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[ca. Oct. 1975]

Education  
Title IX

MEMORANDUM FOR: The Honorable Caspar W. Weinberger  
Secretary of Health, Education, and Welfare

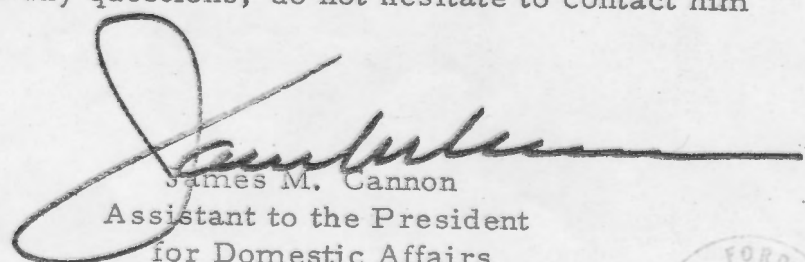
SUBJECT: Sex Discrimination in the Area of Pension  
Benefits

On May 27, 1975, the President approved the Department of Health, Education, and Welfare's proposed Regulation for implementing Title IX of the Education Amendments of 1972, prohibiting discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.

Among other things, this Regulation would prohibit covered employers from participating in pension plans which do not either require equal contributions on behalf of all employees or pay out equal periodic pension benefits to all retirees. As you know, this interpretation, which is identical to the interpretation adopted by the Department of Labor's Office of Federal Contract Compliance for enforcement of Executive Order 11246, is inconsistent with the interpretation adopted by the Equal Employment Opportunity Council for enforcement of Title VII of the Civil Rights Act of 1964.

Because of the potentially wide impact on employers arising out of the present inconsistency in Federal regulations, the President has requested that you work with Secretary Dunlop and EEOC Chairman Perry to promptly develop a single approach to this issue. The President has also asked the Equal Employment Opportunity Coordinating Council, which is already looking into the question, to coordinate this effort and to make recommendations to him by October 15, 1975.

Dick Parsons, of my staff, has been asked to follow the matter for the President, and, if you have any questions, do not hesitate to contact him on 456-2562.

  
James M. Cannon  
Assistant to the President  
for Domestic Affairs

cc: The Attorney General  
The Deputy Attorney General



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David —

1/18/76

By what process

is this closed by

ours & Donor's

Council?

Jim



Don't worry  
I'll get me a copy of this  
and bring it

# Easier Hiring Rules for Colleges That Get Federal Contracts Are Ruled Out by U.S. By Accepting Ad Rules

*By a WALL STREET JOURNAL Staff Reporter*  
WASHINGTON—The Labor Department has decided against issuing special rules to govern the hiring practices of colleges and universities that are federal contractors.

The decision will prove disappointing to a number of college administrators who had argued in hearings last summer and fall that existing rules for federal contractors are unduly harsh and inappropriate when applied to colleges. Some officials insist that federally required hiring goals and time tables overlook such factors as low turnover and the subjective elements of faculty hiring.

Most colleges and universities are subject to the nondiscrimination regulations because they receive large sums under federal research and supply contracts. But instead of setting up special rules for schools, the Labor Department and the Department of Health, Education and Welfare have agreed to seek ways to increase the number of minorities and women qualified for academic jobs and to encourage colleges to improve internal grievance procedures for handling complaints of job discrimination.

In a joint announcement, Labor Secretary

*By a WALL STREET JOURNAL Staff Reporter*  
DALLAS — Bonanza International Inc. said it settled a \$4 million lawsuit brought against it by McDonald's Corp. by agreeing to observe certain guidelines in future advertising that might mention McDonald's.

Bonanza said it entered a consent decree in federal district court agreeing to the guidelines, but that there weren't any monetary payments made by either party.

McDonald's complaint sought \$2 million in actual damages and \$2 million in punitive damages for alleged trademark infringement.

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AFFIRMATIVE ACTION IN EMPLOYMENT AT  
INSTITUTIONS OF HIGHER EDUCATION

Pursuant to Section 202 of Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303), institutions of higher education performing as prime contractors or subcontractors under federal nonconstruction contracts are prohibited from discriminating against any employee or applicant for employment because of race, color, religion, sex or national origin and are required to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to the aforementioned factors.

The Executive Order's affirmative action requirement is intended to ensure prompt achievement of full and equal employment opportunity through the establishment of specific procedures. In order to implement this objective in nonconstruction employment, including employment by institutions of higher education, such as colleges and universities, the Department of Labor has promulgated various regulations set forth in 41 CFR Part 60-1 et seq. The principal regulation in this area is known as "Revised Order No. 4", 41 CFR Part 60-2, which requires prime contractors and subcontractors with 50 or more employees and a contract of \$50,000 or more to develop a written



affirmative action program for each of their establishments. The Department of Health, Education, and Welfare acts as compliance agency for higher education contractors subject to the requirements of Revised Order No. 4.

