



March 14, 2022

Via Certified Mail

Catherine E. Lhamon
Assistant Secretary for Civil Rights
UNITED STATES DEPARTMENT OF EDUCATION
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Brigham Young University–Hawaii’s Religious Exemption to Title IX Requirements

Dear Ms. Lhamon:

This letter provides official notice to the U.S. Department of Education (ED) and its Office for Civil Rights (OCR) that Brigham Young University–Hawaii (BYU–Hawaii) is exempt from any application of Title IX of the Education Amendments of 1972 (Title IX) relating to sexual orientation and gender identity that is not consistent with the religious tenets of The Church of Jesus Christ of Latter-day Saints (the Church of Jesus Christ). We affirm the religious protections that the United States Constitution, Title IX, and other laws provide, and we request that ED formally recognize BYU–Hawaii’s Title IX religious exemption.

BYU–Hawaii is a religious institution of higher education in Laie, Hawaii, “founded by prophets and operated by the Church of Jesus Christ.”¹ Although BYU–Hawaii is a nonprofit corporation, BYU–Hawaii is also part of the Church Educational System, which includes many other institutions and programs affiliated with the Church of Jesus Christ. 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 in their families, their communities, their chosen fields, and in building the kingdom of God.”² 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.”³ 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.”⁴

We reaffirm that the First Amendment to the U.S. Constitution protects the autonomy of religious institutions, including BYU–Hawaii, to be free from government involvement in the teaching or practice of religion, and from excessive entanglement with their religious affairs. Further, federal law prohibits the government from imposing any substantial burden on the free exercise of religion by BYU–Hawaii that is not the least restrictive means of meeting a compelling government interest.

¹ BYU–Hawaii Mission and Vision, <https://about.byuh.edu/about-byuh/mission-and-vision>.

² *Id.*

³ *Id.*

⁴ Church Educational System Honor Code, <https://honorcode.byuh.edu>.

Title IX “is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.” 34 C.F.R. § 106.1. BYU–Hawaii maintains that the text, structure, purpose, and history of Title IX make clear that the term “sex” is not ambiguous and refers only to biological differences between males and females, and therefore Title IX does not apply to discrimination “on the basis of” sexual orientation or gender identity. But regardless of the scope of the term “sex” in the statute, one important exception is that Title IX “shall not apply to an educational institution which is controlled by a religious organization if the application [of Title IX] would not be consistent with the religious tenets of such organization.” 20 U.S.C. § 1681(a)(3). ED has clarified that religious institutions may—but are not required to—seek assurance of a religious exemption by asserting the exemption in writing to ED. 34 C.F.R. § 106.12.

As ED has repeatedly recognized, 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. Also, a majority of BYU–Hawaii’s operating budget is derived from appropriations from the Church of Jesus Christ. Because it is controlled by the Church of Jesus Christ, BYU–Hawaii is exempt from any Title IX requirements that are inconsistent with religious tenets of the Church of Jesus Christ. In fact, OCR has already recognized that BYU–Hawaii is exempt from various Title IX requirements that are not consistent with the religious tenets of the Church of Jesus Christ, as reflected in the Church Educational System Honor Code and other BYU–Hawaii policies.⁵

The Church of Jesus Christ teaches that “[a]ll human beings—male and female—are created in the image of God,” and that “[e]ach is a beloved spirit son or daughter of heavenly parents, and, as such, each has a divine nature and destiny.” The Church of Jesus Christ also teaches that “[g]ender is an essential characteristic of individual premortal, mortal, and eternal identity and purpose.”⁶ The Church of Jesus Christ proclaims “that 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.”⁷ Importantly, “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.”⁸

The Church Educational System Honor Code includes a voluntary commitment by each BYU–Hawaii student and employee to “live a chaste and virtuous life.” In a letter dated March 4, 2020, to students, faculty, and staff, Elder Paul V. Johnson, a General Authority Seventy of the Church of Jesus Christ and then Commissioner of the Church Educational System, explained, “[t]here is and always has been more to living a chaste and virtuous life than refraining from sexual

⁵ See Letter from William L. Smith to Alton L. Wade (May 18, 1989), <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/brigham-young-university-hawaii-response-05181989.pdf>; Letter from Norma V. Cantú to Eric B. Shumway (Oct. 4, 1997), <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/brigham-young-university-hawaii-response-10141997.pdf>; and Letter from Norma V. Cantú to Eric B. Shumway (July 1, 1998), <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/brigham-young-university-hawaii-response-07011998.pdf>.

