



October 11, 2021

Cecilia M. McCormick, J.D.
Office of the President
Elizabethtown College
Alpha Hall
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Elizabethtown, Pennsylvania 17022-2298

URGENT

Sent via U.S. Mail and Electronic Mail (mccormickcecilia@etown.edu)

Dear President McCormick:

FIRE¹ writes to you again out of concern that Elizabethtown College (“Etown”) is violating legal and moral principles of equality by hosting a racially segregated event for students, “Mediocre + Multimedia Content.” We understand that issues of race and social justice have occupied a prominent place in the discourse on many college campuses and that colleges have a legitimate interest in fostering productive student discussion around these issues. Institutions of higher education have a variety of options to facilitate such discussion. Segregation is not among them. It is settled law that colleges like Etown—regardless of purpose or intent—may not deprive students or faculty of educational resources or opportunities on the basis of their race or ethnicity.

I. Etown Sponsors Event that Excludes Individuals on the Basis of Race

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

The Center for Global Understanding and Peacemaking (“CGUP”) is an Etown office that “develops and facilitates programs advancing global understanding, international engagement, and non-violent conflict transformation.”² Through its programming, CGUP seeks to create “opportunities for students, faculty and staff to develop a sense of

¹ As you will recall from our prior correspondence, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America’s college campuses.

² *Center for Global Understanding and Peacemaking*, ELIZABETHTOWN COLL., <https://www.etown.edu/centers/global/index.aspx> (last visited Oct. 6, 2021).

responsibility as citizens of the world who are knowledgeable about global issues, empathetic toward people of other cultures and nationalities, and committed to the values of peace, human dignity, and social justice.”³

This year, CGUP created the “Forum on White Supremacy and Global Colonization,” which consists of activities and events “designed to promote peace with a focus on the examination of how white supremacy and colonization have functioned in various contexts across the globe and individual empowerment to circumvent cycles and systems of oppression—which is essential to the peacebuilding process.”⁴

One of the forum events, “Mediocre + Multimedia Content,” is described on CGUP’s website as a three-session series, beginning October 12, 2021, where participants can “[e]ngage with members of the community who share some of your experiences and have similar backgrounds.”⁵ Participants in the series, facilitated by Assistant Professor of Psychology Dawnielle Simmons and Associate Director for Diversity, Equity and Belonging Ellis Bonds, will receive a copy of the book “Mediocre: The Dangerous Legacy of White Male America” and “engage in reflective exercises around the text and their own experiences.”⁶ The description further states, “The programming for this event is for participants who identify as individuals of color.”⁷ A flyer for the event emphasizes the restriction on attendance: “*Note: This group will be a space for people who identify as individuals of color.*”⁸

II. Race-Based Segregation in Institutions of Higher Education Violates Federal and State Law

Barring students from educational opportunities or experiences because of their race is unlawful. Law protecting students from racial discrimination in higher education reaches back over 70 years.

In *McLaurin v. Oklahoma State Regents for Higher Education*, the United States Supreme Court considered a case in which a black student had been admitted to a public law school but was separated from other students because of his race.⁹ The student was required, for example, to sit apart from white students at a designated desk in both the classroom and the library.¹⁰ The Court found this to be unlawful discrimination, writing:

[T]he State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair

³ *Id.*

⁴ *Center for Global Understanding and Peacemaking - Fall 2021 Opportunities for Students*, ELIZABETHTOWN COLL., <https://www.etown.edu/centers/global/calendar.aspx> (last visited Oct. 6, 2021).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Emphasis in original. A copy of the flyer is enclosed.

⁹ 339 U.S. 637 (1950).

