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January 13, 2009

By Facsimile and United States Mail

Michael R. Orme
Assistant to the President
General Counsel
Brigham Young University
A-357 ASB
Provo, Utah 84602-1333
Fax: (801) 422-0265

Re: Chad Hardy v. Brigham Young University

Dear Mr. Orme:

Thank you for your letter of January 12. Unfortunately, it only deepens, and does not dispel, the confusion over the basis for the university's action in this case and the nature of the limited "remedy" the university affords.

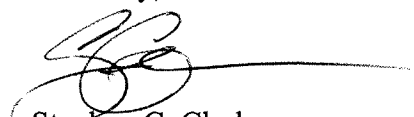
I appreciate your clarifying that Mr. Hardy's excommunication was the sole basis for the university's action. However, your position that the university's decision to withhold the degree you admit Mr. Hardy earned does not constitute punishment is not only tendentious, but also avoids the fundamental question in my prior letter: Since "[w]ithholding the Posting of a degree . . . is used . . . *on a case-by-case basis*" following excommunication, how did the university determine in Mr. Hardy's case that excommunication *ipso facto* removed him from good Honor Code standing, and why was Mr. Hardy's case not assessed on an individualized basis *following* notice and an opportunity to be heard? In the absence of any specific reference to written policies and practices expressly providing a basis for the university's *automatically* withholding Mr. Hardy's degree without prior notice or opportunity to be heard, we can only conclude the university has no such basis.

I also appreciate your again inviting Mr. Hardy to participate in a university review without counsel, and your stated willingness to assist him in following the process. Since he has the burden in that context “to persuade the Dean of Students that BYU should make an exception to its [alleged, unwritten] policy and award Mr. Hardy a degree,” but must do so without the benefit of counsel, could you please at least let me know what the elements are of the case Mr. Hardy must make, what criteria the Dean of Students will apply in deciding whether to make an exception, where I can find established policies or precedents reflecting those elements and applying those criteria, as well as the other details of the process I have requested, so that I can properly advise Mr. Hardy and help him make his case? If there are none, please so indicate so it will be clear that BYU’s practice, in the “review” process as in making the initial determination, is to exercise unfettered, standardless discretion without reference to anything specific in the Honor Code or elsewhere.

Also, please let me know the process and accommodations for making a transcript or other recording of the proceeding so that the record will be clear, and potential dates and times as well as location.

On a separate but related subject, I asked my document clerk to make arrangements for this office to obtain a copy of Mr. Hardy’s entire file based on his FERPA authorization in order to avoid the time and expense that would be involved in either Mr. Hardy’s or my traveling to the university and inspecting the records only to (likely) designate the entire file for copying. He advises me the Assistant Registrar told him the university refuses to provide Mr. Hardy a copy of his file. Once again, I am unable to find anything in FERPA or in the university’s written policies that justifies this refusal. There is a vague statement on one of the websites to which you refer in your prior letter (the other could not be found) to the effect that the university can refuse to provide copies in “[o]ther cases as determined by university policy on registration and academic holds or as determined appropriate by the university” – apparently inviting more standardless discretion and discriminatory treatment of Mr. Hardy, who is only seeking to obtain information and defend himself. Please advise.

Sincerely,



Stephen C. Clark

cc: Chad Hardy