



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

MAY 18 1989

Dr. Alton L. Wade
President
Brigham Young University,
Hawaii Campus
Laie, Hawaii 96762-1294

Dear Dr. Wade:

The Office for Civil Rights (OCR) of the Department of Education has completed its review of your letters, dated March 21, 1989, and March 28, 1989, requesting a religious exemption from certain sections of the regulation implementing Title IX of the Education Amendments of 1972 (Title IX).

In your request letters, you provided information that establishes that Brigham Young University, Hawaii Campus, (BYUH) is controlled by a religious organization and that tenets followed by this organization conflict with specific sections of the Title IX regulation (copy enclosed). You described in your request letters certain policies practiced at BYUH as being consistent with the tenets of the religious organization that controls the institution. These policies would violate certain sections of the regulation implementing Title IX absent a religious exemption. Therefore, I am granting BYUH an exemption to those sections of the Title IX regulation appropriate to your request letters. The exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by BYUH. Brigham Young University, Hawaii Campus, is hereby exempted from the requirements of the following sections of the Title IX regulation: 34 C.F.R. §§ 106.21(c), 106.31, 106.36, 106.39, 106.40, and 106.57. The basis for this decision is discussed in further detail below.

Your request letters indicate that BYUH, a Utah non-profit corporation, is controlled by the Church of Jesus Christ of Latter-day Saints (Church), and that BYUH practices the tenets of the Church and is owned and operated by the Church. Your letters further state that over two-thirds of BYUH's operating budget is provided by the Church. This relationship between the Church and BYUH adequately establishes that BYUH is controlled by a religious organization as is required for consideration for exemption under § 106.12 of the Title IX regulation.

In your request letters, you indicate that all students and employees are expected "to abide by the standards of general Christian living taught by the Church[.]" "By requiring the University to treat pregnancy as any other temporary disability with respect to single students would compel [BYUH'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." Further, your letters add that provision of maternity benefits to married students who become pregnant through extramarital means would violate the fundamental Church doctrine of chastity in marriage. Based on

these principles, BYUH has requested and is granted by this letter, exemption to: 34 C.F.R. § 106.21(c) (marital or parental status of applicants for admission); § 106.39 (health and insurance benefits and services); § 106.40 (marital or parental status of students); and § 106.57 (marital or parental status of employees), to the extent that application of these sections conflict with the religious tenets practiced by BYUH.

Your request letters indicate that there exist on BYUH campus "numerous student congregations (called 'Wards', according to Church nomenclature) organized and maintained through the ecclesiastical channels of the sponsoring Church."

Your letters state that whether these organizations choose to have activities or suborganizations exclusively for men or for women is a matter of Church organization. Based on these principles, BYUH has requested and is granted by this letter, exemption to 34 C.F.R. § 106.31, regarding education programs and activities, to the extent that § 106.31 conflicts with the operation of extracurricular student activities and policies of student religious organizations at BYUH.

Your letters state that "[t]he 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 differences between counseling for men and counseling for women," since such roles may affect educational and career choices. Based on these principles, BYUH has requested and is granted by this letter, exemption to 34 C.F.R. § 106.36, regarding counseling of students and applicants for admission.

Your letters also state that, with respect to pregnancy-related conditions of married women, BYUH promotes the religious belief that in most cases, full-term delivery, not abortion, is the only morally acceptable resolution of pregnancy. As you know, the Civil Rights Restoration Act of 1987 (Act), enacted March 22, 1988, amends Title IX. One of the provisions of the Act states that under Title IX, provision of or payment for benefits or services related to abortion is neither required nor prohibited. Although OCR has not yet amended its regulations to conform to the Act, OCR interprets its regulations in accordance with the requirements of the Act. Therefore, under the Title IX regulation as interpreted by OCR, BYUH is not required to provide or pay for benefits or services related to an abortion. As so interpreted, the Title IX regulation does not conflict with the religious tenets of BYUH. Thus, the exemptions to §§ 106.39 and 106.40 are granted, subject to the limitations discussed above.

Your letter of March 28, 1989, indicates that BYUH is not seeking exemption from § 106.32 regarding housing. Thus, this issue is not addressed by this letter.

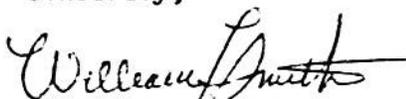
This letter should not be construed to grant exemption from any section of the Title IX regulation not specifically mentioned. In the event that OCR receives a complaint against BYUH, we are obligated to determine initially whether the allegations fall within the exemption herein granted. Also, in the unlikely event that a complainant alleges that the practices followed by BYUH are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets.

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I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact the San Francisco Regional Office for Civil Rights. The address is:

Mr. John E. Palomino
Regional Civil Rights Director
Office for Civil Rights, Region IX
Department of Education
221 Main Street, 10th Floor
Suite 1020, 09-8010
San Francisco, California 94105-1925.

Sincerely,



William L. Smith
Acting Assistant Secretary
for Civil Rights

Enclosure

cc: John E. Palomino, Regional Civil Rights Director, Region IX