

December 21, 2008

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Michael R. Orme
Assistant to the President
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Brigham Young University
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Re: Chad Hardy v. Brigham Young University

Dear Mr. Orme:

Thank you for your letters of December 3 and December 18, 2008 regarding this matter. You suggest the documents to which my November 21 letter referred are not applicable to this situation. That highlights a fundamental problem with the university's actions in this matter: it is not clear what policies, procedures and practices were applied. What is clear is that while the university uses an alleged violation of the Honor Code as the basis for withholding Mr. Hardy's diploma, the university itself has not complied with the letter or the spirit of the Honor Code.

As an initial matter, I note that a fundamental principle reflected in the Honor Code, and indeed a fundamental requirement of fairness, is that "prior to the actual implementation of any disciplinary action" the university will provide a student with "(i) notice of the nature of the alleged or suspected Honor Code violation(s), and (ii) an opportunity to respond." See Honor Code Investigation and Administrative Review Process dated August 11, 2008. The university failed to provide Mr. Hardy with notice or an opportunity to be heard "prior to the actual implementation" of the decision to withhold his degree, and apparently had no intention of ever providing him such notice and opportunity to be heard until it received my letter.

I further note that, while you refer to a provision in the student catalogue that you apparently claim requires the university's action in this case, the Honor Code itself states: "Since a degree from BYU certifies a person's knowledge, behavior, and character to be of the highest caliber, if you have not achieved good Honor Code standing *when you complete other*

university requirements for graduation, you may not be allowed to graduate or receive your degree.” (Emphasis added.) Mr. Hardy had not been excommunicated when he completed his “other university requirements for graduation,” and your letter does not contain nor am I aware of any other basis for a claim that Mr. Hardy was not in good Honor Code standing at that time, assuming he even remained subject to the Honor Code after he ceased attending the university in 2001. The Honor Code further states, in the “Action Options” section which you say does apply in this case: “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: a. Excommunication, disfellowshipment, or disaffiliation from the Church.” (Emphasis added.) The Honor Code thus indicates that the university’s decision to withhold Mr. Hardy’s degree was not mandated in this situation, but should have been addressed on a case-by-case basis, following notice and an opportunity to be heard.

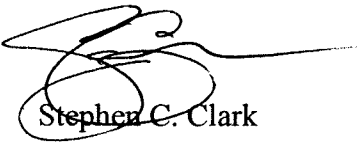
These are just a couple of the ambiguities and inconsistencies in the university’s written policies, procedures and practices. Your letter introduces the potential for additional ambiguity and confusion when it refers to an unwritten but allegedly “established practice” concerning university review. I note that while the Honor Code specifically states that an Honor Code Office review “is intended to be educational and not adversarial,” and therefore “attorneys are not allowed to attend or represent either the university or the affected student,” it does not appear to make any such statement in reference to university review, and you do not refer to any written policy to that effect.

Since the university apparently maintains it did not have any obligation to provide Mr. Hardy with notice and an opportunity to be heard before making the decision to withhold the degree he earned, I respectfully renew the request in numbered paragraph 3 of my November 21 letter and ask that you provide all relevant documentation and information, including copies of all documents that support the university’s position along with any others you believe are applicable, with specific reference to the provisions that are applicable and specific details about whether and how the University complied with those provisions. I also respectfully request a detailed explanation of any unwritten but allegedly “established practice” the university has that you believe applies in this situation, including all details about the university review process. Finally, I would respectfully request that you provide me a consent form for the release of Mr. Hardy’s records so that we can obtain the entire file and all materials relevant to the university’s action, including all communications with his ecclesiastical leaders.

Upon receipt of complete documentation and a complete explanation and understanding of the university's procedures and the asserted basis for actions in this situation, we will be in a position to discuss an appropriate review of the university's actions. Mr. Hardy will not participate in any informal, "educational" review, nor will he meet with the university unrepresented by counsel. As your December 3 letter acknowledges in requesting that all correspondence be directed through counsel, this matter is already adversarial. Under the circumstances, I'm sure you will agree that both parties will be best served by understanding and agreeing upon all applicable policies, procedures and practices, informed and advised by legal counsel, rather than adopting ad hoc policies, procedures and practices as the university has done to date in this matter.

Please respond to this letter by the end of this week.

Sincerely,



Stephen C. Clark

cc: Chad Hardy