In August, 1975, the Department of Labor developed and approved a format for the development of affirmative action programs by institutions of higher education (40 FR 37064) which the Department of Health, Education, and Welfare uses in securing compliance with such requirements.

Equal employment opportunity matters at institutions of higher education are subjects of strong concerns and views by the Government, the institutions, their employees and potential employees, and various other persons, organizations and agencies. In order to receive such views and concerns as they might affect the Government's implementation of Executive Order 11246, as amended, the Department of Labor requested information and held public fact-finding hearings ending on October 10, 1975, with the record held open until November 15, 1975, for the submission of written statements (40 FR 30166, 37129).

Having fully considered the administrative record of these proceedings, we have decided on the following actions:

1. The Department of Labor and the Department of Health, Education, and Welfare will undertake a joint review of existing regulations including procedures for compliance reviews, preaward clearances and reviews, and the development and implementation of affirmative action programs. This review is intended to ensure the further development of policies and procedures by both the institutions themselves and the Departments which will result in the expansion of employment opportunities for minorities and women.

Specific attention will be given during this review to any revisions of existing regulations which are necessary to accomplish this objective in the context of the unique problems facing institutions of higher education as described in the hearings referenced above.

2. The Department of Labor and the Department of Health, Education and Welfare will explore with other public and private agencies various approaches for increasing the supply of minorities and women qualified for academic employment. These approaches would seek to encourage minorities and women to achieve graduate and professional education necessary for academic employment.





3. All institutions of higher education now holding federal contracts or subcontracts, because of concurrent receipt of federal grants, are also subject to the requirements of Title IX of the Education Amendments of 1972. Regulations issued by the Department of Health, Education, and Welfare under that Title currently require the development and implementation of internal grievance procedures for resolving discrimination complaints. Institutions of higher education will be encouraged to develop and implement internal grievance procedures for resolving discrimination complaints by employees under the Executive Order Program as well. These procedures can serve as a salutary and expeditious means for resolving many equal employment issues. Internal grievance procedures might be established separately for each higher education establishment or might be developed for the joint use of a group of such establishments, such as an entire state higher education system. Such procedures might involve either binding or advisory arbitration. The findings of arbitrators in these proceedings will be considered by the Government in the conduct of its own complaint investigations, compliance reviews, and enforcement measures under Executive Order 11246.

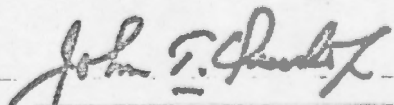
4. In order to facilitate the development of acceptable affirmative action programs by institutions of higher education, including the analysis of minority and female

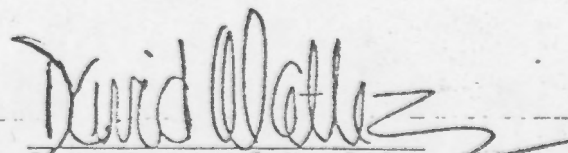


utilization in faculty employment, the Departments of Labor and Health, Education, and Welfare will work with public and private agencies to develop improved data on minority and female availability for academic and other professional employment, and to make such improved data readily accessible to these institutions.

5. In order to provide the Government with continuing advice and recommendations on equal employment matters in higher education, the Departments of Labor and Health, Education, and Welfare will initiate procedures under the Federal Advisory Committee Act to establish an interagency advisory committee. Membership would include persons from academic and related areas, and would encompass faculty, administration, minorities and women.

We believe that the measures outlined above will help to expand significantly the employment opportunities of minorities and women in the area of higher education and will further the Government's nondiscrimination and affirmative action mandate under Executive Order 11246 as amended.

  
Secretary of Labor

  
Secretary of Health,  
Education & Welfare

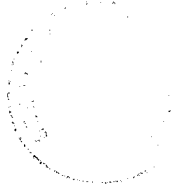
THE WHITE HOUSE  
WASHINGTON  
2-/16/76

TO: JIM CANNON

FROM: JIM CONNOR

Jim, Dick Cheney says  
to "forget about this"--the  
President won't make any  
reference to it in the meeting.

encl.  
memo from Cannon on National  
Association of Secondary School  
Principals Title IX Issue



THE WHITE HOUSE  
WASHINGTON

DECISION

February 16, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: National Association of Secondary School  
Principals--Title IX Issue

This is to present you with an option for announcing an Administration decision in your remarks to the principals.

BACKGROUND

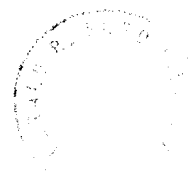
Some low-level HEW officials have ruled that schools could not participate in the American Legion Boys' State and Girls' State programs because participation would violate Title IX anti-sex discrimination requirements. The issue has received press attention.

