

Dr. Sandra E. Elman, President
Northwest Commission on Colleges
and Universities
8060 165th Ave. NE
Suite 100
Redmond, WA 98052

Dear Dr. Elman:

I am writing to file a complaint with the Northwest Commission on Colleges and Universities against Brigham Young University in Provo, Utah (University or interchangeably BYU). The University revoked (or refused to award) my bachelor's degree after I had completed all requirements for graduation. The grounds for this action were that I had been excommunicated by The Church of Jesus Christ of Latter-day Saints (Church) between the time I completed all graduation requirements and when the degree should have been posted to my academic record. I believe the action taken by the University is unfair and violates both the NWCCU Eligibility Requirements and NWCCU Accreditation Standards.

It is my position that my remedies under the student grievance policy were rendered meaningless by the University when I was not given notice of, or a hearing on, the alleged Honor Code violations. The University refuses to reconsider its actions until I let them baptize me into the Church.

A detailed, sequential statement of events is attached for reference purposes. The following is a brief summary.

Background

I was a full-time student at BYU from 1999 through early 2002. I signed a pledge to uphold BYU's Honor Code, as must all students who attend. During this period, and until after I had completed all requirements for graduation, I was in good Honor Code standing. This is not disputed by the University.

In December 2001 I submitted an application and paid the requisite fee for April 2002 graduation. Subsequently, learned I needed four religion credit hours to qualify for graduation and would not be able to obtain my degree until I completed those credits.

I left Provo and later moved to Las Vegas, Nevada with the understanding from my academic advisor that I could complete the required hours through BYU's Independent Study program, and that once I did, I would be awarded my degree.

During 2007, while living in Las Vegas, I and a business partner formed a company for the purpose of producing a calendar based on an original idea. The calendar, entitled “Men on a Mission,” depicts former Mormon missionaries with their shirts off: their upper torsos are exposed, but otherwise they are fully clothed. No one alleges that the depictions of the models are pornographic, lewd or indecent.

Each page of the calendar features a different former missionary, with a picture of him posing without his shirt. Each former missionary describes his missionary experience briefly. The information is positive in nature and does not in any way denigrate the Church, its missionary program, its teachings, or any aspect of its doctrine. Most of the models pictured were active members in the Church at that time the photos were taken, and continue to be today. Some models were BYU students during the time of their participation.

The calendar contains an express disclaimer that it is in no way “affiliated with or endorsed by” the Church. I conceived and developed the calendar as a way to spread a positive message about religious tolerance that would challenge religious stereotypes, raise proceeds for charitable causes, and hopefully provide income for me and my business partner.

The 2008 *Men on a Mission* calendar garnered substantial notoriety and was featured on MSNBC, Fox News, Rolling Stones magazine and other national and international publications. It not only achieved commercial success, but also furthered charitable purposes, consistent with my promise that a portion of the proceeds from calendar sales would be donated to worthwhile charities in the countries where the missionaries had served their missions.

On June 7, 2008, I registered through BYU’s Independent Study program to obtain the four credit hours I needed to complete my academic requirements for graduation. I contacted my academic advisor Brenda Butterfield and she added my name to the list for the August 2008 graduation. I was not required to sign anything from the Honor Code Office, pay any fees, nor was I required to produce an ecclesiastical endorsement for graduation. Ms. Butterfield informed that the application and fees from 2001 would be acceptable.

One month later, on July 7, 2008, I completed the final credits needed through the University’s Independent Study program by taking the final exam at the BYU Independent Study Testing Center on the Provo, Utah campus. The classes were taught online and the work was done by me in my Las Vegas home.

Shortly thereafter, on July 13, 2008 I was excommunicated from The Church of Jesus Christ of Latter-day Saints. My excommunication was not based on any of the usual grounds for excommunication, which include “moral” (sexual) transgressions and apostasy. I was excommunicated for refusing to discontinue distribution of the *Men on a Mission* calendar.