⁶ See *The Family: A Proclamation to the World*, The Church of Jesus Christ of Latter-day Saints (“The Family: A Proclamation to the World”), attached as **Exhibit 1**, <https://www.churchofjesuschrist.org/study/scriptures/the-family-a-proclamation-to-the-world>.

⁷ *Id.*

⁸ *Id.*

relations outside of marriage.” Referencing the above-stated doctrine of the Church of Jesus Christ, Elder Johnson wrote that “[s]ame-sex romantic behavior cannot lead to eternal marriage and is therefore not consistent with the principles included in the Honor Code.”⁹ Thus, any Title IX requirement that BYU–Hawaii must allow same-sex romantic behavior would be inconsistent with religious tenets of the Church of Jesus Christ, and BYU–Hawaii would be exempt from that requirement. Further, BYU–Hawaii also would be exempt from any requirements under Title IX that 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.¹⁰

BYU–Hawaii affirms that the freedom of religion guaranteed by the Constitution and federal law includes the freedom to operate a religious university without sacrificing distinctive religious beliefs or practices. At the same time, BYU–Hawaii welcomes and supports all our students and employees who agree to abide by the tenets of the Church of Jesus Christ, including those who identify as LGBTQ. We acknowledge the complicated realities that many of these individuals experience as they navigate issues surrounding sexual orientation, gender identity, and religious doctrine. The intersection of religious identity and LGBTQ identity—both at an institutional level and an individual level—is complex and nuanced. At BYU–Hawaii, where our religious mission and vision are inextricably bound up in the doctrine of Jesus Christ, we simultaneously stand firm in our religious beliefs and reiterate our love and respect for each member of our campus community. We also applaud and will continue to support ongoing efforts to find common ground on these important issues as we strive to follow Jesus Christ’s example of love and fairness for all of God’s children.¹¹

We appreciate your consideration of our religious beliefs and look forward to your response confirming ED’s acknowledgement of our religious exemption, as set forth herein.

Sincerely,



John S.K. Kauwe III, President
BRIGHAM YOUNG UNIVERSITY–HAWAII

⁹ Letter from Paul V. Johnson to Students, Faculty and Staff of the Church Educational System (Mar. 4, 2020), attached as **Exhibit 2**.

¹⁰ Specifically, BYU–Hawaii would be exempt from any Title IX requirements related to sexual orientation or gender identity to the extent that those requirements conflict with the Church of Jesus Christ’s religious tenets as applied to individuals’ behavior/conduct (as opposed to status/identity), including without limitation, provisions regarding education programs or activities (*id.* § 106.31), housing (*id.* § 106.32), comparable facilities (*id.* § 106.33), access to classes and schools (*id.* § 106.34), counseling (*id.* § 106.36), financial assistance (*id.* § 106.37), employment assistance to students (*id.* § 106.38), health and insurance benefits and services (*id.* § 106.39), marital or parental status (*id.* § 106.40), athletics (*id.* § 106.41), measuring skills or progress in physical education classes (*id.* § 106.43), and employment (*id.* § 106.51–61).

¹¹ *See, e.g.*, Fairness for All Act, H.R. 1440, 117th Congress (2021) (protecting LGBTQ rights and religious freedom); BYU–Hawaii Diversity Statement (BYU–Hawaii “seeks students who relate together in such a manner that they are ‘no more strangers and foreigners, but fellow citizens with the saints, and the household of God.’” (quoting Ephesians 2:19)), <https://about.byuh.edu/ethics-diversity>.

EXHIBIT 1

**The Family: A Proclamation to the World
The Church of Jesus Christ of Latter-day Saints**

THE FAMILY

A PROCLAMATION TO THE WORLD

THE FIRST PRESIDENCY AND COUNCIL OF THE TWELVE APOSTLES OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

WE, THE FIRST PRESIDENCY and the Council of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints, solemnly proclaim that 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.

