

JAN 12 1989

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

JAN 6 1989



Dr. Jeffrey R. Holland
President
Brigham Young University
D-346 ASB
Provo, Utah 84602

Dear Dr. Holland:

The Office for Civil Rights (OCR) of the Department of Education has completed its review of your letter, dated November 17, 1988, requesting a religious exemption from certain sections of the regulation implementing Title IX of the Education Amendments of 1972 (Title IX).

In your request letter, you provided information that establishes that Brigham Young University (BYU) 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 letter certain policies practiced at BYU 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 BYU an exemption to those sections of the Title IX regulation appropriate to your request letter. The exemption is limited to the extent that compliance with the Title IX regulation conflicts with the religious tenets followed by BYU. Brigham Young University is hereby exempted from the requirements of the following sections of the Title IX regulation: 34 C.F.R. §§ 106.31, 106.32, 106.35, 106.39, and 106.40. The basis for this decision to grant this exemption is discussed in further detail below.

Your request letter indicates that BYU is controlled by the Church of Jesus Christ of Latter-day Saints (Church) and that BYU 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.

In your request letter, you indicate that there exist on BYU campus "numerous student congregations (called 'Wards', according to Church nomenclature) organized and maintained through the ecclesiastical channels of the sponsoring Church." Your letter states 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, BYU has requested and is granted by this letter, exemption from 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 BYU.

Your letter also indicates that "[t]he teachings of the sponsoring Church regarding sexual morality and marriage are inconsistent with housing arrangements in which single students share the same facilities." BYU claims exemption from 34 C.F.R. § 106.32 "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 students." Based on these principles, BYU has requested and is granted by this letter, exemption from 34 C.F.R. § 106.32, which addresses housing.

Your letter states 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." Based on these principles, BYU has requested and is granted by this letter, exemption from 34 C.F.R. § 106.36, which pertains to counseling of students and applicants for admission.

Your request letter states: "By requiring the University to treat pregnancy as any other temporary disability with respect to single students would compel BYU'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 letter adds 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, BYU has requested and is granted by this letter, exemption to 34 C.F.R. §§ 106.39 and 106.40, regarding the provision of health and insurance benefits and services to single students and married students who become pregnant outside of marriage.

Your letter also states that, with respect to pregnancy-related conditions of married women, BYU 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) 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, BYU 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 BYU. Thus, the exemptions to §§ 106.39 and 106.40 are granted, subject to the limitations discussed in the preceding paragraph.

*Mark
Richard*

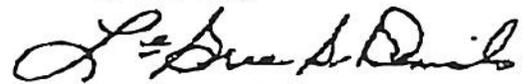
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This letter should not be construed to grant exemption from any section of the Title IX regulation not specifically mentioned. In the event that OCR receives a complaint against BYU, we are obligated to determine initially whether the allegations fall within the exemption here granted. Also, in the unlikely event that a complainant alleges that the practices followed by BYU 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 BYU, or if the organization denies that it controls BYU, 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 the Denver Regional Office for Civil Rights. The address is:

Dr. Gilbert D. Roman
Regional Civil Rights Director
Office for Civil Rights, Region VIII
Department of Education
Federal Office Building
1961 Stout Street, 3rd Floor - 08-7010
Denver, Colorado 80294-3608.

Sincerely,



LeGree S. Daniels
Assistant Secretary
for Civil Rights

Enclosure

cc: Dr. Gilbert D. Roman, Regional Civil Rights Director, Region VIII