The excommunication was conducted in Las Vegas, Nevada and was presided over by my Stake President, Frank Davie. The University played no role in this proceeding and was not privy to the grounds for my excommunication. Davie, who presided over my excommunication had no relationship to the University. During the proceeding, I was offered a “deal,” which if accepted, would have allowed me to remain in the Church. The requirement was that I discontinue publishing and distributing the *Men on a Mission* calendar.

I explained that I could not agree to discontinue publishing and distributing the calendar because it was not owned by me, but rather by a corporation, of which I was only part owner. I explained that my business partner, who had fronted all the money for the start up of the company, and to whom the sales revenues were owed until he was paid in full, was adamant about continuing production and distribution of the calendar. Without his agreement, I explained, I would be unable to comply with the request to discontinue production. After a brief deliberation by the group of Church elders, I was told I had been excommunicated and was no longer a member of the Church.

On July 30, 2008 – seventeen days after my excommunication – I requested and received an official transcript from the BYU Records Office. The transcript indicated the four religion credit hours had been posted to my record and that all other requirements for graduation had been met. This was consistent with the agreement I had made with my counselor in 2002.

On August 15, 2008 – just over a month after my excommunication, I graduated. I walked with my class, was photographed in my cap and gown and went through graduation exercises with the other graduates. We were all told our diplomas would be mailed to us soon.

On September 24, 2008, when I still hadn’t received my diploma in the mail, I called the University’s advisement center to find out when I might expect it. The advisement center informed me that the degree had not been posted and said they could not explain why and they advised me to speak to my advisor, Brenda Butterfield. I immediately called the Honor Code Office and the Financial Aid Office. Both verified there were no holds of any kind on my

record, and said they could see nothing on my records that that might prevent my degree from being posted.

On September 25, 2008, I spoke with my advisor, Brenda Butterfield. She told me she had investigated the situation and was told to inform me that a non-academic hold had been placed on my record and that I needed to speak with Norman Finlinson, the Executive Director of Student Academic and Advisement Services. I called Mr. Finlinson., and he apologized for not speaking with me sooner and said that he had been meaning to send me a letter. He said this letter would be mailed shortly and it would explain the reasons for the non-academic hold. He would not discuss the matter, nor would he give any explanation over the phone.

On October 4, I received a letter dated September 30, 2008. The letter informed me that my “name [had] been deleted from the August 2008 Graduation list” and that I would “not be awarded a degree from Brigham Young University” because “[a] non-academic hold was placed on [my] record *prior* to the posting of my degree.” It further stated that BYU “became aware that [I was] not in good honor code standing to graduate because [I] had been excommunicated from The Church of Jesus Christ of Latter-Day Saints, the affiliated sponsor of BYU.” It went on to say that if I wish to be eligible for my degree in the future, I would need to be reinstated as a member of the Church in good standing.

I called Finlinson to discuss the letter. Finlinson provided no additional information and did not offer any options. He did not mention to me that I had a right to appeal the decision. I was simply told BYU would stand by its decision and that it was within its rights to refuse to award me my degree.

I then called Vernon Heperi, the Dean of Students. When I asked how I could appeal the decision, he said he, too, would be standing behind the letter.

The press picked up the story and soon it was international news. Newspapers in every English-speaking country in the world carried the story, from small, local papers to large national and international ones. Without exception, they decried the acts of the University as unreasonable, unjustifiable and grossly unfair. Utah radio stations, blogs and other media discussed the incident, with readers and listeners invited to “weigh in” on the controversy. It seemed that nearly everyone agreed that withholding my degree was unfair and constituted a punishment far too severe for the alleged infraction.

The University Violated NWCCU's Policy on Institutional Integrity

The NWCCU Standard on Institutional Integrity states:

9.1 A college or University must be well managed and remain solvent, but it is not a business or an industry. It must be concerned with the needs of its community and state and country, but an institution of higher learning is not a political part or a social service. It must be morally responsible, but, **even when Church-related, it is not a religion or a Church.** (emphasis added)

A college or University is an institution of higher learning. Those within it have, as a first concern, evidence and truth rather than particular judgments of institutional benefactors, concerns of churchmen, public opinion, social pressure, or political proscription.