In a decision approved by Secretary Mathews and to be announced tomorrow, HEW will say it has decided to consider participation in the American Legion programs to be permissible under the Bayh Amendment exemption for the membership policies of youth service organizations. Granting academic credit (which few schools do) would not be permitted. A number of women's groups will be highly critical of HEW's decision.

Secretary Mathews has tried to treat this issue as low key as possible. His staff who have worked on the issue do not believe you should announce the decision and become the lightning rod for the criticism of the women's groups.

RECOMMENDATION

I recommend you not make any reference to this issue, as it will detract from the general high level tone of your remarks.





DECISION

- \_\_\_\_\_ Option 1: Insert reference to the decision in your speech. Language approved by Bob Orben is at Tab A.
- \_\_\_\_\_ Option 2: Have HEW handle the decision announcement, but White House staff will alert the American Legion and officials of the National Association of Secondary School Principals.

PROPOSED INSERT AFTER FIRST FULL PARAGRAPH ON PAGE 6

Speaking of red tape, I note from the newspapers that you have expressed concern about a possible HEW interpretation of Title IX rules that would bar your cooperating with the American Legion Boys' State and Girls' State programs. I think you will be pleased to know that HEW has decided that it is perfectly permissible for schools to select students to participate in these programs and that decision will be made formal tomorrow.

THE WHITE HOUSE

WASHINGTON

DECISION

February 16, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Your Appearance Before the National Association of Secondary School Principals -- Title IX Issue

This is to alert you to an issue which has been of concern to the principals during this meeting and which has received press attention.

ISSUE:

At least one HEW Regional Office has advised principals they could no longer have anything to do with the annual American Legion Boys' State and Girls' State programs because they are sexually discriminatory and school participation would be in violation of Title IX requirements.

BACKGROUND:

Schools participate in the Boys' State and Girls' State programs by posting information notices and selecting student representatives. A few schools apparently give some academic credit to those students who participate. The programs give students the chance to experience first hand the workings of government.

The principals have protested any interpretation of Title IX which would preclude participation in the American Legion programs. Women's groups, on the other hand, have resisted any weakening of Title IX regulations and have taken the position that the American Legion programs are unacceptable.

The Bayh amendment exempted the membership policies of the Boy Scouts and Girl Scouts and other youth service organizations from Title IX requirements. In a decision to be announced Tuesday by HEW, in the form of a response from the Acting Director of the Office of Civil Rights to Senator Thurmond, HEW will say it has decided to consider partici-



pation in the American Legion programs to be within the exemption carved out by the Bayh amendment and thus permissible. Granting of academic credit, however, will not be considered to be a "membership policy" and will be considered a Title IX violation.

At least some of the women's groups will disagree with the HEW decision.

RECOMMENDATION:

Although the principals should be pleased with the position HEW will announce, on balance I recommend you not take the initiative and raise the issue in your remarks. There is a split among the women's groups, but at least some (and probably the more vocal ones) would attack the decision and you for announcing it. I really think this announcement would detract from the overall high-level tone of your remarks.



Title IX



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20201

MAR 17 1976

Dr. George C. Roche, III  
President  
Hillsdale College  
Hillsdale, Michigan 49242

Dear Dr. Roche:

Secretary Mathews has asked me to thank you for your letter enclosing the Resolution of the Board of Trustees of Hillsdale College concerning the applicability to Hillsdale College of Title IX of the Education Amendments of 1972, and the regulations of the Department of Health, Education, and Welfare implementing Title IX. I welcome Hillsdale's support for the proposition ". . . of equal opportunity without discrimination by reason of race, religion, or sex, . . ." as expressed in the Resolution of the Board of Trustees reflecting your commitment to continue operation on a nondiscriminatory basis.

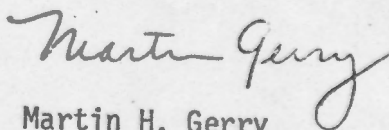
In your letter and the accompanying resolution, the question is raised whether the Title IX regulation is consistent with the statute in applying its provisions to colleges whose only connection with the Federal Government is that students attending the institution receive Federal assistance. I have asked members of my staff to analyze the options, if any, available to the Department under the law. At the same time, there is no question but that the regulation as it stands does cover colleges such as Hillsdale.

In any event, the Department's information suggests that Hillsdale participates directly in a number of programs -- for example, College Work Study, Supplemental Educational Opportunity Grants, National Direct Student Loans -- and accordingly is covered by the provisions of Title IX regardless of the answer to the question you have raised. This situation corresponds with the Department's understanding that since 1964 Hillsdale, in filing assurances and reports with this Department, has acknowledged that it is subject to the requirements of Title VI of the Civil Rights Act of 1964, a statute whose coverage is identical with that of Title IX.



