



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

May 9, 2022

John S.K. Kauwe III, President
Brigham Young University-Hawaii
55-220 Kulanui St.
Laie, HI 96762

Dear President Kauwe:

I write in response to your March 14, 2022, 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-Hawaii ("BYU-Hawaii") in Laie, Hawaii.

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-Hawaii is a religious institution of higher education in Laie, Hawaii, 'founded by prophets and operated by' the Church of Jesus Christ of Latter-day Saints (the Church of Jesus Christ). The letter explains that BYU-Hawaii is "controlled by' the Church of Jesus Christ, whose governing leaders appoint prophets, apostles, general authorities, and officers of the Church of Jesus Christ as members of BYU-Hawaii's Board of Trustees." Your letter also explains that "a majority of BYU-Hawaii's operating budget is derived from appropriations from the Church of Jesus Christ." The letter also states that BYU-Hawaii is "part of the Church Educational System, which includes many other institutions and programs affiliated with the Church of Jesus Christ" and that BYU-Hawaii's unique mission "is to integrate both spiritual and secular learning and to prepare students with character and integrity who can provide leadership

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100
www.ed.gov

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

in their families, their communities, their chosen fields, and in building the kingdom of God.” The letter further explains that BYU-Hawaii’s vision is “to assist individuals in their quest for perfection and eternal life and in their efforts to influence the establishment of peace internationally.” The letter also states that “all BYU-Hawaii 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 “‘marriage between a man and a woman is ordained of God and that the family is central to the Creator’s plan for the eternal destiny of His children.’” The letter 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.’” Your letter references correspondence by Elder Paul V. 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-Hawaii further explains that any obligation that would require it to “allow same-sex romantic behavior would be inconsistent with religious tenets of the Church of Jesus Christ” and would “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.”

For the above reasons, BYU-Hawaii requests assurance of its exemption from the following regulatory provisions to the extent that those provisions are “related to sexual orientation or gender identity” and “conflict with the Church of Jesus Christ’s religious tenets applied to individuals’ behavior/conduct (as opposed to status/identity)”:

- 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-Hawaii 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 'C. Lhamon', with a long horizontal flourish extending to the right.

Catherine E. Lhamon
Assistant Secretary for Civil Rights