



October 14, 2020

Sent Via email (robert@thefire.org)

Robert L. Shibley
Executive Director
Foundation for Individual Rights in Education

Dear Mr. Shibley,

I am writing in response to your October 6 letter to President Wiewel.

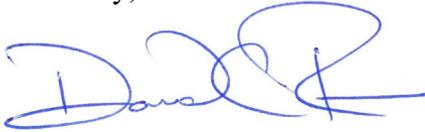
I received your letter only last week, and have not yet talked with Professor Asher or with all involved with planning the orientation event. However, I am generally aware of the event and the nature of the activity.

The session at issue was a single event on Saturday afternoon, August 29, during the five-day New Student Orientation (NSO) that was conducted August 25-30. NSO was a reimagined and reconfigured event this year due to the pandemic, with many long-standing in-person events cancelled. The Race Talks session was provided in place of the community service-type event that is generally included in NSO. The session was “mandatory” in the sense that new students are expected to participate fully in NSO, although some students do miss individual sessions and there are no consequences for doing so. In fact, some students did opt out of this session, or left before it concluded. Attendance is not taken and participation in NSO events has no impact on students’ academic standing. As part of this particular session, students were asked to self-select an affinity group in order to participate in facilitated discussions about race and racism. Students were free to select a group of their choice. All participants then came back together to wrap up the session.

A single session of this nature as part of a diversity-related awareness session seems quite different from the invidious state-sponsored discrimination at issue in segregation-era cases such as *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U.S. 637 (1950), cited in your letter. Breaking into smaller caucus groups is a common approach in education and training of this nature, and has been found to be an effective way to encourage frank and robust discussion. Students were not provided a different educational experience or outcome based on race, they simply had different individual conversations before coming back together as a larger group. That is significantly different from cases such as *McLaurin*. The purpose of the session was to be as inclusive as possible, not exclusionary, and was meant to further the institution’s strong and legitimate interest in fostering a college community where all feel supported and challenged to venture from their comfort zone as they grow and learn.

Nonetheless, I realize from your letter that the use of breakout session in this manner, even through self-selection and in the very limited way at issue here, is objectionable to at least one of our faculty members. In the future, if affinity groups are to be part of such a session, we will be clearer that it is optional and that students can accomplish the session objective in a different manner. Whether or not we will even include such a session in NSO in future years is uncertain, given that some of the NSO events this year were planned at the last minute due to the pandemic, with new remote events taking the place of the traditional schedule. We certainly hope to return to doing community service events during NSO in the future.

Sincerely,



David C. Reese
General Counsel

cc: Professor Lyell Asher (*sent via email* asher@lclark.edu)