I personally am pleased to hear of your support for the objectives of the law and would be pleased to discuss further with you any of the points in this letter, as you may wish. In particular, the Department will be glad to review any aspects of the regulation that may unduly impinge upon the College's independent status. It is our intention to minimize the burden imposed on the operation of academic programs consistent with the fulfillment of our obligations under the civil rights laws.

Sincerely yours,



Martin H. Gerry  
Acting Director  
Office for Civil Rights





HILLSDALE COLLEGE

HILLSDALE, MICHIGAN 49242

GEORGE C. ROCHE III  
PRESIDENT

November 3, 1975

Mr. David Matthews  
Secretary  
Department of Health, Education  
and Welfare  
330 Independence Avenue, SW  
Washington, D.C. 20201

Dear Secretary Matthews:

The enclosed materials are largely self-explanatory.

Hillsdale College is deeply distressed to find itself suddenly re-classified as a recipient of federal funds when it has never accepted any such federal funds in its entire 131-year history.

I hope that the resultant injustice is no more than a result of a bureaucratic oversight. If so, Hillsdale College and all the other independent colleges in the United States will look forward to a speedy correction of the present situation.

Should you wish any other additional information or comment on this, I would be delighted to confer further with you.

All my best,

*George Roche*

CS

Enclosures

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# Hillsdale College

Hillsdale, Michigan

## Resolution

WHEREAS the Board of Trustees of Hillsdale College has been made aware of new restrictive regulations imposed by the Department of Health, Education and Welfare promulgated under the guise of implementing Title IX of the Education Amendments of 1972; and

WHEREAS Hillsdale College has maintained its freedom and independence of federal control by consistent refusal of federal aid to education, federal grants and any and all forms of subsidy by the Federal government; and

WHEREAS, by the regulations aforementioned, the Federal government now seeks to impose its control over such freedom and independence through the subterfuge that a few of the students of Hillsdale College receive federal aid through the medium of such programs as Veterans Benefits and the National Direct Student Loan Fund; and

WHEREAS it is the conviction of the Board of Trustees of Hillsdale College that such regulations are excessive of the authority granted by Congress and violative of the inalienable rights of freedom and choice of this institution and are therefore immoral and illegal; and

WHEREAS Hillsdale College has traditionally far exceeded the social benefit purported to be achieved in such regulations by natural and voluntary non-discrimination: Now therefore be it

RESOLVED, That Hillsdale College will hold to its traditional philosophy of equal opportunity without discrimination by reason of race, religion or sex, but such non-discrimination will be voluntary, thus preserving equality with dignity and encouraging friendship based on recognition of equal worth and mutual respect; and be it

RESOLVED further, That Hillsdale College will, to the extent of its meager resources and with the help of God, resist by all legal means this and all other encroachments on its freedom and independence.

THE BOARD OF TRUSTEES OF  
HILLSDALE COLLEGE



Adopted October 10, 1975

*Donald R. Mossey*  
Chairman

*George Charles Roche III*  
President



GEORGE C. ROCHE III  
PRESIDENT

## HILLSDALE COLLEGE

HILLSDALE, MICHIGAN 49242

617 437-7341

October, 1975

Dear Friend of Hillsdale:

Hillsdale has long prided itself on its independence from political funding. That independence has permitted the maintenance of high standards because we have avoided the pressures which politicized education produces. We have been able to offer quality education to generations of students, without regard to race, sex or religion.

Our independence has been based upon the non-acceptance of federal funds for any purpose whatsoever. There have been students on campus who are individual recipients of federal loans, grants, veterans benefits and similar programs, but such funds have never been accepted by the school as an institution. Now the federal bureaucracy has changed the rules. Beginning in October, 1975, Hillsdale College and all other independent colleges and universities are to be regarded as "recipient institutions" if they have any students on campus who receive individual funding through government programs. The American Association of Presidents of Independent Colleges and Universities has recognized the threat and is marshalling a campaign of determined resistance.

Acceptance of such status as a "recipient institution" opens the door to federal control of Hillsdale College. The entire weight of federal guidelines, covering faculty, students, curriculum, dormitories and every aspect of our existence, would potentially dominate our campus if we once accept the premise that aid to an individual student makes Hillsdale College a recipient of federal funds.

The issue at stake is not equal treatment for minority groups or women. Hillsdale College had already pioneered in non-discriminatory treatment for over a century before the first federal legislation on the subject. Our record of non-discrimination speaks for itself. We have consistently displayed a willingness to measure our faculty and students by the only yardstick with any real meaning: individual performance.

Now through a bureaucratic ploy, Hillsdale's independence is presumably to give way to the social engineers in Washington. Rather than allow such a federal takeover of our campus, we are prepared to refuse compliance with the government edicts now proposed. None of us at Hillsdale underestimate the power of the federal government to harass and possibly destroy those who do not comply, but we feel the fight must be made if independent education is to endure in America.

