



FIRE

Foundation for Individual
Rights and Expression

August 2, 2022

Pradeep K. Khosla
Office of the Chancellor
University of California, San Diego
9500 Gilman Drive #0005
La Jolla, California 92093-0005

Sent via U.S. Mail and Electronic Mail (chancellor@ucsd.edu)

Dear Chancellor Khosla:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights on campus, is concerned the University of California, San Diego, is violating the legal and moral principles of equality by hosting racially segregated programming—the “Black, Latinx, and Native American Family Orientation”—for admitted students. We understand that conversations concerning race and representation have occupied a prominent place in discourse on the campuses of many colleges, which have legitimate interests in fostering productive student discussion around these issues. But racially segregating a college’s educational programming is not a lawful means of facilitating the conversations.

UCSD’s Black, Latinx, and Native American Family Orientation is a three-day orientation program “[s]eparate from the mandatory college orientations,” and “delivers tailored programming for Black, Latinx, and Native American students and their families.”¹ On its sign-up page, there are only three options for student ethnicity: “Black[,]” “Latinx/Chicanx[,]” and “Native American/Alaskan Native[.]”²

Although meeting and fostering the needs of minority students at UCSD is an important and laudable goal, the university cannot lawfully serve this goal by barring students of other ethnicities from educational opportunities or experiences based on their race. Laws enacted to protect students from racial discrimination in higher education, at public and private schools, have been in effect for more than 70 years.

¹ *Black, Latinx, and Native American Family Orientation*, UNIV. OF CAL. SAN DIEGO, https://parents.ucsd.edu/events/black_latinx_family_orientation/index.html [<https://perma.cc/5ZSN-MK3B>].

² *Black, Latinx and Native American Family Orientation Weekend*, UNIV. OF CAL. SAN DIEGO, <https://eforms.ucsd.edu/view.php?id=659445> [<https://perma.cc/M5M3-YT8B>].

In *McLaurin v. Oklahoma State Regents for Higher Education*, the Supreme Court analyzed the Fourteenth Amendment implications of a law school admitting a student of color but separating him from classmates based on his race by requiring him, for example, to sit apart from white students at a designated desk in both the classroom and library.³ The Court held this constituted discrimination prohibited under the Equal Protection Clause, noting that:

The result is that [the student] is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.⁴

Nearly 30 years later, in *Regents of University of California v. Bakke*, the Supreme Court refused to adopt a more restrictive view of the Equal Protection Clause, even in the context of a well-intentioned effort to favor historically marginalized groups.⁵

Likewise, Title VI of the Civil Rights Act of 1964, which effectuates the Equal Protection Clause, forbids institutions receiving federal financial assistance from discriminating “on the ground of race, color, or national origin.”⁶ Colleges and universities that accept payments from students receiving federal financial aid—like UCSD—are bound by Title VI.⁷

While the creators of UCSD’s orientation program might, like the UC Regents in *Bakke*, have nobler intentions than the Oklahoma State administrators in *McLaurin*, good intentions do not make race-based segregation lawful. Just like the law school in *McLaurin*, UCSD is setting certain students “apart from the other students” by imposing race-based restrictions on attendance, consequently impairing students’ ability “to engage in discussions and exchange views with other students” of different races.⁸

UCSD can meet the thrust of its goals without violating federal law by simply removing any race-based restriction on attendance in the program’s registration, and by clarifying to admitted students that it is open to any person interested in its content. While programming intended to appeal to or discuss a particular group’s interests is a form of speech the First Amendment protects, federal law and college policy forbid UCSD from denying students access to educational opportunities by virtue of their skin color.

History has witnessed many misguided attempts to deny students equal educational opportunities because of their race, with many of those efforts no doubt believed to have been

³339 U.S. 637, 640 (1950).

⁴ *Id.* at 640–41.

⁵ 438 U.S. 265, 294–95 (1978). (“Petitioner urges us to adopt for the first time a more restrictive view of the Equal Protection Clause, and hold that discrimination against members of the white ‘majority’ cannot be suspect if its purpose can be characterized as ‘benign.’ The clock of our liberties, however, cannot be turned back to 1868. It is far too late to argue that the guarantee of equal protection to all persons permits the recognition of special wards entitled to a degree of protection greater than that accorded others.”) (cleaned up).

⁶ Title VI, 42 U.S.C. § 2000d (1964).

⁷ *Grove City Coll. v. Bell*, 465 U.S. 555, 564 (1984) (college was recipient of federal financial assistance under Title IX because it enrolled students who financed their education with federal educational grants).

⁸ 339 U.S. at 641.

well-intentioned. Now, as then, racial discrimination must have no place at America's colleges and universities.

We request receipt of a response to this letter no later than Tuesday, August 16, 2022, confirming that no UCSD student will be excluded from the "Black, Latinx, and Native American Family Orientation" program, or any other college-sponsored event, on the basis of their race.

Sincerely,

A handwritten signature in black ink, appearing to read "Sabrina Conza".

Sabrina Conza
Program Officer, Campus Rights Advocacy

Cc: Alysson Satterlund, Vice Chancellor for Student Affairs