¹⁰ *Id.* at 640.

and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.¹¹

While *McLaurin* involved a public institution, Title VI of the Civil Rights Act of 1964 forbids all institutions receiving federal financial assistance, whether those institutions are public or private, from discriminating “on the ground of race, color, or national origin.”¹² Colleges and universities like Etown that accept payments from students who receive federal financial aid are covered by Title VI.¹³

Pennsylvania law also bars colleges and universities—including private ones—from discriminating on the basis of race, which occurs when an institution denies any of its “accommodations, advantages, facilities or privileges” to a person “because of his race [or] color.”¹⁴ Moreover, Etown’s own “Policy Against Discrimination, Harassment, and Bullying” affirms that the college “does not tolerate discrimination . . . of any kind . . . against any member of the Elizabethtown College community.”¹⁵ Discrimination on the basis of various protected characteristics, including race, color, and ethnic origin, is “strictly forbidden.”¹⁶

The “Mediocre + Multimedia Content” event plainly discriminates on the basis of race by excluding from attendance and participation people who do not “identify as individuals of color.”¹⁷ While the creators of this program might have nobler intentions than the school authorities in *McLaurin*, good intentions do not make race-based segregation lawful. Like the law school in *McLaurin*, Etown sets certain students “apart from the other students” by imposing race-based restrictions on attendance at the “Mediocre + Multimedia Content”

¹¹ *Id.* at 640–41.

¹² 42 U.S.C. § 2000d; 28 C.F.R. § 42.102(f).

¹³ *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); *Bob Jones Univ. v. Johnson*, 396 F. Supp. 597, 601 (D.S.C. 1974) (private religious university was recipient of federal financial assistance within meaning of Title VI where it accepted money from students receiving veterans benefits to subsidize their education), *aff’d*, 529 F.2d 514 (4th Cir. 1975). *See also Financial Aid*, ELIZABETHTOWN COLL., <https://www.etown.edu/offices/financial-aid/grants.aspx> (providing Etown’s Free Application for Federal Student Aid (FAFSA) school code and information on how to apply for federal student aid) (last visited Oct. 6, 2021).

¹⁴ 43 P.S. § 955(i)(1). A “public accommodation” is any place that is “open to, accepts or solicits the patronage of the general public,” and the definition expressly includes “colleges and universities.” 43 P.S. § 954(l). *See also Education Discrimination*, PA. HUM. RELS. COMM’N, <https://www.phrc.pa.gov/File-a-Compliant/complaint-types-and-forms/Pages/Education.aspx> (stating illegal education discrimination can occur at public and private schools) (last visited Oct. 7, 2021).

¹⁵ ELIZABETHTOWN COLL., POLICY AGAINST DISCRIMINATION, HARASSMENT, AND BULLYING, *available at* <https://www.etown.edu/offices/human-resources/Policy%20Against%20Discrimination.pdf>.

¹⁶ *Id.*

¹⁷ The program appears to be geared toward students, but to the extent it is also a resource for faculty members, they are equally protected from racial discrimination under Title VII of the Civil Rights Act of 1964 and Etown policy. *See* 42 U.S.C.A. § 2000e-2(a)(2) (it is unlawful for an employer “to limit, segregate, or classify his employees . . . in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race [or] color”); POLICY AGAINST DISCRIMINATION, HARASSMENT, AND BULLYING, *supra* note 15.

event, impairing their ability “to engage in discussions and exchange views with other students” of different races.

Of course, students and faculty members are free to make their own private choices about those with whom they wish to associate. And nothing prevents Etown from creating “educational opportunities, programs, and services that are multicultural in content and expressive of a diverse life of experiences and worldviews that underrepresented groups bring to the learning environment.”¹⁸ But Etown has no authority to prohibit students or faculty members of different races from freely associating with each other at a college-sponsored event, nor may it deprive students of an educational opportunity by virtue of their skin color.