On the part of trustees and administrators, there is the obligation to protect faculty and students from inappropriate pressures or destructive harassments.

Applying the above Standard to my situation demands that the University, as an institution of higher learning, operate independent of the judgments of its "institutional benefactor," The Church of Jesus Christ of Latter-day Saints. This holds true even though the University is "church-related." Furthermore, the University has an obligation, under this Standard, to protect me, a student, from inappropriate pressures or destructive harassments applied by The Church of Jesus Christ of Latter-day Saints. With "evidence and truth" as its first concern, the University should make its own determination of my worthiness to graduate and not permit this decision to be dictated by any other person or institution, even its institutional benefactor, the LDS Church.

Unfortunately, in my case Brigham Young University failed Standard 9.1.A in every possible way when it accepted the outcome of the Church Court in Las Vegas as grounds for denying me my degree. The University was not concerned with "evidence and truth," as is demonstrated by the fact that it held no hearings, examined no witnesses and conducted no investigations. It did not offer me a chance to speak or call witnesses. The University did not deliberate before imposing its sentence, nor did it review its actions after. In fact, the University didn't even notify me of alleged violations of the Honor Code until after I discovered on my own that my degree had been revoked. I cannot imagine a clearer example of a University violating Standard 9.1.A.

Although I agree that it is possible that the grounds for excommunication might also constitute grounds for academic discipline (as in the case of a serious criminal offense), each process should arrive at its own determination after an independent investigation has been conducted. This is especially appropriate when a University degree is at stake. Even in cases where it seems clear that behavior violates the Honor Code, there will usually be mitigating circumstances that must be considered if justice is to be served.

Although it's impossible to reconstruct the situation and ask the question "what would have happened if the University has adhered to Standards 9.1.A," I believe the outcome would have been different. University officials are familiar with the student grievance process, whereas the Church Court in Las Vegas was likely not. There is no reason to believe the Church officials sitting in judgment against me in Las Vegas were even aware of the potential consequences of their decision. If the Church Court proceedings in Las Vegas were confidential, as I was promised they would be, then there is absolutely no possible way for the University officials in Provo to have known *why* I was excommunicated. Therefore, the University revoked my degree and didn't even know why it had done so.

Excommunication as Basis for Denying Degree

In defining excommunication in the LDS Church, Wikipedia refers to official LDS sources. Wikipedia's description is consistent with what I've been taught with respect to excommunication. The article states that excommunication is "a disciplinary process used only in extreme situations." Its proceedings are confidential, according to the Wikipedia article. Then quoting Church Seventy Robert L. Simpson, it continues:

There are very few sins which mandate excommunication to begin the process of repentance. Gross iniquity can qualify a person for excommunication. "Gross Iniquity" could include "murder, adultery, sexual perversion or any serious offense against society that has resulted in conviction by the civil courts. A good example would be a major criminal charge."

"... the procedure is kind, and it is gentle. The Church Court system is just. As has been stated on many occasions, these are courts of love. . . ."

Clearly, the acts of producing and distributing a calendar with pictures of shirtless men; men who were of legal age and able to make a decision to pose without a shirt, do not constitute gross iniquity as defined to include murder, adultery, and sexual perversion. In producing and distributing the calendar, I committed no crime, nor did I even commit a legal infraction on the

level of a parking ticket. I didn't engage in conduct that could have resulted in liability in a civil court (although I wouldn't be able to make this claim if I had accepted the Church's deal and breached my contract with my partner).

The men who posed for the calendar did so by their own choice; in fact some even asked if I would call them should I decide to do another edition the following year.

Assuming the University believed I violated provisions in the Honor Code, it should have provided me with notice and an opportunity to defend myself prior to taking disciplinary action. Following disciplinary action, the University should have provided a review.

BYU Policy on Student Rights is Unclear

NWCCU Accreditation Standard 3.B.3 states: Policies on student's rights and responsibilities, including those related to academic honesty and procedural rights, are clearly stated, well-publicized, readily available, and implemented in a clear and consistent manner.