ALL HUMAN BEINGS—male and female—are created in the image of God. Each is a beloved spirit son or daughter of heavenly parents, and, as such, each has a divine nature and destiny. Gender is an essential characteristic of individual premortal, mortal, and eternal identity and purpose.

IN THE PREMORTAL REALM, spirit sons and daughters knew and worshipped God as their Eternal Father and accepted His plan by which His children could obtain a physical body and gain earthly experience to progress toward perfection and ultimately realize their divine destiny as heirs of eternal life. The divine plan of happiness enables family relationships to be perpetuated beyond the grave. Sacred ordinances and covenants available in holy temples make it possible for individuals to return to the presence of God and for families to be united eternally.

THE FIRST COMMANDMENT that God gave to Adam and Eve pertained to their potential for parenthood as husband and wife. We declare that God's commandment for His children to multiply and replenish the earth remains in force. We further declare 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.

WE DECLARE the means by which mortal life is created to be divinely appointed. We affirm the sanctity of life and of its importance in God's eternal plan.

HUSBAND AND WIFE have a solemn responsibility to love and care for each other and for their children. "Children are an heritage of the Lord" (Psalm 127:3). Parents have a sacred duty to rear their children in love and righteousness,

to provide for their physical and spiritual needs, and to teach them to love and serve one another, observe the commandments of God, and be law-abiding citizens wherever they live. Husbands and wives—mothers and fathers—will be held accountable before God for the discharge of these obligations.

THE FAMILY is ordained of God. Marriage between man and woman is essential to His eternal plan. Children are entitled to birth within the bonds of matrimony, and to be reared by a father and a mother who honor marital vows with complete fidelity. Happiness in family life is most likely to be achieved when founded upon the teachings of the Lord Jesus Christ. Successful marriages and families are established and maintained on principles of faith, prayer, repentance, forgiveness, respect, love, compassion, work, and wholesome recreational activities. By divine design, fathers are to preside over their families in love and righteousness and are responsible to provide the necessities of life and protection for their families. Mothers are primarily responsible for the nurture of their children. In these sacred responsibilities, fathers and mothers are obligated to help one another as equal partners. Disability, death, or other circumstances may necessitate individual adaptation. Extended families should lend support when needed.

WE WARN that individuals who violate covenants of chastity, who abuse spouse or offspring, or who fail to fulfill family responsibilities will one day stand accountable before God. Further, we warn that the disintegration of the family will bring upon individuals, communities, and nations the calamities foretold by ancient and modern prophets.

WE CALL UPON responsible citizens and officers of government everywhere to promote those measures designed to maintain and strengthen the family as the fundamental unit of society.

This proclamation was read by President Gordon B. Hinckley as part of his message at the General Relief Society Meeting held September 23, 1995, in Salt Lake City, Utah.

EXHIBIT 2

March 4, 2020 Letter from
Elder Paul V. Johnson

THE CHURCH OF
JESUS CHRIST
OF LATTER-DAY SAINTS

CHURCH EDUCATIONAL SYSTEM
COMMISSIONER'S OFFICE
50 East North Temple Street
Salt Lake City, Utah 84150-0009

March 4, 2020

To students, faculty, and staff of the Church Educational System:

Recently the language of the principle-based Church Educational System Honor Code was updated. Those adjustments included significant doctrinal and behavioral matters that have led to much discussion and some misinterpretation. Out of respect for all concerned, we are providing the following clarifying statement.

One change to the Honor Code language that has raised questions was the removal of a section on "Homosexual Behavior." The moral standards of the Church did not change with the recent release of the *General Handbook* or the updated Honor Code. There is and always has been more to living the Lord's standard of a chaste and virtuous life than refraining from sexual relations outside of marriage. Lasting joy comes when we live the spirit as well as the letter of God's laws.

A foundational doctrine of the restored gospel of Jesus Christ is that "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 Family: A Proclamation to the World"). Church leaders have long taught these principles.

Same-sex romantic behavior cannot lead to eternal marriage and is therefore not compatible with the principles included in the Honor Code.

We are grateful for the commitment that all students and employees in the Church Educational System make to live the principles and spirit of the Honor Code.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul V. Johnson", is written over a horizontal line.

Elder Paul V. Johnson
Commissioner, Church Educational System