral because the Act provides a practical incentive to perform abortion and a concomitant financial penalty for those institutions promoting religious tenets which prohibit abortion. BYU-Hawaii is unwilling to accept abortion as a cheap, simple and facile mechanism to keep insurance costs within reasonable financial limits.

In addition, as the regulations now stand, married or single students who become pregnant in violation of the doctrine of chastity through extramarital means would be afforded maternity benefits. This would also be in violation of the fundamental Church doctrine requiring chastity and forbearance of premarital or extramarital sexual relations.

BYU-Hawaii is a church-related institution of higher learning with a serious religious commitment at the heart of its educational mission. With the enactment of the Civil Rights Restoration Act of 1988, the University began a careful and deliberative process to assess the possible adverse impact of the Act on the University. Because it is possible that there may be carying interpretations of Title IX and its regulations yet to be resolved, the University determined to protect its vital interests against the possibiliyt of any future adverse determinations as to the meaning of these regulations with this Notice of Exemption. The University, however, fully supports the goal of equal opportunity and non-discrimination on the basis of gender while at the same time preserving its Constitutional Rights of free exercise of religion. Your prompt attention in evaluating this Notice would be greatly appreciated. If I can be of any assistance to you in completing this task or if you require additional information, please do not hesitate to contact me.

Sincerely,

Alton L. Wade

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