After I was told by my academic advisor that my degree would not be posted, I referred to the Honor Code to try to determine what recourse I might have to appeal the University's action. It soon became obvious that the "due process" provisions of the Honor Code are inconsistent and often contradictory.

There is, however, one consistent concept that runs throughout the Honor Code: "fairness." The Honor Code obligates BYU to deal fairly with students and states that in cases where the University believes a student is in violation of the Honor Code, the student will receive notice of the alleged violation and have an opportunity to defend himself, including calling witness on his behalf. The Honor Code anticipates this notice would occur prior to any action being taken against the student by the University. The standards of notice and hearing are found in various places in the Honor Code. For example:

a. The Honor Code requires the Church to report any excommunication of a student to the University's Honor Code Office ("HCO") (the office established to investigate and handle alleged Honor Code violations), and requires the HCO to inform the student of any action it plans to take in response: "bishops and/or stake presidents are required to convey that change of status to the Honor Code Office. In turn, the Honor Code Office informs students of any actions taken related to their University status."

b. The Honor Code requires BYU and the HCO to follow certain procedures in investigating alleged Honor Code violations. BYU must give the student notice before taking disciplinary action against the student. As part of an Honor Code investigation, the HCO is to “**notify the student in writing of the alleged violation(s) of the Honor Code if it appears that an Honor Code violation has occurred.**” (emphasis added) The Honor Code permits the University to deviate from this general policy only “so long as the student receives from the University, **prior** to the actual implementation of any disciplinary action, (i) **notice of the nature of the alleged or suspected Honor Code violation(s), and (ii) an opportunity to respond.**” (emphasis added)

c. When a student’s continuing ecclesiastical endorsement is withdrawn as a result of a student’s excommunication, the Honor Code requires that BYU provide the student notice “in writing of his or her ineligibility to continue enrollment.” “Instructions on the procedure for requesting an exception to the ecclesiastical endorsement requirement are also included [in this notice].”

BYU Failed to Provide Notice and Hearing on Honor Code Violations, Notice of Ineligibility to Continue Enrollment, and Instructions for Requesting Exception to Ecclesiastical Endorsement

The Honor Code requires the University to a) notify the student in writing of the alleged Honor Code violation and b) give the student an opportunity to respond. This is required in ***all*** cases whether or not a student has been excommunicated from the Church. This basic concept of “notice and hearing” is a fundamental concept of fairness. It is key to the American system of justice and is enshrined in the constitutions of both the United States and the State of Utah. Denying notice and hearing is a violation of the most basic and fundamental of human rights.

Should the University claim it provided a hearing (albeit one that took place 6 months after the imposition of its sentence), I refer to the well-known adage that “justice delayed is justice denied.” Delaying my hearing for a period of six months is tantamount to denying the hearing altogether. To even consider the question of whether justice could be served by a hearing delayed six months is ludicrous.

It should be noted that throughout this matter, the University has never denied that it a) failed to notify me of the allegations against me; b) failed to provide an opportunity to respond to alleged Honor Code violations; c) failed to notify me of my ineligibility to continue enrollment,

and d) failed to notify me of the process for appealing the University's decision. It's hard to imagine a case where the University could fail more miserably in its duty to notify. After all of this, the University went even further and determined I *violated* the Honor Code and then punished me with the most severe of all possible penalties, that of revoking my degree. These actions not only demonstrate a complete disregard for NWCCU Eligibility Requirements and Standards of Accreditation, they violate the University's duties under the very Honor Code it is supposed to enforce.

Is Excommunication *Per Se* A Violation of the Student Honor Code?

