



OFFICE OF THE GENERAL COUNSEL  
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January 12, 2009

**Via U.S. Mail and Fax**

Stephen C. Clark, Esq.  
Jones Waldo Holbrook & McDonough  
170 S. Main Street, Suite 1500  
Salt Lake City, Utah 84101  
FAX: 801-328-0537

Re: Chad Hardy

Dear Mr. Clark:

This letter addresses Chad Hardy's opportunity to receive a university review through the dean of students. Please be aware that this letter contains specific information from Mr. Hardy's education records that is not otherwise available for general disclosure under FERPA and which should not be redisclosed to third parties without the express written consent of Mr. Hardy.

BYU, along with all other public and private institutions of higher education, has the authority and the responsibility to set both academic and non-academic standards for awarding a degree. A college or university may withhold a degree for failure to meet those standards.

BYU's academic standards include general education courses, religion courses, residence hours (classes taken on BYU's campus), department standards for a chosen major, and total credit hours. The non-academic standards for graduation have also been made clear by BYU. For example, you refer in your letters dated November 21, 2008, and December 21, 2008, to several documents that specify BYU's non-academic requirement that a student be in good Honor Code standing in order to graduate. In addition, I refer you to the first paragraph under the graduation section of the undergraduate catalog, which is titled Graduation Information/Adherence to University Standards (available online at <http://saas.byu.edu/catalog/2007-2008ucat/graduation.aspx?lms=18>).

Creating a list of students who are in the process of completing graduation requirements is in no sense a guarantee that graduation requirements have been met. Rather, it is simply a tool used by the university to verify and confirm that the requirements have indeed been met. Deleting a student's name from a graduation list prior to delivery of a diploma can occur as a result of any failure to satisfy a graduation requirement. It is not a disciplinary action. It is a ministerial action, during the post-commencement

process of graduation evaluation, that reflects the student's failure to meet either academic or non-academic requirements for graduation.

Mr. Hardy has been given credit for the two online religion courses he took last summer, and he is currently academically eligible for graduation. However, completing the academic requirements is not alone sufficient. Mr. Hardy must also meet the non-academic requirements for graduation at the time of graduation evaluation. A student's academic eligibility for graduation does not override, replace, or otherwise satisfy his non-academic requirements any more than a student's non-academic eligibility for graduation can substitute for academic eligibility.

Both in April 2002, when Mr. Hardy first walked in cap and gown with his prospective class, and again in August 2008, when Mr. Hardy again walked in cap and gown with his prospective class, Mr. Hardy's eligibility for graduation was determined during the post-commencement process of graduation evaluation. Mr. Hardy's name was deleted from the graduation list in 2002 because he failed to meet BYU's academic standards. His name was deleted in 2008 for failure to meet BYU's non-academic standards.

Prior to the date when diplomas were to be delivered, BYU determined that Mr. Hardy was not in good Honor Code standing based solely on his ecclesiastical status as an excommunicated member of the Church. Excommunication is the most serious ecclesiastical action that may be taken against a member of the Church. When a student is excommunicated, suspension (which is more severe than probation) from school is virtually automatic. When Mr. Hardy's ecclesiastical leaders made the determination to excommunicate Mr. Hardy from the Church, Mr. Hardy ceased to be in good Honor Code standing and no longer met the non-academic requirements to receive a degree.

However, neither Mr. Hardy nor anyone else has reported violations of the Honor Code by Mr. Hardy to the Honor Code Office, and the Honor Code Office has not undertaken any investigation of Mr. Hardy. Because no investigation has taken place, the Honor Code Office's investigation and administrative review process does not apply.

Mr. Hardy's university review through the dean of students is his exclusive remedy to the university's decision to hold his diploma. In this review (should Mr. Hardy elect to pursue it), Mr. Hardy will have the opportunity and the burden to demonstrate either that he was not excommunicated from the Church (and therefore establish that BYU was mistaken in its basis for not awarding Mr. Hardy a degree) or to persuade the dean of students that BYU should make an exception from its policy and award Mr. Hardy a degree, despite his failure to be in good Honor Code standing.

It is BYU's established practice for students to meet with the dean of students in a collegial, non-adversarial manner. The student and the dean of students meet and talk directly with each other. This practice has been in place for years and has been memorialized, for example, in the context of reviews of Honor Code Office investigations. Mr. Hardy may have one or two other people present at the meeting to support or confer with him, but those people do not participate in the conversation unless the dean of students invites them to do so. In this university review, attorneys will not be allowed to attend or represent either the university or Mr. Hardy. Only attorneys who are directly related to Mr. Hardy as a parent, legal guardian, or spouse may attend the meeting, but solely in the role of a support person.

Mr. Hardy will be entitled to present any information he wishes the university to take into account in this matter. For example, he may wish to alert the dean of students to any mitigating factors that may bear on the university's decision not to award a degree. At the conclusion of the review, the dean of students

will provide a written decision to Mr. Hardy on behalf of the university, and that decision will be final and not subject to further university review.

In conclusion, we have reviewed in detail the various university documents and procedures, and have concluded that BYU has satisfied applicable procedures in this instance by providing Mr. Hardy with an opportunity to participate in a university review through the dean of students. I again invite Mr. Hardy to call the office of the dean of students at 801-422-7254 to schedule a time to avail himself of this review. BYU stands ready to assist Mr. Hardy in following this process if that is his election. Also, as I have said before, if you would like to discuss these issues, I will be available to meet with you at a mutually convenient time and place.

Sincerely,



Michael R. Orme  
General Counsel

MRO/bmj