At the October 10, 1975, meeting of the Board of Trustees, the decision was unanimously and vigorously made to resist federal control with every means at our disposal. It is with great pride that I enclose a copy of the Trustee Resolution.

The Trustees fully appreciated how high the stakes are likely to be. If the bureaucracy now withdraws the scholarships and veterans benefits of those students attending Hillsdale College, the federal government will be discriminating against those students and will in effect be denying them an education at the accredited college of their choice. The college itself will also be penalized. In an age when independent higher education already faces inflation, governmentally subsidized competition, and a continuing reduction of private revenue through more and more stringent tax policy, the difficulties of meeting the budget and surviving have grown larger each year. Now we are faced with the additional burden of aiding those students against whom the government proposes to discriminate.

The additional financial burdens are enormous, but Hillsdale College feels the fight must be made. In addition to the large operating deficits which the school must face, the October 10 meeting of the Trustees also discussed an endowment campaign of \$25,000,000 for scholarships and faculty salaries to perpetuate our independence - whatever new tax policies or bureaucratic whims may lie ahead.

We need help now as never before. The question involved is nothing less than whether or not the private sector can survive in our present society. At Hillsdale, we believe the answer is a resounding affirmative. With your help, we will prove that the job can be done.

All my best,

*George Roche*

CS

Enclosure



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20201

MAR 17 1976

Dr. Dallin H. Oaks  
President  
Brigham Young University  
Provo, Utah 84601

Dear Dr. Oaks:

Secretary Mathews has asked that I respond to the letter in which you notified the Department that Brigham Young University and Brigham Young University-Hawaii Campus consider themselves exempt from certain provisions of the regulations published under Title IX of the Education Amendments of 1972. Your letter states that these provisions conflict with the teachings of the Church of Jesus Christ of Latter-Day Saints, which sponsors those institutions. I apologize for the delay in responding.

As you know, Section 86.12 of the regulation specifically exempts an institution from complying with any provision of the regulation which is in conflict with the religious tenets of the Church sponsoring the institution. We conceive of our responsibilities under this section as principally assuring that the institutions claiming exemptions have a full understanding of the provisions from which they believe themselves exempt.

It is not clear from your letter what aspects of the regulatory sections you identify conflict with the university's Code of Honor as the code reflects the religious tenets of the Church of Jesus Christ of Latter-Day Saints. As we interpret those sections, they do not preclude institutions from imposing standards of morality (so long as those standards apply equally to members of both sexes). It may be, therefore, that no conflict between the regulations and your code exists. It would be helpful for our discussion if you would identify more specifically the provisions of the sections you have cited which you feel conflict with particular practices of Brigham Young University which, in turn, are derived from the religious tenets of the Church of Jesus Christ of Latter-Day Saints.

The Department has no intention of reviewing the nature of the religious tenets asserted by a university to be in conflict with the Title IX regulations, as a general matter.





Page 2 - letter to Dr. Oaks

We do not understand your letter to assert that any tenets conflict with the provisions of those regulations governing equal opportunity in athletics programs.

Beyond the claim for an exemption based on a conflict with religious beliefs, your letter raised a number of additional questions about Title IX and the Department's regulations. Members of my staff will be in touch with the University over the next several weeks to resolve those issues. I look forward to those discussions.

Cordially,

*Martin H. Gerry*  
Martin H. Gerry  
Acting Director  
Office for Civil Rights



1875 • Brigham Young University Centennial • 1975

Dallin H. Oaks  
President

October 31, 1975

Hon. David Matthews  
Secretary of Health,  
Education and Welfare  
330 Independence Avenue, S.W.  
Washington, D.C. 20201

Re: Notification that Brigham Young University is  
exempt from certain Title IX Regulations

Dear Mr. Secretary:

This letter will serve as official notification that Brigham Young University and Brigham Young University--Hawaii Campus consider themselves exempt from portions of the provisions of Sections 86.21(c), 86.40(b), 86.57(b) and 86.31(b)(5) of the regulations published under Title IX of the Education Amendments of 1972 because such sections conflict with the religious teachings of the Church of Jesus Christ of Latter-Day Saints, which sponsors these institutions.

For example, all students and employees at B.Y.U. and B.Y.U.--H.C., male and female, agree to abide by the moral teachings of the Church as embodied in the University's enclosed "Code of Honor." We object to portions of these regulations because they would prevent us from advocating and practicing this religious standard of morality, including sexual morality, among the employees and students of the University. Portions of these regulations would bar our taking notice of or acting upon flagrant violations of this moral code. We intend to continue to practice our moral code, which applies on the same basis to men and women.

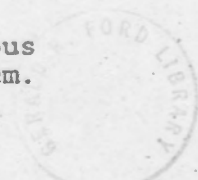
Hon. David Matthews  
Secretary of Health,  
Education and Welfare  
October 31, 1975  
Page 2

So far as we know, the sections of the Title IX regulations referred to above are the only ones which conflict with the Church's religious teachings. However, if other regulations are later interpreted in such a way as to bring them into conflict with our religious beliefs, we will notify you of our objections to such sections.