The University has maintained that when a student is excommunicated, that student is automatically in violation of the Honor Code. Nowhere in the Honor Code does it state that a student's excommunication from the Church is the same as a determination on the facts that a student is not in good Honor Code standing. On the contrary, it provides: "Withholding the posting of a degree or denying graduation participation is used . . . on a case-by-case basis, when criteria such as the following exist for withholding the posting or denying graduation for violation of the Honor Code when all other requirements for graduation have been met. As noted in the BYU Bulletin: Undergraduate Catalog, 'Graduation may be delayed or denied for students who violate the BYU Honor Code, whose ecclesiastical endorsement has been withdrawn, or who have unmet financial obligation with the University.' The criteria include: Excommunication, disfellowship or disaffiliation from the Church." Clearly, excommunication, according to this provision, is not something the University must accept as sufficient reason to withhold a degree or terminate enrolment.

It should be noted that by the time the University agreed to give me a hearing, it had been the object of a great deal of criticism for its decision. Blogs and editorial columns in newspapers both in Utah and across the country had almost uniformly weighed in that the University, even if within its legal rights, had overreacted and been unnecessarily harsh. I had been interviewed on Fox News and on other national television and radio shows. Surely, the University knew of this, as did the Church.

The University had stated publicly that it had no intention of backing down from its position. In other words, its decision was made and nothing could change it. Somehow, I didn't expect the University would give me an unbiased review, nor did it.

University Officials had Conflicting Interests

If the University had actually granted me a fair hearing, I would have had to convince them to go against a decision made by their superiors and employers. Not only that, they would have had to disobey their religious leaders because it was the religious leaders who had excommunicated me. If the University officials wanted to stay in the good graces of the University and the Church, there was no question which side they should come down on. Such conflicts of interest are intended to be addressed and avoided, according to NWCCU Standard 9.A.4, which states:

Institutional policy defines and prohibits conflict of interest on the part of governing board members, administrators, faculty, and staff.

I searched the University's web site and other online sources to find the University's Conflict of Interest Policy and did not find it. Regardless of whether a written policy exists, it seems there is an obvious conflict of interest in the University attempting to fairly and impartially review the same punishment it imposed.

The University, as stated in Standard 9.1, has a duty to be fair and ethical in all its dealings with me, as a student. The University officials, who would have reviewed my case, would have likely felt an obligation to their superiors who had made the decision. They would also have had their own interests to consider before going against the Church and University. Then, there was the fact that Latter-day Saints are taught to never question their Church leaders. Last and least of all would be their duty to me, a student.

Honor Code Compliance not Required for Independent Study

It should be noted that during the time I was earning the final four credits toward my degree, I was not required to comply with the Honor Code. Neither the Honor Code generally, nor its Continuing Student Ecclesiastical Requirement, apply to those who take courses online from BYU. Likewise, the Honor Code contains no requirement that BYU review a student's Honor Code standing after the date when the student completes all other graduation requirements. There is no mention, for example, of any graduation evaluation period following the completion of academic requirements or any post-commencement review of a student's Honor Code standing.

The Honor Code *does* appear to require, at least in one place, that “[i]f a student is not in good Honor Code standing, the University will not award a degree.” BYU apparently concluded that (1) this provision required me to remain continuously in good Honor Code standing until up to, and even after, the time I fulfilled all outstanding academic requirements; and (2) my excommunication justified imposing the most severe of all sanctions, because it could be taken *without question* that I was not in good Honor Code standing if I’d been excommunicated.

The Penalty is Excessively Severe and has Been Unfairly Imposed

The University says it had no choice but to revoke my degree because of the action taken by a disciplinary body in Las Vegas. Because the findings of a disciplinary court are confidential and therefore not available to school officials the HCO would not know why I was excommunicated. It would have no standard for measuring whether the penalty of revoking a four year degree was justified by the alleged actions on my part which led to my excommunication.

The Honor Code stresses that students are to be treated with fairness, yet the University has not treated me with fairness. Fairness requires the punishment to be commensurate with the severity of the “offense.” Without looking at the grounds for the excommunication, it is impossible for the University to determine whether or not a penalty is fair.

Standard 9.A.1 requires the University to exemplify high ethical standards in all its dealings with Students.

9.A.1 The institution, including, governing board members, administrators, faculty, and staff, subscribes to, exemplifies, and advocates high ethical standards in the management and operations and in all of its dealings with students, the public, organizations, and external agencies.

