



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Dr. Eric B. Shumway
President
Brigham Young University--Hawaii Campus
55-220 Kulanui Street
P.O. Box 1971
Laie, Hawaii 96762

July 1, 1998

Dear Dr. Shumway:

The Office for Civil Rights (OCR) of the Department of Education has completed its review of your letter, dated April 14, 1998, requesting a religious exemption for Brigham Young University -- Hawaii Campus (the University), to the extent described in your letter, from 34 C.F.R. § 106.60, a provision of the Department's regulations implementing Title IX of the Education Amendments of 1972. Based on the information provided in your letter, which specifically referenced gender inquiries about recruitment and admissions, we construed your request to extend to 34 C.F.R. § 106.60(a), but not § 106.60(b). For this reason, only § 106.60(a) is addressed in this response.

In your letter you provided information that establishes that the University is controlled by a religious organization and that tenets followed by this organization conflict with the requirements of § 106.60(a). Subpart C of the Title IX regulation prohibits discrimination in the admission and recruitment of students. Section 106.15(e) of the Title IX regulation specifically exempts private undergraduate institutions from compliance with Subpart C.

You described in your request letter certain policies practiced at the University as being consistent with the tenets of the religious organization that controls the University. These policies would violate § 106.60(a) absent a religious exemption. Therefore, I am granting Brigham Young University -- Hawaii Campus an exemption to that provision of the Title IX regulation as specified in your request letter. The exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by the University. Brigham Young University -- Hawaii Campus is hereby exempted, to the extent requested in your letter, from the requirements of § 106.60(a) of the Title IX regulation. The basis for this decision to grant this exemption is discussed in further detail below.

Your letter indicated that Brigham Young University -- Hawaii Campus is controlled by the Church of Jesus Christ of Latter-day Saints (the Church) and that the University practices the tenets of the Church and is owned and operated by the Church. This relationship between the Church and the University adequately establishes that the University is controlled by a religious organization as is required for consideration for exemption under § 106.12 of the Title IX regulation.

Page 2 - Dr. Eric B. Shumway

In your letter you indicated that all members of the University's Board of Trustees are selected by the presiding officers of the Church, that the Trustees are all General Officers of the Church, and that, as such, the Board of Trustees establishes the hiring policies for every full-time faculty position at the University. In addition, your letter indicated that General Officers of the Church are directly involved in the hiring process for every full-time faculty position at the University. Your letter further indicated that, in this regard, one of the criteria that the University evaluates in hiring individuals for teaching and other permanent faculty positions at the University is the degree of the candidate's "religious conviction and commitment to Church doctrine and practice." Your letter also indicated that Church doctrine establishes certain values with respect to family life and morality and that, in order to evaluate a faculty candidate's commitment to Church doctrine and practice, including Church doctrine and practice relative to family life and morality, the University conducts a wide-ranging inquiry, which may include a preemployment inquiry as to the candidate's marital status. The practice of making a preemployment inquiry as to marital status would violate § 106.60(a) absent a religious exemption. Based on these principles, Brigham Young University -- Hawaii Campus has requested, and is granted by this letter, exemption, in connection with the employment of all new permanent faculty, from 34 C.F.R. § 106.60(a), which addresses preemployment inquiries as to marital status, to the extent that § 106.60(a) conflicts with the religious tenets followed by the University.

This letter should not be construed to grant exemption from any provision of the Title IX regulation not specifically mentioned. In the event that OCR receives a complaint against the University, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by the University are not based on the religious tenets of the controlling organization, OCR is obligated to contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the University, or if the organization denies that it controls the University, this exemption will be rescinded.

I hope this letter responds fully to your request. If you have any questions, please do not hesitate to contact OCR's Seattle office. The address and phone number are:

Mr. Gary D. Jackson, Enforcement Director, Office for Civil Rights, Seattle Office, United States Department of Education, 915 Second Avenue, Room 3310, 10-9010, Seattle, WA 98174-1099, (206) 220-7880.

Sincerely yours,

Norma V. Cantú
Assistant Secretary
for Civil Rights

cc: Mr. Gary D. Jackson, Enforcement Director, Seattle Office