



Office of the General Counsel
FAX Transmission

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OFFICE OF THE GENERAL COUNSEL
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January 21, 2009

Via U.S. Mail and Fax

Stephen C. Clark, Esq.
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170 S. Main Street, Suite 1500
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FAX: 801-328-0537

Re: Chad Hardy

Dear Mr. Clark:

In your letter to me of January 13, 2009, you express confusion over the basis for BYU's decision not to award a degree to Mr. Hardy and the nature of his remedy of meeting with the dean of students. You also raise a number of specific procedural questions. As you can see from the discussion that follows, I believe that the basis for the university's decision is clear. I also provide in this letter additional clarification on a few points in your letter.

Quite frankly, I believe that BYU's policies and procedures relating to the connection between a student's standing in The Church of Jesus Christ of Latter-day Saints (the "Church") and eligibility for the benefits of a BYU education are clearly articulated and easily capable of being understood by both prospective and ongoing students (*see* pp. 12-21, 31, 36-39 of the 2007-2008 Undergraduate Catalog ("Catalog"), available online at the URL I provided in my letter dated January 12, 2009). Except for very limited exceptions, students who are members of the Church must be in good standing with the Church to be admitted to, to continue enrollment at, and to graduate from BYU. Moreover, a high moral and religious standard based on Church values is articulated in the BYU Honor Code and is required of all students (*see* Catalog pp. 36-39). Our students understand that being excommunicated from the Church automatically takes them out of good Church standing and, therefore, out of good Honor Code standing, which directly impacts their eligibility for admission, continued enrollment, and graduation (*see* Catalog pp. 36-39, 40-42, 56, 65). Because a BYU degree signifies compliance with both academic and non-academic standards, including Honor Code standards, a prospective graduate is not cleared for the awarding of a degree once BYU becomes aware, as it did in Mr. Hardy's case, of his status as an excommunicated member of the Church.

However, as I have pointed out in my earlier correspondence, Mr. Hardy is not without a remedy at the university. Mr. Hardy has the opportunity, specific to his case, to address his Honor Code standing with the dean of students in a university review. In that meeting with the dean of students, he can demonstrate he is in good Church standing or he can persuade the dean of students that notwithstanding his status as an excommunicated member of the Church, BYU should in his case

make an exception to the clear requirement that a student must be in good Honor Code standing to receive a degree. This is a high burden of persuasion because excommunication from the Church acts as an ecclesiastic decertification of good Honor Code standing. Mr. Hardy therefore should be prepared to demonstrate to the dean of students that, taking into account all relevant facts and any mitigating circumstances, an exception should be granted in his case.

In my previous correspondence, I have attempted to be clear that BYU's processes are not adversarial. The dean of students will consider all information presented by Mr. Hardy to make an informed evaluation of whether an exception to the requirement of good Honor Code standing should be granted. Just as an instructor evaluates academic work and accomplishments without the adversarial trappings of attorneys, cross-examination, transcripts and the like, the dean of students will engage in a similar collegial evaluation of the information Mr. Hardy presents. Some find it difficult to accept that the education process—both as to matters of academic and non-academic standards—is appropriately administered without the adversarial rules and customs of the American legal system. American courts, however, recognize that the educational evaluation process at private religious institutions does not require traditional legal proceedings.

With respect to your request to make copies of Mr. Hardy's education records, Mr. Hardy is only entitled under FERPA to "inspect and review" those records. However, BYU does allow for making copies in some contexts. One of our concerns when providing copies is the privacy of others. Accordingly, the university is willing to provide copies (at Mr. Hardy's expense) of any of Mr. Hardy's records to him that do not implicate the privacy of others. Someone from the registrar's office will contact your office when the copies are ready. Mr. Hardy's other education records will remain available for inspection and review. Incidentally, we have verified the accuracy of the Web site citations I provided to you earlier. Is it possible that your Internet search to locate the site inadvertently failed to include the underscore symbol?

In sum, Mr. Hardy is being held to the same published and well-recognized standards that apply to all BYU students. Adequate processes are in place to provide Mr. Hardy with an opportunity to present information and receive a personalized review of the circumstances surrounding his Honor Code standing and his status as an excommunicated member of the Church. I believe that I have addressed through our series of letters the legitimate questions that have been raised. Mr. Hardy is again invited to contact the dean of students to schedule his university review.

Sincerely,



Michael R. Orme
General Counsel

MRO/bmj