

OFFICE OF THE PRESIDENT



May 7, 1985

Mr. Gary Jackson  
Regional Director  
Office for Civil Rights  
Region X  
U.S. Department of Education  
M/S 106 Third & Broad Building  
2901 Third Avenue  
Seattle, WA 98121

RECEIVED  
1985 MAY -9 PM 1:01  
DOE--OCR

Re: Title IX Religious Exemption

Dear Mr. Jackson

On November 17, 1975, my predecessor, Henry B. Eyring, sent a letter with certain enclosures to David Mathews, who was then Secretary of Health, Education, and Welfare. These materials constituted the official notification to HEW that Ricks College considered itself exempt from certain provisions of the then applicable regulations promulgated under Title IX of the Education Amendments Act, by application of the statutory religious exemption in Title IX. On December 10, 1975, Secretary Mathews acknowledged receipt of our letter and indicated that Martin H. Gerry, Acting Director of the Office for Civil Rights, would respond to our letter. On September 28, 1976, President Eyring filed with HEW a routine Assurance of Compliance with Title IX in which the religious exemption previously claimed was reiterated.

Reservations other than those pertaining to the religious exemption were also claimed by Ricks College in this correspondence, primarily having to do with our view that only programs or activities receiving direct federal assistance are covered by Title IX and that certain forms of student aid do not create federal jurisdiction for purposes of Title IX enforcement. Reference was also made to the right claimed by the College to identify future claims for a religious exemption, and to our view that the Constitution does not allow a government agency to inquire into the truth of our religious principles or the sincerity of our belief in them. At the same time, our materials also stated our commitment to equal educational opportunity and our commitment to comply with federal law.

Following the receipt by Secretary Mathews of my predecessor's 1975 letter, no further communication to Ricks College from HEW or the Department of Education was forthcoming on the subject of our claim to a religious exemption under Title IX, until your letter of March 22, 1985.

Mr. Gary Jackson  
May 7, 1985  
Page 2

Your letter states, "there is no record that OCR adequately acknowledged" our request for a religious exemption. Other than Secretary Mathews' brief acknowledgment of having received our letter in 1975, there has been no response at all. I understand from telephone conversations with members of your staff within the past month that you are now very anxious to receive our reply to your March 22 letter and to process our claim for an exemption. We are grateful for your willingness to attend now to this matter and hope to supply you with any needed information as completely as we can. However, this is a matter of sufficient importance that we wish to ensure adequate deliberation on our part, as well as yours. It will not surprise me to learn that considerable time and correspondence are necessary to enable us to reach a mutually satisfactory agreement about the application of the religious exemption to Ricks College. We do not wish to be understood as challenging the authority of the U.S. Department of Education under Title IX or other laws. We fully support the goal of equal opportunity. However, because Ricks College is a church-related college with a serious religious commitment at the heart of its educational mission, and because many interpretations to Title IX and its regulations are yet to be resolved, I hope you can understand the need we feel to protect our vital interests against the possibility of future adverse determinations. Also, our desires for a careful and deliberative process spring only from the significance we attach to the subject matter.

Before proceeding with our response to your request for additional information, I would like to ask some questions about your view concerning the meaning and application of the Title IX religious exemption, in order to guide our understanding in both our current and future relationships with your office. Your answers to these questions may influence our decision to make additional claims for exemption, beyond those discussed below.

1. Does our assurance of compliance with Title IX, subject to the religious exemption, in any way limit our right to claim in some later proceeding that the free exercise of religion clause in the First Amendment allows broader latitude to a college having a religious mission than is represented by the current statutory exemption in Title IX?
2. What is the meaning of the phrase "religious tenets of such organization" in the current statutory exemption? Would "religious tenets" include the practical interpretation or specific application of some doctrinal teaching, as determined by the duly constituted authorities of the church that controls a church-related college, or does it refer only to theoretical and general religious doctrines?
3. What role is played by a governmental agency in determining the nature and meaning of religious doctrines? Is a good faith claim by

Mr. Gary Jackson  
May 7, 1985  
Page 3

an educational institution having a bona fide religious mission entitled to a presumption of validity? If so, what circumstances would lead to rebuttal of the presumption? If not, why not? Will doubts about the presence and/or meaning of a religious tenet be resolved in favor of such an educational institution? If not, why not?

For the purpose of providing an initial response to your March 22 letter, I am assuming (1) that our assurance of compliance under Title IX and our discussions with you about the religious exemption do not limit our right subsequently to claim a broader free exercise right before a judicial body; (2) that "religious tenets" in Title IX's religious exemption includes practical and specific religious teachings by duly constituted authorities; (3) that our good faith claims about the existence and meaning of a religious doctrine are entitled to a presumption of validity; and (4) that governmental agencies should not assume the role of determining the nature and meaning of religious doctrines.

Your first request was to provide "the name of the religious organization that controls the institution and a brief description of how the organization controls the institution." Ricks College is owned and operated by the Church of Jesus Christ of Latter-day Saints. The Church's headquarters are located in Salt Lake City, Utah. The Church originally created the College in 1888 and has always been ultimately responsible for its operation. Our Board of Trustees consists of persons appointed by the governing board of the Church and approximately 70% of our operating budget is funded directly by appropriations from the Church. While non-members of the Church are welcome to apply for admission as students and welcome to apply for employment, all students and employees are expected to live according to a behavioral standard that is rooted in the religious teachings of the Church. In general terms, this standard requires one to abide by the standards of general Christian living taught by the Church; to be honest in all behavior; to respect the personal and property rights of others; to obey the law of the land; to avoid the use of alcoholic beverages, tobacco, tea, coffee, and illegal drugs; to observe prescribed standards of dress and grooming; to abstain from sexual relations outside marriage; and to observe high standards of taste and decency. Members and non-members of the Church who choose not to accept these standards are not eligible for admission as students or for employment at the College. Both historically and at present, over 90% of our students and our employees are members of the Church.

