



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 3, 2022

Kevin J. Worthen, President
Brigham Young University
D-346 ASB
Provo, Utah 84602-1346

Dear President Worthen:

I write in response to your November 19, 2021, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested assurance of a religious exemption from Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, for Brigham Young University ("BYU") in Provo, Utah.

Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. Title IX and its implementing regulations at 34 C.F.R. § 106.12 provide that Title IX does not apply to an educational institution controlled by a religious organization to the extent that the application of Title IX would be inconsistent with the controlling organization's religious tenets. Section 106.12(b) of the Department's Title IX regulations describe the process by which an educational institution may request assurance of a religious exemption. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law or regulation that conflict with those tenets. Section 106.12(c) of the Department's Title IX regulations describes the evidence that is sufficient to establish that an educational institution is controlled by a religious organization.

Your letter states that "BYU is a religious institution of higher education, 'founded, supported, and guided by'" the Church of Jesus Christ of Latter-day Saints (Church of Jesus Christ). The letter explains that BYU is "'controlled by' the Church of Jesus Christ, whose governing leaders appoint prophets, apostles, general authorities, and offices of the Church of Jesus Christ as members of BYU's Board of Trustees." Your letter also explains that "a majority of BYU's operating budget is derived from appropriations from the Church of Jesus Christ." The letter also states that "BYU is part of the Church Educational System, which includes many other institutions and programs affiliated with the Church of Jesus Christ" and that BYU's mission is "'to assist individuals in their quest for perfection and eternal life' by 'provid[ing] an environment enlightened by living prophets and sustained by those moral virtues which characterize the life and teachings of the Son of God.'"

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The letter further explains that “the common purpose of all education at BYU is to build testimonies of the restored gospel of Jesus Christ.” “All BYU students, faculty, administrators, and staff agree to the Church Educational System Honor Code and thereby ‘voluntarily commit to conduct their lives in accordance with the principles of the gospel of Jesus Christ.’”

Your letter explains that “the Church of Jesus Christ teaches that ‘all human beings—male and female—are created in the image of God,’ and that ‘the Church of Jesus Christ proclaims that marriage between a man and a woman is ordained of God and that family is central to the Creator’s plan for the eternal destiny of His children.’” The letter also states that “‘God has commanded that the sacred powers of procreation are to be employed only between man and woman, lawfully wedded as husband and wife,’ and ‘the means by which mortal life is created are divinely appointed.’” The Church Educational System Honor Code includes a “voluntary commitment by each BYU student and employee to ‘live a chaste and virtuous life.’” Your letter references a letter by Elder Johnson, a General Authority Seventy of the Church of Jesus Christ and then-current Commissioner of the Church Educational System, which states that “same-sex romantic behavior cannot lead to eternal marriage and is therefore not consistent with the principles included in the Honor Code.” BYU further explains that any obligation that would require it to “allow same-sex romantic behavior” or “contradict doctrine of the Church of Jesus Christ regarding the distinction between men and women, the eternal nature of gender, or God’s laws of chastity and marriage” would violate the religious tenets of the Church of Jesus Christ.

For the above reasons, BYU requests assurance of its exemption from the following regulatory provisions to the extent that those provisions are interpreted to prohibit discrimination based on sexual orientation or gender identity and application of those provisions would conflict with the religious tenets of its controlling religious organization:

- 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)

BYU is exempt from these provisions to the extent that application of these provisions conflict with the religious tenets of its controlling religious organization that pertain to sexual orientation and gender identity.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulations other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here recognized. Also, in the unlikely event that a complaint alleges that the practices followed by an institution are not based on the religious tenets identified in your request, OCR may 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 institution, or if the organization denies that it controls the institution, OCR will not recognize this exemption.

I hope this letter fully responds to your request. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'CEL', with a long horizontal flourish extending to the right.

Catherine E. Lhamon
Assistant Secretary for Civil Rights