We assure you that Brigham Young University does not claim the right to discriminate against members of either sex. None of our policies or activities has the purpose or effect of promoting greater opportunity for members of one sex than the other or implying in any way that either sex is inferior to the other.

Enclosed is a copy of a notice entitled Notification of Brigham Young University Policy of Nondiscrimination on the Basis of Sex, which we have published in local newspapers as required by section 86.9 of the regulations. You will note from this publication that Brigham Young University considers most, if not all, of the Title IX regulations to be unlawful as applied to its programs, most of which receive no direct federal funding. Nevertheless, this notice proclaims our determination to maintain policies which are consistent with the regulations, except for the instances noted in the publication.

We do not concede that the Department of Health, Education and Welfare has the power to review our claim of exemption on the ground of religion. Our rights to the free exercise of religion are granted and fully protected by the United States Constitution, which prohibits any government inquiry into the truth of our religious principles or the sincerity of our belief in them. Title IX also exempts religious institutions.



Hon. David Matthews  
Secretary of Health,  
Education and Welfare  
October 31, 1975  
Page 3

We do not wish to be seen as defying the authority given to the Department of Health, Education and Welfare under Title IX or other civil rights statutes. We fully support the goal of equal opportunity for all persons. I am certain that as you review the enclosed notice you will see that Brigham Young University does not discriminate unlawfully against members of either sex and that a reasonable interpretation of Title IX and the regulations would find us in compliance.

I would be happy to correspond further with you and to confer with members of your Department concerning the information contained in this letter.

Sincerely,

Dallin H. Oaks

DHO:lj  
Enclosures (2)

cc: Peter E. Holmes, Director  
Office of Civil Rights

Rulon Garfield, Regional Director  
Department of Health, Education  
and Welfare, Denver, CO

Joe Maldonado, Regional Director  
Department of Health, Education  
and Welfare, San Francisco, CA

# NOTIFICATION OF BRIGHAM YOUNG UNIVERSITY POLICY OF NON-DISCRIMINATION ON THE BASIS OF SEX

Brigham Young University is committed to equal opportunity for men and women in education and employment. Its Board of Trustees has adopted a policy forbidding sex discrimination.

The University is already in compliance with many of the regulations issued under Title IX of the Education Amendments Act of 1972 by the United States Department of Health, Education and Welfare. Any past policy or practice of the University which may have implied discrimination on the basis of sex has been corrected.

While affirming the goal of equal opportunity, Brigham Young University challenges the legality

and constitutionality of certain Title IX regulations because they exceed the statutory authority of the Department and infringe on religious freedom.

BYU's opposition to parts of 6 of the 13 designated regulations issued by an executive agency should not be taken as defiance of the law or of the Federal Government. The University believes its position is authorized by the Constitution and laws of the United States. BYU will comply with any regulations which the courts ultimately sustain as lawful.

This notification also states the position of Brigham Young University-Hawaii Campus, LDS Business College, and Ricks College.

## REQUIREMENT FOR NOTICE

On July 21, 1975 the United States Department of Health, Education and Welfare published extensive regulations purporting to enforce Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally assisted educational programs. Section 84.9 of the regulations gives each educational institution 90 days to publish a notice that it does not discriminate among applicants for admission or employment and among students or employees on the basis of sex. Educational institutions are also required to state their policies for compliance with the Title IX Regulations.

## POLICY FORBIDDING SEX DISCRIMINATION

The Board of Trustees of Brigham Young University endorses the goal of equal opportunity for men and women in education and employment. Brigham Young University does not discriminate on the basis of sex among its students or employees, or among applicants for admission or employment. We support the nondiscrimination laws and have modified various University policies or procedures which in the past may have been interpreted as discrimination on the basis of sex.

## POSITIVE ACTIONS TAKEN

The University has taken major steps to insure equal opportunities for men and women. University scholarships are now awarded without discrimination. Women's athletic programs have received increased financial support, and women's access to facilities and their opportunities for participation have increased significantly. Housing regulations for women are no longer more restrictive than those for men. Salaries of women faculty and staff members are regularly reviewed to insure that women are receiving equal pay for equal work. Policies are in effect which guarantee nondiscrimination in hiring and promotion, and any inequities are being identified and corrected. University departments and colleges have been challenged to avoid sex stereotyping in textbooks, curriculum, and student advisement. University leaders are urging women students to pursue their educational interests with seriousness and vigor.

