



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD., SUITE 310
DENVER, CO 80204-3582

REGION VIII

ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

February 8, 2022

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

Sent by email only to: kevin_worthen@byu.edu

Re: Brigham Young University
OCR Case Number 08-20-2196

Dear President Worthen:

On March 9, 2020, the U.S. Department of Education's Office for Civil Rights (OCR) received a complaint alleging that Brigham Young University (the University) discriminates against students on the basis of sex. Specifically, the complaint alleged that the University engages in the different treatment of students who are involved in same-sex romantic relationships by stating that such relationships are not compatible with the principles of the University's Honor Code.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 - 1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX. Title IX and its implementing regulation contain several exemptions and exceptions from its coverage. *See* 20 U.S.C. §§ 1681(a)(1)-(9); 34 C.F.R. §§ 106.11-106.15.

By letter dated October 21, 2021, OCR notified the University that it was opening an investigation into the complaint. By letter to the Assistant Secretary for Civil Rights dated November 19, 2021, the University requested an assurance of exemption from the application of Title IX and its implementing regulation to the complaint. By letter dated January 3, 2022, the Assistant Secretary for Civil Rights assured the University of its exemption from the following regulatory provisions to the extent that application of those provisions would conflict with the religious tenets of the University's controlling religious organization that pertain to sexual orientation and gender identity:

- 34 C.F.R. § 106.21 (admission)
- 34 C.F.R. § 106.22 (preference in admission)

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

- 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)

Because the University is exempt from the above-referenced regulatory provisions of Title IX to the extent that application of those provisions conflict with the religious tenets of its controlling religious organization, OCR lacks jurisdiction to address the complaint's allegations. Accordingly, OCR is dismissing this complaint pursuant to Section 108(f) of its *Case Processing Manual* as of the date of this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. OCR also would like to make the University aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, you may contact Stephen Worthington, an OCR attorney assigned to this case, at (303) 844-3682 or stephen.worthington@ed.gov.

Sincerely,

Sandra Roesti
Supervisory Attorney

cc: David M. Andersen, University Counsel, Brigham Young University

Steven M. Sandberg, Assistant to the President and General Counsel, Brigham Young University