April 13, 2022

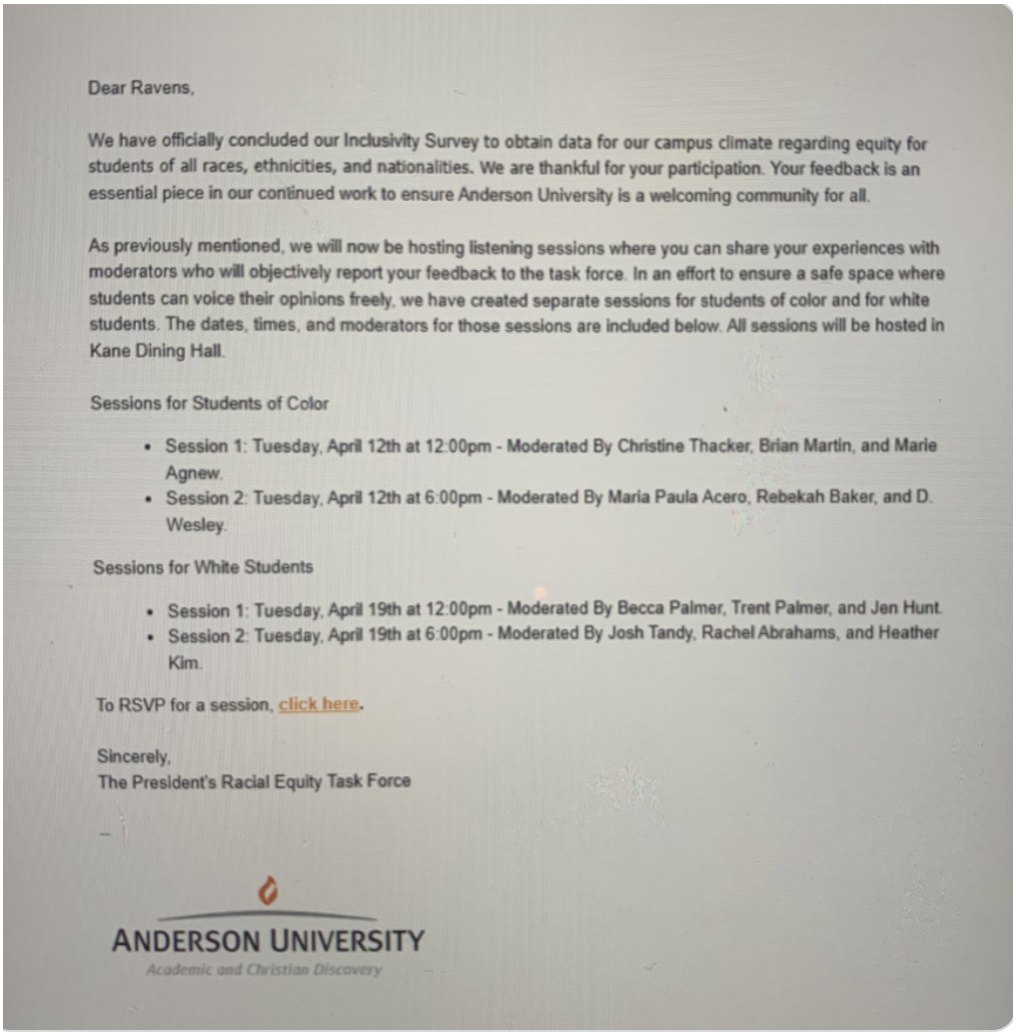
President John S. Pistole
Anderson University
1100 E. Fifth Street
Anderson, IN 46012

Sent via email

Dear President Pistole:

The Foundation Against Intolerance & Racism (FAIR) is a nonpartisan organization dedicated to advancing civil rights and liberties and promoting a common culture based on fairness, understanding, and humanity. We have more than 100 chapters and tens of thousands of members nationwide, including in Indiana. Our website, fairforall.org, can give you a fuller sense of our identity and activities.

We write in response to an incident report regarding Anderson University submitted to FAIR on April 12 through our transparency website, fairtransparency.org. The report states, "Anderson University will host 'listening sessions' for students of color and white students on separate days." It also includes a link to a news article containing an announcement purportedly from the President's Racial Equity Task Force. That announcement states the university will host listening sessions in which students will be separated by skin color. The purpose of that separation is "to ensure a safe space where students can voice their opinions freely." According to the announcement, the student feedback from those sessions will be reported to the task force and "is an essential piece in our continued work to ensure Anderson University is a welcoming community for all."



Dear Ravens,

We have officially concluded our Inclusivity Survey to obtain data for our campus climate regarding equity for students of all races, ethnicities, and nationalities. We are thankful for your participation. Your feedback is an essential piece in our continued work to ensure Anderson University is a welcoming community for all.

As previously mentioned, we will now be hosting listening sessions where you can share your experiences with moderators who will objectively report your feedback to the task force. In an effort to ensure a safe space where students can voice their opinions freely, we have created separate sessions for students of color and for white students. The dates, times, and moderators for those sessions are included below. All sessions will be hosted in Kane Dining Hall.