Your second question asks for "a brief description of the religious tenets of the controlling organization that are followed by the institution." The Church of Jesus Christ of Latter-day Saints is a major Christian religion having a fully developed theology, a well-known

Mr. Gary Jackson  
May 7, 1985  
Page 4

history of some 165 years, and a worldwide membership presently numbering over 5 million. Its members believe the Church and its doctrines contain the fulness of the Gospel of Jesus Christ, restored by direct revelation from God to a young man called as a Prophet in the Biblical sense in 1820. The governing Board of the Church consists of a First Presidency of three, along with a Council of Twelve Apostles, all of whom are regarded by the Church membership as apostles and prophets in the Biblical sense. While accepting the Bible as holy scripture, the Church also accepts certain other prophetic writings as scripture, and regards the teachings of the current Church leaders as religious doctrine. Central to the Church's theology is the view that, through the Atonement of Christ, all mankind may be saved by obedience to the laws and ordinances taught by Christ.

Within this general framework, the Church teaches not only the doctrine of individual eternal life, but also the doctrine that marriages performed by proper authority and subject to certain conditions are eternal in duration. Thus, the family unit is viewed as having high theological significance, and Church teachings about such matters as marriage, chastity, abortion, and the roles of husbands, wives, and children, are fundamental religious doctrines. The Church also teaches that certain distinctions based on gender, particularly as they relate to matters of family life, are both natural and religiously significant. At the same time, the Church has a remarkable record of encouraging all its members--male and female--to obtain as much education as possible and to participate fully in the economic, political, and social life of the communities in which they live. The very existence of Ricks College, with women representing more than half of its students, attests to this commitment to educational opportunity. The mission of Ricks College is essentially an educational mission, but the College would not exist were it not for the opportunity of fully and freely blending the teachings and influence of the Church within both the curriculum and the extracurricular environment on the campus.

Your third question asks for a statement of those provisions of the regulations implemented under Title IX from which exemption is requested, together with an indication of the religious tenet in conflict with the provision. I will attempt to list some of the Title IX regulatory provisions with which we have concerns, but assume, as mentioned earlier, that this listing will not foreclose our opportunity to claim further exemptions as needed.

1. § 106.21(c), 106.40, and 106.57(b). Ricks College claims exemption from these regulations to the extent that they prohibit certain inquiries into or actions based upon the marital or parental status or the pregnancy or termination of pregnancy of present or prospective students or employees. The Church which sponsors the College

teaches strict adherence to the highest Christian standards of sexual morality on the same basis for both sexes, as indicated above.

2. § 106.31. Ricks College claims exemption from this regulation to the extent that it may prohibit the enforcement of the College's rules of appearance, which differ for men and women because of the teaching of the sponsoring Church that differences between the dress and grooming of men and women are proper expressions of God-given differences in the sexes.
3. § 106.36. Ricks College claims exemption from this regulation to the extent that it may inhibit our teachers or counselors from talking with students about ways in which marriage may be compared to career choices or when other questions arise concerning the planning by students of their educational or career plans. The sponsoring Church teaches that marriage and childrearing 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.
4. § 106.32. Ricks College claims exemption from this regulation to the extent that it interferes with the College's policy of requiring sex-segregated housing by off-campus landlords as a condition of being given approval to house Ricks College students. The regulation allows sex-segregated housing when provided by the recipient, but appears to prohibit such segregation in off-campus housing. The teachings of the sponsoring Church regarding sexual morality and marriage are inconsistent with housing arrangements in which single students share the same facilities. For this same reason, the College claims the right under the religious exemption to interpret "separate housing on the basis of sex," as allowed by the regulation for on-campus housing, to mean separate buildings and not merely separate apartments, in both on and off-campus housing.
5. § 106.14. Ricks College claims exemption from this and related sections regarding membership practices to the extent that it interferes with the operation of extracurricular student activities in organizations sponsored by the Church. The regulation exempts the "membership practices of social fraternities and sororities" as well as certain national youth service organizations. However, exemptions should also extend to the membership activities and other practices of religious organizations for students. For example, over 30 student congregations (called "wards" according to Church nomenclature) are organized and maintain an active campus program through the ecclesiastical channels of the sponsoring Church.

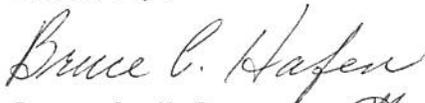
Mr. Gary Jackson  
May 7, 1985  
Page 6

Whether these organizations choose to have activities or sub-organizations exclusively for men or for women is clearly a matter of Church organization and should therefore be exempt.

The foregoing are the specific claims for religious exemption Ricks College wishes to make at the present time.

I stress again that we desire to cooperate with your office in every way. If I have misunderstood anything about the intent of your letter or the nature and application of the regulations, I will welcome the opportunity to obtain clarification.

Sincerely,

A handwritten signature in cursive script that reads "Bruce C. Hafen". The signature is written in dark ink and is positioned above the typed name and title.

Bruce C. Hafen  
President

A30BH2/eef