“Ethics,” by definition, is a branch of philosophy that concerns itself with what is fair, just, good, and right. High ethical standards, when imposing a punishment, would require that the punishment be fair and just, taking all factors into consideration. “Fairness” would require one to balance the severity of the penalty with the seriousness of the offense. In so doing, it is important to note that the University has never alleged that I violated the Honor Code while attending the University, nor has it alleged that I was required to be in good Honor Code standing while taking a course through Independent Study.

When application was made for graduation, I was in good Honor Code standing. I was never accused of plagiarism, cheating, or any other act of dishonesty. I have not done anything

that would result in a criminal charge, not even the lowest level infraction (on the level of a parking violation). The behavior which constitutes the basis for revoking my degree is that of not being a member of the Church for a 32 day period from July 13, 2008 through August 15, 2008.

There are many possible penalties that the University could have been imposed, had it investigated and found me in violation of the Honor Code. Of them, revocation of an earned degree must be the most severe. My degree represents more than four years of my life, during which time I was dedicated to preparing myself for a future career and for my life ahead. Without the degree, I lack one of the most essential credentials for getting a job in my chosen field. In fact, without the degree, I may never get an interview for a job. I've spent tens of thousands of dollars in the process and forfeited time I might otherwise have spent working.

According to the Census Bureau, over an adult's working life, high school graduates earn an average of \$1.2 million and bachelor's degree holders earn about \$2.1 million, or a difference of \$900,000.00. In addition to revoking, as mentioned before, I have now been delayed from entering my chosen professions by two years. This punishment is excessive considering my alleged violation.

In an effort to make an example of me, or at the behest of Church officials in Salt Lake City who were embarrassed by the extensive negative publicity this matter has generated all over the world, University officials have used poor judgment at best. Regardless of the motive or incentive to punish me severely, the penalty does not fit the "crime." Imposing this type of penalty on me, the University violates its duty to demonstrate the highest ethical standards in its dealings with students.

BYU Failed to Conduct an Independent Inquiry

Only after repeated requests that BYU either award me my degree or provide me the review promised in the Honor Code, was I finally given a hearing. The review was conducted on February 13, 2009 – some six months after my graduation – by BYU's Dean of Students, Vernon Heperi.

In the days leading up to the review, I requested access to my ecclesiastical records so that I could effectively present my case. The Church denied me access to those records. I asked to have legal counsel present at the review and the University denied my request. I also

requested that the review be focused solely on my excommunication, as that was the lone reason cited by BYU for withholding my degree.

University Failed to Protect Me from Harassment

I thought this had been agreed to and I was surprised that during the review, I was repeatedly asked personal questions about my private life and activities, and even my sexual behavior from 2002 through the date of the interview – a time period during which I was not enrolled at, and had no affiliation with, BYU. These questions clearly violated my privacy, invaded my personal space and I knew they could have had no other possible purpose than to humiliate and intimidate me.

The nature of the questions still embarrasses me today when I think of the Dean sitting across the desk from me with my father by my side, and trying to engage me in a conversation about explicit sexual behavior. I declined to answer any of these questions, repeating my intention to limit the discussion to the relevant issue: my excommunication based on my involvement with the calendar.

On February 27, 2009, I received a letter from Dean Heperi advising me that BYU would stand by its decision to deny me my degree. First, Heperi explained that “the University did not grant to [me] a baccalaureate degree because [I was] excommunicated from The Church of Jesus Christ of Latter-day Saints . . . and removed from good Honor Code Standing.” Second, Heperi explained that “even if [he] were to disregard the excommunication,” my refusal to answer questions about my personal and sexual activities during the years of 2002 through 2008 “made it impossible to justify a conclusion that [I] currently [am] or have recently been in compliance with the Honor Code.” In other words, because I was unwilling to prove my innocence, I was to be considered guilty, and that would serve as the justification for revoking my degree.