## REFUSAL TO FOLLOW CERTAIN REGULATIONS

Title IX (the statutory law) forbids sex discrimination in every "education program or activity receiving federal financial assistance." However, the regulations issued by the Department purport to dictate policies and activities in many areas of the University, whether or not such policies or activities involve "education" and whether or not they concern a "program

or activity receiving federal financial assistance." The regulations effectively ignore these important qualifying words in the statute. They extend government powers well beyond those granted by the statute by insisting that if any part or area of an institution receives direct or indirect federal financial assistance (such as by enrolling students who receive federal aid), then the entire institution is subject to federal regulation. We reject this all-inclusive interpretation, believing that many of the regulations are unlawful because they exceed the Department's statutory authority under Title IX.

BYU has traditionally refused all federal grants. We have limited our receipt of federal funds to a few programs in which the government receives a service equal in value to its payments. While some of our students receive federal assistance (such as veteran's benefits), the statute does not suggest that payments to students should be a basis for regulating every educational policy and activity of the institution. We therefore believe that most of our activities are not subject to the regulations.

We also believe that some of the regulations are unconstitutional because they violate the due process clause or the constitutional guarantee of the freedom of religion.

Nevertheless, we voluntarily choose to follow many of the regulations because we believe them to embody policies which are fair and just. But where we believe the regulations are unconstitutional or illegal and where they prohibit or interfere with the teaching or practice of high moral principles, we will not follow them.

## UNLAWFUL REGULATIONS

H.E.W. regulations the University will not follow are:

1. §86.2(g) and (h): Contrary to the broad definitions in this regulation, a university program or activity not receiving federal financial assistance is not subject to the regulations. However, the University will not discriminate on the basis of sex in any university program or activity regardless of the applicability of the regulations.

2. §86.12: The University will notify the Department that it is exempt from certain regulations on the ground of religious belief. However, the Constitution forbids the Department from making any judgment as to the content or sincerity of religious belief. We will resist any attempt by the Department to rule on the validity of our constitutional claim.

3. §§86.21(c), 86.40, and 86.57(b): Brigham Young University will not follow the provisions of these regulations to the

extent that they prohibit certain inquiries into or actions based upon the marital or parental status or the pregnancy or termination of pregnancy of present or prospective students or employees. BYU teaches and enforces strict adherence to the highest Christian standards of sexual morality. Our standards of behavior and our admissions, hiring and dismissal policies related to sexual behavior are identical for both sexes. Where an inquiry or action prohibited by the regulations may be necessary to create or enforce the moral climate we desire at BYU, we will disregard the contrary requirements of the regulations.

4. §86.31(b)(5): BYU will continue to enforce rules of appearance which differ for men and women because we believe that differences in dress and grooming of men and women are proper expressions of God-given differences in the sexes. We will resist the imposition of a unisex standard of appearance.

5. §§86.31(c) and 86.37(d): BYU will not discriminate in any federally-financed student aid programs or in the University's own financial aid. BYU will also endeavor to persuade private donors to refrain from discrimination on the grounds of sex. Because this regulation would require us to breach agreements with previous donors, the University will continue to administer existing privately-financed student aid according to the conditions imposed by the donors. We believe the regulations' requirement that universities not administer financial aid restricted to one sex deprives private donors of property without due process of law. Congress must not have intended that a statute forbidding misuse of federal aid serve as the basis for depriving private donors of their right to use their property as they see fit.

6. §§86.37(c) and 86.41: The sections of the regulations dealing with athletics are not clear. They have been the subject of widespread controversy over their meaning and coverage. We do not concede that these regulations, apply to our athletic program, which is not an "education program or activity receiving federal financial assistance." Our women's athletic program is among the best in the nation. We are confident that our voluntary efforts to improve athletic opportunities for women will meet or exceed the requirements of the regulations within the three-year implementation period.

## OUR POSITION IS LAWFUL

Our stand in opposition to these regulations should not be taken as defiance of the law or the federal government. We believe our position is lawful—that it is the Department of Health, Education and Welfare that is violating the constitutional and statutory law. Our Church teaches the necessity of "obeying, honoring and sustaining the law" (Articles of Faith 1:2) and of "befriending that law which is the constitutional law of the land" (Doc. & Cov. 98:6). Therefore, we will comply with any regulation ultimately sustained as lawful by the courts of the United States. In the interim we will follow the policies outlined above, which represent our best judgment on the meaning of the constitution and laws that govern us.

While we have based our refusal to comply with certain regulations on the grounds that they exceed statutory authority and violate our constitutional rights relating to religion, we also oppose such regulations on moral grounds. The teaching of honesty, integrity and chastity must not become exclusively the province of religion. If our government not only abandons the advocacy of moral standards but positively prohibits the practice of such values at teaching institutions, as these regulations appear to do, the destruction of America as a great nation will be both imminent and inevitable.

BRIGHAM YOUNG UNIVERSITY  
October 16, 1975



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20201

*File  
Title IX*

**MAR 31 1976**

MEMORANDUM FOR THE HONORABLE JAMES M. CANNON

Secretary Mathews has shared your memorandum of January 12 with me concerning the WALL STREET JOURNAL article with respect to the Department's enforcement responsibilities under Title IX of the Education Amendments of 1972 relating to Hillsdale College and Brigham Young University.