III. Conclusion

In no circumstances should a student’s race be determinant of their educational opportunities. In addition to contravening federal law, state law, and Etown policy, excluding students of a particular race from an educational program wrongly suggests they have both nothing to gain from the event and nothing of value to contribute because of their race. Students of all races are individuals with unique personalities, experiences, beliefs, interests, and learning styles. Segregating students by race disregards this truth and reduces them to the sum of their blood and ancestry. History has witnessed many other misguided attempts to deny students equal educational opportunities on the basis of race, with many of those efforts no doubt believed to be well-intentioned by those implementing them. Now, as then, racial discrimination must have no place at America’s colleges and universities.

Etown can resolve this issue by removing the race-based restriction on attendance in the “Mediocre + Multimedia Content” program’s description and clarifying to the college community that the event is open to any person interested in the perspectives of individuals of color. We request receipt of a response to this letter no later than October 12, 2021, confirming that no student or faculty member will be excluded from the “Mediocre + Multimedia Content” program or any other college-sponsored event on the basis of race.

Sincerely,



Aaron Terr
Program Officer, Individual Rights Defense Program and Public Records

Encl.

¹⁸ *Inclusive Excellence*, ELIZABETHTOWN COLL., <https://www.etown.edu/about/excellence.aspx> (last visited Oct. 7, 2021).



THE CENTER FOR
GLOBAL UNDERSTANDING
& PEACEMAKING
ELIZABETHTOWN COLLEGE

▶ REGISTER:
etown.edu/centers/global

Forum on White Supremacy and Global Colonization

Examine how white supremacy and colonization have functioned in various contexts across the globe and explore how individual empowerment can be used to circumvent cycles and systems of oppression. This Forum will offer the following opportunities for reflection:

RACETALK PANEL

OCT. 4

6 - 9:30 p.m., Susquehanna Room

Join us for a unique opportunity to examine racial identity and privilege through foundational content and presentation of narratives from a panel. This panel, facilitated by Dr. Dawnielle Simmons, will initiate dialogue regarding race, racism, white supremacy, racial identity development, racial socialization, campus climate, and many other issues while addressing the unique needs of students and faculty of color at predominantly white institutions.

BOOK GROUP

NOVEMBER

(Month-long series)

As a group, we will read Ijeoma Oluo's "So You Want to Talk about Race" and meet throughout the month of November to discuss its content and how it relates to our own communities. A copy of the book will be provided to all registered participants.

"PUSHOUT" FILM SCREENING & PANEL

NOVEMBER 7

7 p.m., Gible Auditorium

View a screening of the film "Pushout: The Criminalization of Black Girls in Schools" and panel discussion on the challenges and unique issues faced by Black girls in the United States. This event does not require pre-registration.

"ME & WHITE SUPREMACY" WRITING WORKSHOP

OCT. 12, OCT. 21, NOV. 2

6 - 7:30 p.m., Bowers Writers House

Examine your own identity and take your anti-racist mindset and work to the next level in this three-session series. In this writing workshop facilitated by Rev. Amy Shorner-Johnson, we will be working through Layla Saad's "Me and White Supremacy" book and guided journal - a must for any white ally serious about examining their own relationship to whiteness and effective allyship. A copy of the book will be provided to all registered participants. This series is co-sponsored by the Bowers Writers House and will include a reception featuring their signature chocolate fondue following the first and third sessions.



BOWERS WRITERS HOUSE
ELIZABETHTOWN COLLEGE

"MEDIocre" & MULTIMEDIA CONTENT

OCT. 12, OCT. 21, NOV. 2

6-7:30 p.m., High Library Conference Room

Engage with members of the community who share some of your experiences and have similar backgrounds. Participants in this three-session series facilitated by Dr. Dawnielle Simmons and Ellis Bonds will receive a copy of "Mediocre: The Dangerous Legacy of White Male America" by Ijeoma Oluo and engage in reflective exercises around the text and their own experiences. This series is co-sponsored by the Bowers Writers House and will include a reception featuring their signature chocolate fondue following the first and third sessions. *Note: This group will be a space for people who identify as individuals of color.*



BOWERS WRITERS HOUSE
ELIZABETHTOWN COLLEGE