It is again noteworthy that there was never any allegation of sexual impropriety or misconduct on my part at the time of my excommunication by the Church Court in Las Vegas. Neither was sexual impropriety given as a reason for withholding my degree. Only now, several months after the University had taken away my degree, did it first allege it was because of sexual improprieties.

Looking back, I believe Dean Heperi was on a fishing expedition looking for new justification for the penalty that had already been imposed. He was hoping that by finding

something new, he might be able to justify the obvious unfairness of the University's past decision.

Heperi then explained that he had conducted his own personal investigation of me – again, without providing me any prior notice or an opportunity for me to question how he arrived at his conclusions – and had determined that I “ha[d] not demonstrated conduct and personal behavior in harmony with the principles and values reflected in the Honor Code, including, among others, the principles of living a chaste and virtuous life, respect for others, and participating regularly in Church services.” *Id.* In arriving at this conclusion, Heperi cited only my involvement with the *Men on a Mission* calendar and his personal review of my web site, www.ChadHardy.com, a web site I established in October 2008, *after* BYU refused to award me my degree. Based on this “investigation,” Heperi concluded and informed me that “independent of your excommunication, . . . you have not demonstrated good Honor Code Standing.”

I ask NWCCU to determine whether Dean Heperi, in trumping up new grounds to justify the revocation of my degree, has demonstrated “high ethical standards in his dealings” with me. If not, I deserve to have my degree awarded. If yes, then shouldn't the review process have begun again? Isn't it fair to have expected notice from Dean Heperi of the “new” allegations against me which he claims he unearthed during his personal investigation and which gave him reason to want to engage me in a discussion of sexual matters? What exactly did this personal investigation consist of and were any of my privacy rights as a United States citizen violated?

Further, I ask NWCCU to determine whether Brigham Young University compromised its institutional integrity when, as I've detailed earlier in this complaint, it permitted its institutional benefactor, The Church of Jesus Christ of Latter-day Saints, to dictate the outcome of a procedure that resulted in denial of a University degree. In its determination that I was unfit to be awarded a University degree, did “those within [the University] have, as a first concern evidence and truth, rather than particular judgments of institutional benefactors [and] concerns of churchmen?” Or did they allow the judgment of the LDS Church and the concerns of LDS leaders to trump truth and evidence? Is the University, as an institution of higher learning, a religion when it acts as an extension of a Church Court to sentence the excommunicated?

These are appropriate questions and should be answered by the Dean and other University officials as NWCCU determines whether University officials have demonstrated high ethical standards in all their dealings with me. They should be reminded, at the same time, that

whereas the University may disregard the Constitutional rights of Brigham Young University students, it may not violate *my* rights under the Constitutions of the United States and the State of Utah - rights which I regained upon leaving Brigham Young University.

Unequal Implementation of University Policies

It should be noted that initially, the calendar itself seemed not to be an issue with the University and the HCO. On September 24, 2007, the *BYU Daily Universe* ran a feature story about the calendar in its paper. Several models appearing in the calendar were BYU students at the time the photos were shot and the HCO did not contact them or seek to punish them for posing without shirts in the calendar.

Only after a front page story ran in the April 28, 2009 edition of the *Los Angeles Times*, did the University make contact with any of the models who attended BYU. The *Times* article was very critical of the University. In it, the writer of the article interviewed a model, who identified himself as a BYU student. Soon, that student was summoned to the HCO.

His first contact with the HCO, like mine, came after he had completed his academic coursework and was awaiting graduation. The HCO, however, informed him of the alleged violations and granted an opportunity to respond. He was invited to prepare a written response to the allegation that he had been “engaging in conduct inconsistent with the principles of The Church of Jesus Christ of Latter-day Saints and the BYU Honor Code by participating in a project that disrespectfully shows returned missionaries in an inappropriate context.” He submitted a response, as requested, was cleared for graduation and received his diploma.

