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November 21, 2008

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Norman B. Finlinson
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Dear Mr. Finlinson:

Chad Hardy has retained this office to represent him in connection with actions taken against him by the Church of Jesus Christ of Latter-day Saints ("the Church") and Brigham Young University. I write in response to your letter to Mr. Hardy dated September 30, 2008 and related actions taken by the University in violation of its policies and procedures for enforcing the BYU Honor Code, as well as for possible violations of Mr. Hardy's privacy rights under The Family Educational Rights and Privacy Act (FERPA), in connection with the University's refusing to award Mr. Hardy the degree he earned.

As you know, Mr. Hardy was a full-time student at BYU from 1999 through early 2002. In December of 2001, he submitted an application and paid the applicable fee for the upcoming April 2002 graduation. Prior to April, however, he learned he was short four credits hours and would not be able to obtain his degree until he complete those credits. He left the University at that time with the understanding from his student advisor that he could complete the required hours through the University's Independent Study Program at any time, thereby fulfilling all remaining requirements for his degree.

On June 7, 2008, Mr. Hardy registered through the university's Independent Study Program to obtain the credit hours needed. He took the courses from his home in Las Vegas. On July 7, 2008, he successfully completed the final exams at the BYU Independent Study Testing Center on the Provo campus.

On July 30, Mr. Hardy requested and received an official transcript from the BYU Records Office which indicated the 4 credit hours had been posted and all other requirements for graduation, including the application filed in 2002, had been met. Mr. Hardy attended graduation on August 15, walked with his class, had his photo taken in cap and gown by a school representative and happened to meet his adviser, who congratulated him on his graduation. The diploma was to be mailed to him and all other students at a later time.

On September 24, when Mr. Hardy had not received his degree, he telephoned the University to determine its whereabouts. He was advised that his degree had not yet been posted and referred to his advisement center. The advisement center had no explanation for why the degree had not been posted. He scheduled a call with his advisor for the following day. He then called the Honor Code Office and financial aid and verified there were no holds of any kind on his academic records.

When Mr. Hardy spoke with his advisor the following day, she told him that she had investigated the situation and was told to tell him a non-academic hold had been placed on his diploma and records and he needed to speak with you. She confirmed that, as far as she knew, he had completed all requirements for graduation.

Mr. Hardy then called you. You told him you would not discuss the matter over the phone but he could expect a letter. He received your September 30 letter on October 4. When he called you and other persons copied on your letter, he was given no additional information, nor was he offered any opportunity to appeal the University's decision; he was simply told the University stood by the letter and was within its rights to refuse to award him his degree.

As we understand the University's position, it maintains it may refuse to award a degree to a student who has otherwise earned it if he or she is in violation of the University's Honor Code. Mr. Hardy was in Honor Code compliance at the time he made application for graduation in 2002. He was also in compliance when he completed the requirements for graduation, although it appears from information on the Independent Study website that one need not even be a BYU student, let alone in Honor Code compliance, to take courses through that program. He was not required to file a new application after he completed those course requirements, and was told by his student advisor that she need only add his name to the graduation list. Nevertheless, it appears that the University may have taken this action because Mr. Hardy was excommunicated on July 13, after he had completed all requirements for graduation.

Mr. Hardy wishes to appeal the University's decision, but he has been denied any opportunity to do so, in violation of the University's own policies and procedures. Under the Honor Code section entitled "Action Options," it states "if the diploma is to be held, the student may request a university review through the dean of students." Written notice of the decision "will . . . contain information regarding the procedure for seeking an administrative review of the Decision." Such information was not included in the University's letter to Mr. Hardy.

The section of the Honor Code entitled "Honor Code Investigation and Administrative Review Process," appears to lay out the procedure the university will follow in the event of an alleged Honor Code violation. This section also provides that "the university reserves the right, at its discretion, to vary from these procedures according to the circumstances of individual matters, 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.)

The section further provides: "After a violation report is received, the HCO will (i) analyze the violation report and relevant evidence, (ii) conduct an investigation and interview the student and any witnesses or other persons having information about the student and/or the allegations as the HCO deems appropriate, (iii) notify the student in writing of the alleged violation(s) of the Honor Code *if* it appears that an Honor Code violation has occurred,(iv) encourage the student to respond, preferably in writing, to the allegations and relevant evidence, (v) assess the credibility of the witnesses and strength of the evidence, and (vi) prepare a decision and recommended course of action."

There are numerous other references throughout the Honor Code to procedures that University should follow in cases where serious Honor Code violations are alleged. One such provision states that when an ecclesiastical endorsement is withdrawn as a result of excommunication, the student is to be provided 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.**" (Emphasis added.) The Honor Code requires that students wishing to seek an exception to the requirement give notice of their intent within two days of receiving notice of discontinuance from the University. Had the notice provided the required instructions for seeking the exception to the ecclesiastical endorsement requirement, Mr. Hardy and the University might have been spared the embarrassment of the current situation. It is now impossible to wind back the clock to provide another opportunity for the University to follow its policy.

Not only did the University fail to notify Mr. Hardy of the alleged Honor Code violations prior to implementing disciplinary action, it further failed to interview Mr. Hardy and his witnesses or encourage him to respond to the allegations. The University was thus prevented from deciding on a course of action based on the strength of the evidence and Mr. Hardy was denied a chance to show his punishment greatly outweighs the alleged Honor Code violation. The possibility of altogether avoiding the current situation was precluded by several failures on the University's part to adhere to its own policies.

Inasmuch as it is now impossible for anyone to reverse the process and provide Mr. Hardy the due process guarantees he has been denied, we believe there is only one fair and reasonable remedy. We respectfully request that the University demonstrate adherence to both the letter and the spirit of the BYU Honor Code and recognize that Mr. Hardy earned his degree by posting Mr. Hardy's degree and awarding him his diploma.

Should the University confirm its decision to withhold Mr. Hardy's degree, we believe that would constitute a violation of the University's own policies and procedures and give rise to legal claims. In that event, we would respectfully request the following:

1. An opportunity for Mr. Hardy to review all records of his educational and ecclesiastical records, including those associated with the disciplinary action taken against him. This review is to include the statements of any witnesses, as provided under FERPA and the "Access to Student Records Policy and Procedure" of the BYU Honor Code;

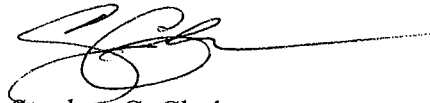
2. A University/administrative review of the decision and action which led to the revocation of Mr. Hardy's degree, with notice of the date, time and place to be given to Mr. Hardy through our office, and with an opportunity for Mr. Hardy to be represented by counsel;

3. Production of all internal records in the University's possession, custody or control pertaining to the disciplinary action taken against Mr. Hardy, and in this connection we formally request in contemplation of adversary proceedings that the University maintain, and not alter or destroy, any relevant materials, including electronic information, it has in its possession, custody or control.

4. Strict compliance with all other Honor Code procedures and due process provisions relative to disciplinary action, insofar as is still possible, including but not limited to instructions and procedures, provided in writing as required by the Honor Code, for requesting an exception to the ecclesiastical endorsement requirement.

Thank you for your prompt attention to this matter.

Sincerely,



Stephen C. Clark

cc: Chad Hardy