Sessions for Students of Color

- Session 1: Tuesday, April 12th at 12:00pm - Moderated By Christine Thacker, Brian Martin, and Marie Agnew.
- Session 2: Tuesday, April 12th at 6:00pm - Moderated By Maria Paula Acero, Rebekah Baker, and D. Wesley.

Sessions for White Students

- Session 1: Tuesday, April 19th at 12:00pm - Moderated By Becca Palmer, Trent Palmer, and Jen Hunt.
- Session 2: Tuesday, April 19th at 6:00pm - Moderated By Josh Tandy, Rachel Abrahams, and Heather Kim.

To RSVP for a session, click here.

Sincerely,
The President's Racial Equity Task Force

ANDERSON UNIVERSITY
Academic and Christian Discovery

If that report is accurate, we believe Anderson is in violation of Title VI of the Civil Rights Act. That statute provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

42 U.S.C. § 2000d. Private universities that receive federal funding, such as Anderson, must comply with Title VI. *Id.* §§ 2000d, 2000d-4a(2); *see Robinson v. Vollert*, 602 F.2d 87, 89 (5th Cir. 1979) ("Title VI prohibits discrimination on account of race, color, or national origin in all programs and activities receiving federal financial assistance"); *Goodman v. Bowdoin College*, 135 F. Supp. 2d 40, 52-3 (D. Me. 2001) (student stated Title VI claim against private college that received federal funding); *see also Gratz v. Bollinger*, 539 U.S. 244, 275-6 (2003) (Title VI applied to racially discriminatory admissions policy of state university that received federal funding).

Under Title VI (and the Equal Protection clause from which it is derived), all distinctions based on skin color are "strictly scrutinized" by the courts. *Adarand Constr., Inc. v. Pena*, 515 U.S. 200, 227 (1995). Strict scrutiny applies not only to invidious racial discrimination. Rather, it applies to distinctions that are "benign" or that purport to treat people "differently yet equally." *See Johnson v. California*, 543 U.S. 499, 506 (2005). The *Johnson* case is instructive. There, an inmate challenged a prison policy that separated new inmates according to skin color: Latino prisoners were housed with other Latinos, black inmates with other black inmates, and so forth. *Id.* at 502. The corrections department argued that strict scrutiny should not apply because the separation was for a benign purpose—reduction of gang-based violence—and all inmates were still treated equally within their respective groups. *Id.* The Court rejected that rationale:

> The CDC claims that its policy should be exempt from our categorical rule because it is "neutral"—that is, it "neither benefits nor burdens one group or individual more than any other group or individual." In other words, strict scrutiny should not apply because all prisoners are "equally" segregated. The CDC's argument ignores our repeated command that "racial classifications receive close scrutiny even when they may be said to burden or benefit the races equally." Indeed, we rejected the notion that separate can ever be equal—or "neutral"—50 years ago in *Brown v. Board of Education*, and we refuse to resurrect it today.

Id. at 506 (internal citations omitted); *see also Powers v. Ohio*, 400 U.S. 400, 410 (1991) (rejecting the argument that race-based peremptory challenges were permissible because they applied equally to white and black jurors and holding that "[i]t is axiomatic that racial classifications do not become legitimate on the assumption that all persons suffer them in equal degree"). Thus, even if Anderson's segregation were benign or "separate but equal," it will still be strictly scrutinized.

Strict scrutiny "is a searching examination" that is rarely survived. *Fisher v. University of Texas*, 570 U.S. 297, 310 (2013); *Burson v. Freeman*, 504 U.S. 191, 211 (1992); *Bauer v. Shepard*, 634 F. Supp. 2d 912, 940 (N.D. Ind. 2009). A racial classification such as Anderson's will pass strict scrutiny only if the entity proves it has a "compelling interest" in treating individuals differently based on skin color, and the means used to achieve that interest are "narrowly tailored." *Adarand*, 515 U.S. at 227. A policy is not narrowly tailored if a "less restrictive alternative is readily available." *Boos v. Barry*, 485 U.S. 312, 329 (1988).

In its announcement, Anderson claims it has an interest in "ensur[ing] a safe space where students can voice their opinions freely." Even if that were a compelling interest, separating students by skin color is not narrowly tailored to achieve that goal. Many other non-discriminatory alternatives are readily available, such as encouraging students to speak openly and freely, allowing equal time for each student who wishes to speak, giving students an option to submit comments and questions anonymously in advance, and articulating rules and expectations of respectful conduct and dialogue. The message that it is "unsafe" to be around those who do not share the same skin color stigmatizes all. As stated by the Supreme Court, instead of helping individuals, separating them by color "threaten[s] to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility." *Shaw v. Reno*, 509 U.S. 630, 643 (1993).

We hope that going forward, Anderson will hold listening sessions (and other events) where all students are welcome, regardless of their immutable traits. Such openness will help promote understanding, tolerance, and a sense of shared belonging within our universities.

We would like to give Anderson an opportunity to respond. Please let us know within the next five days if you intend to do so.

Very truly yours,

Letitia Kim
Managing Director of the Legal Network
Foundation Against Intolerance & Racism