Copies of my reply to Dr. George C. Roche, III, President, Hillsdale College, and Dr. Dallin H. Oaks, President, Brigham Young University, are enclosed.

If you have any questions in this matter, please let me know.

*Martin H. Gerry*

Martin H. Gerry  
Acting Director  
Office for Civil Rights

Enclosures



*cc: Dick Parsons*



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20201

MAR 17 1976

Dr. George C. Roche, III  
President  
Hillsdale College  
Hillsdale, Michigan 49242

Dear Dr. Roche:

Secretary Mathews has asked me to thank you for your letter enclosing the Resolution of the Board of Trustees of Hillsdale College concerning the applicability to Hillsdale College of Title IX of the Education Amendments of 1972, and the regulations of the Department of Health, Education, and Welfare implementing Title IX. I welcome Hillsdale's support for the proposition ". . . of equal opportunity without discrimination by reason of race, religion, or sex, . . ." as expressed in the Resolution of the Board of Trustees reflecting your commitment to continue operation on a nondiscriminatory basis.

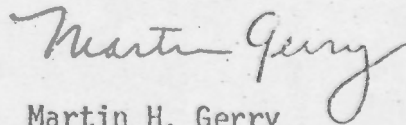
In your letter and the accompanying resolution, the question is raised whether the Title IX regulation is consistent with the statute in applying its provisions to colleges whose only connection with the Federal Government is that students attending the institution receive Federal assistance. I have asked members of my staff to analyze the options, if any, available to the Department under the law. At the same time, there is no question but that the regulation as it stands does cover colleges such as Hillsdale.

In any event, the Department's information suggests that Hillsdale participates directly in a number of programs -- for example, College Work Study, Supplemental Educational Opportunity Grants, National Direct Student Loans -- and accordingly is covered by the provisions of Title IX regardless of the answer to the question you have raised. This situation corresponds with the Department's understanding that since 1964 Hillsdale, in filing assurances and reports with this Department, has acknowledged that it is subject to the requirements of Title VI of the Civil Rights Act of 1964, a statute whose coverage is identical with that of Title IX.

Page 2 - Dr. George C. Roche, III

I personally am pleased to hear of your support for the objectives of the law and would be pleased to discuss further with you any of the points in this letter, as you may wish. In particular, the Department will be glad to review any aspects of the regulation that may unduly impinge upon the College's independent status. It is our intention to minimize the burden imposed on the operation of academic programs consistent with the fulfillment of our obligations under the civil rights laws.

Sincerely yours,



Martin H. Gerry  
Acting Director  
Office for Civil Rights







DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20201

MAR 17 1976



Dr. Dallin H. Oaks  
President  
Brigham Young University  
Provo, Utah 84601

Dear Dr. Oaks:

Secretary Mathews has asked that I respond to the letter in which you notified the Department that Brigham Young University and Brigham Young University-Hawaii Campus consider themselves exempt from certain provisions of the regulations published under Title IX of the Education Amendments of 1972. Your letter states that these provisions conflict with the teachings of the Church of Jesus Christ of Latter-Day Saints, which sponsors those institutions. I apologize for the delay in responding.

As you know, Section 86.12 of the regulation specifically exempts an institution from complying with any provision of the regulation which is in conflict with the religious tenets of the Church sponsoring the institution. We conceive of our responsibilities under this section as principally assuring that the institutions claiming exemptions have a full understanding of the provisions from which they believe themselves exempt.

It is not clear from your letter what aspects of the regulatory sections you identify conflict with the university's Code of Honor as the code reflects the religious tenets of the Church of Jesus Christ of Latter-Day Saints. As we interpret those sections, they do not preclude institutions from imposing standards of morality (so long as those standards apply equally to members of both sexes). It may be, therefore, that no conflict between the regulations and your code exists. It would be helpful for our discussion if you would identify more specifically the provisions of the sections you have cited which you feel conflict with particular practices of Brigham Young University which, in turn, are derived from the religious tenets of the Church of Jesus Christ of Latter-Day Saints.

The Department has no intention of reviewing the nature of the religious tenets asserted by a university to be in conflict with the Title IX regulations, as a general matter.

Page 2 - letter to Dr. Oaks

We do not understand your letter to assert that any tenets conflict with the provisions of those regulations governing equal opportunity in athletics programs.

Beyond the claim for an exemption based on a conflict with religious beliefs, your letter raised a number of additional questions about Title IX and the Department's regulations. Members of my staff will be in touch with the University over the next several weeks to resolve those issues. I look forward to those discussions.

Cordially,

*Martin H. Gerry*  
Martin H. Gerry  
Acting Director  
Office for Civil Rights