



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, PA 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

David French
PRESIDENT

Greg Lukianoff
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Rob Pfaltzgraff
VICE PRESIDENT OF
DEVELOPMENT,
MANAGEMENT, AND
MARKETING

BOARD OF DIRECTORS

Alan Charles Kors
CHAIRMAN

Harvey A. Silverglate
VICE CHAIRMAN

William J. Hume
Joseph M. Maline
Michael Meyers
Marlene Mieske
Daphne Patai
Virginia Postrel
Ed Snider
James E. Wiggins

BOARD OF ADVISORS

Lloyd Buchanan
T. Kenneth Cribb, Jr.
Candace de Russy
William A. Dunn
Benjamin F. Hammond
Nat Hentoff
Roy Innis
Wendy Kaminer
Woody Kaplan
Leonard Liggio
Herbert London
Peter L. Malkin
Milton Rosenberg
John R. Searle
Ricky Silberman
Christina Hoff Sommers

September 23, 2005

President Michael M. Crow
Office of the President
Arizona State University
PO Box 877705
Tempe, Arizona 85287-7705

Sent by U.S. Mail and Facsimile (480-965-0865)

Dear President Crow:

As you can see from the list of our Directors and Board of Advisors, FIRE unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, and freedom of speech on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

In April of 2002, FIRE wrote to your predecessor regarding a Navajo history class at Arizona State University that restricted class enrollment to "Native American students." At the time, FIRE wrote, "This sort of requirement reduces students to the sum of their blood and ancestry, and should be anathema to any institution committed to the diversity of its student population.... The last century saw other misguided attempts to deny education on the basis of race; American universities should be the last institutions to introduce those shameful practices to this new century." It is sorely disappointing that three years later, FIRE is once again forced to protest the existence of unlawful segregation at Arizona State.

This is our understanding of the facts. Please inform us if you believe we are in error. FIRE has become aware of two courses offered by Arizona State's English department that appear to contain racial restrictions. One or more sections of the university's English 101 and 102 first-year composition class have apparently been designated "Rainbow Sections." According to the faculty webpage of the instructor for the course, Professor G. Lynn Nelson, the "Rainbow Sections" are limited to "Native Americans only." A flyer acquired by FIRE (attached) confirms that two of these racially exclusive sections of English 101 are being offered in the current Fall 2005 semester.

As we wrote in our 2002 letter, "to exclude students from a class on the basis of their race is not only unconscionable but, also, unconstitutional." The legal and

regulatory prohibitions on such a practice are considerable. The 1954 decision of the U.S. Supreme Court in *Brown v. Board of Education* confirmed that racially segregated classes violate the Equal Protection Clause of the Fourteenth Amendment, while Title VI of the Civil Rights Act of 1964 forbids institutions receiving federal monies from discriminating “on the ground of race, color, or national origin.” Arizona State’s own “Equal Employment Opportunity/Affirmative Action Policy” states that “[i]t is the policy of Arizona State University (ASU) to provide equal opportunity through affirmative action in employment and **educational programs** and activities. **Discrimination is prohibited on the basis of race**, color, religion, national origin....” (Emphasis added.) In addition, Arizona State’s Academic Affairs Policies and Procedures Manual states in section 403 that “[i]t is a violation of ASU policy **to discriminate against any employee or student on the basis of that individual’s race**, color, religion, national origin...or any other unlawful discriminatory grounds.” (Emphasis added.) Under the law, as well as under its own rules, Arizona State cannot exclude some students from class sections based on their race or ethnicity.

Segregated class sections fail not only these legal and regulatory tests, but also cannot withstand the most elementary moral scrutiny. In a free society, there can be no compelling reason for an agency of the state government such as Arizona State to deny students an equal educational opportunity because of their race or ethnicity. Indeed, according to the description of the “Rainbow Sections” of English 101 and 102 found in the flyer advertising these classes, students in those sections will engage in activities and events that differ from those found in the normal, non-racially exclusive sections of the course. Students come to college in part to have many different experiences, and different students of every race and ethnicity benefit from different approaches to learning. Yet the racial exclusivity of these sections means that non-Native American students will be denied the ability to share in these educational opportunities, making it clear that students are not only separate but also unequal.

FIRE requests that Arizona State University immediately remove the Native American ancestry requirement for the “Rainbow Sections” of English 101 and 102, and that the university reiterate its commitment to treating all students equally, regardless of race or ethnicity. FIRE is committed to using all of its resources to ensure that the civil rights of Arizona State’s students are respected and preserved. Please spare ASU the embarrassment of fighting against the Constitution and the principles of legal equality and individual rights by which it is legally and morally bound. Because of the critical nature of the rights being denied to students, Arizona State’s history of racially exclusive classes, and the straightforward nature of the problem, we request a response on this matter by September 30, 2005.

Sincerely,



Robert L. Shibley
Program Manager

cc:

Milton D. Glick, Executive Vice President and Provost, Arizona State University

Paul Ward, Vice President for University Administration and General Counsel, Arizona State University

Barbara Mawhiney, Director of Equal Opportunity and Affirmative Action, Arizona State University

G. Lynn Nelson, Associate Professor, Department of English, Arizona State University

Encl.

<<<< NATIVE AMERICAN STUDENTS >>>>
“Rainbow Sections”
of
ENG 101 and 102 First Year Composition

“We want a language of that different yield. A yield rich as the harvest of earth, a yield that returns us to our own sacredness, to a self-love and respect that will carry out to others.”

(Linda Hogan, DWELLINGS)

Native American students who need to take First Year Composition are invited to enroll in special Native American sections of ENG 101 and 102.

These are standard First Year Composition credit classes -- but they feature added emphasis on such things as:

- a supportive, encouraging, and non-threatening atmosphere;**
- writing as a tool for personal growth and understanding;**
- the classroom as a helping community;**
- the Feather Circle approach to writing and sharing;**
- the I-Search Project as the focus for your 102 semester's work.**

If you have questions or want to know more about these classes, please see Aaron Woods or Michael Begay (Native American Counselors) in the Student Services Bldg -- or G. Lynn Nelson, Rm. 215 of Language and Literature Bldg.

****** Registration Information for ENG 101 Rainbow for Fall 2005:
Two sections will be offered. Both will meet on Tuesday-Thursday,***