This incident shows how two students accused of the similar behavior were treated differently by University administrators. Standard 3.B.3 states that colleges and universities must ensure that “policies on students’ rights and responsibilities, including those related to academic honesty and procedural rights, are clearly stated, well publicized, readily available, and **implemented in a fair and consistent manner.**” (emphasis added)

The Proposed Solution is a Violation of My Conscience

If the University had followed its own policy and given me an opportunity to respond to allegations of an Honor Code violation *before* it revoked the degree, rather than *after* it had already done so, I believe I would have stood a good change of convincing the officials that the revocation would be an unfair and excessive punishment. By the time we finally met, the degree had already been revoked, the national and international press had widely reported the story, and

the University had come under fire from people who felt that the action was unjustifiable and should be reversed. Public opinion, according to my estimates, was running above 90 percent against the University's decision.

After the Associated Press released a story on its world news service, English language newspapers all over the world ran the story, which sided against the action of the University. Surely, the University knew of the publicity and that sentiment was running against the decision. It was in this atmosphere – with the University already defending its actions – that I was to be given a chance to meet with a University official. It was almost certain that no University official would take my side and go against his or her employer. By the time we met, University officials had been defending their actions for half a year and had publicly stated the decision would not be reversed.

I also believe that had the University had “as a first concern, truth and evidence,” it would have concluded that producing the *Men on a Mission* calendar did not violate any portion of the Honor Code, either in letter or in spirit. Had the University followed its policies and procedures, it would have been easier for administrators to have halted the process that ultimately led to the loss of my degree. It is extremely difficult to overlook these mistakes on their part when the price has been my University degree. I have earned every credit, paid every fee and am entitled to the degree that I have earned. I believe withholding my degree is mean-spirited, vindictive and punitive, and it serves no educational or academic interest for the University to continue to refuse to award it.

Conclusion

Since I first learned that my degree would not be posted, my experiences with University and Church officials have not been positive. I found my rights as a student and as a U.S. citizen violated at every turn. First, the University's actions violated promises it made in the Honor Code. The University promised to notify me of any allegations made against me of Honor Code violation. It promised I would be given a chance to defend myself against these allegations; It promised to decide on the evidence, including evidence presented by me and witness in my defense; it promised that if it decided against me, it would notify me of its decision and explain how I could request a review. The University further promised that a review would be conducted fairly and the decision would be just. I believe it also promised me that if I completed

the requirements for a degree, paid my fees, attended classes and lived by my agreement to abide by the Honor Code, I would be granted a degree.

The University promised NWCCU that it would provide clear and concise statements of University policy concerning the rights and responsibilities of students; It promised it would implement its policies in a fair and consistent manner; The University further promised NWCCU its policies would respect individual privacy and that its administrators and officers would subscribe to, exemplify and advocate the highest ethical standards in all its dealings, including those with students; The University further promised its employees would avoid conflicts of interest, and have as its first concerns evidence and truth, rather than particular judgments of institutional benefactors or concerns of churchmen. The University promised that even though it is Church-related, it would not act like a religion. The University promised NWCCU it would protect its students from inappropriate pressures or destructive harassments, when they come from an administrator or official, or even from the institutional benefactor itself, or a kangaroo court in Las Vegas.

As the Commission performs its obligation to look at the University in its totality to determine if it has lived up to its promises, I ask that it pay particular attention to the circumstances of my case and realize that the pressures put on students at Brigham Young University prevent many others who are less certain of their rights, or who fear what the Church and University may do to them, from bringing a similar complaint to the NWCCU.

The simple thing for me to do would be to return to the Church, be baptized and reapply for graduation. It might only take a few months before I'd have my degree. To do so, however, would require not only that I once again give up my constitutional rights, but it would demand that I betray my conscience. I know I would regret that decision for the rest of my life.

I urge the Commission to determine, based on the totality of the facts, whether Brigham Young University has exemplified high ethical standards in its dealings with Chad Hardy. Did it keep the promises it made me as a student and to the Commission as the accrediting body? Unless that answer is a resounding "yes," I request that the appropriate action be taken to ensure that I receive my degree.

Respectfully,

Submitted on March 8, 2010.

By: Chad Hardy