



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

JAMES MOESER
Chancellor

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August 12, 2004

Mr. Robert L. Shibley
Program Officer
Foundation for Individual Rights in Education
210 West Washington Square, Suite 303
Philadelphia, PA 19106

Dear Mr. Shibley:

I write in response to your letter dated July 23, 2004, concerning the seven-member Alpha Iota Omega fraternity.

At this University, we encourage students to nurture their moral, spiritual and religious lives. And we do not discriminate against students seeking recognition for religious groups. In fact, we have 42 recognized student religious groups, the overwhelming majority of them being Christian, with student membership totaling nearly 5,000.

As a state educational institution receiving federal funding, the University must balance the constitutionally mandated freedom of association (provided in the First Amendment of the U.S. Constitution) with constitutionally required protection against discrimination (found in both the Fourteenth Amendment of the U.S. Constitution and Article 1, section 19 of the North Carolina Constitution). We strive to be fair and reasonable. In the case of Alpha Iota Omega, the University has met that goal and acted appropriately in not extending the fraternity's official recognition for 2003 - 2004. We provided the members of the fraternity with every opportunity to comply with University policies required to satisfy recognition criteria while still honoring their mission of providing leadership and outreach to the campus Greek community through evangelism and mentorship. They refused, and we acted based on our obligations under applicable federal and state law.

The University is bound to abide by federal nondiscrimination laws including Title VI of the Civil Rights Act (nondiscrimination on the basis of race, color, national origin); The Americans With Disabilities Act and Section 504 of the Rehabilitation Act (nondiscrimination on the basis of disability); Title IX (nondiscrimination on the basis of sex); and 42 U.S. Code 6101-6103



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(nondiscrimination on the basis of age). Finally, as noted before, we must also abide by the U.S. Constitution, including the equal protection clause of the Fourteenth Amendment, and the North Carolina Constitution, which provides that “No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.”

When the University recognizes student groups, it provides their members with access to certain public resources, including priority access to University facilities for meetings and events as well as the right to seek student activity fee funding for their activities from Student Congress. The University charges and collects the student activity fee from every student as part of its tuition and fees and grants Student Congress the power to appropriate it.

The University has established several requirements that organizations must meet to be recognized. One requirement is that the groups agree to abide by the University’s nondiscrimination policy by allowing membership and participation without regard to age, race, color, national origin, religion, disability, sex, or sexual orientation. Currently 595 recognized student organizations (including the 42 student religious organizations referred to earlier with their 4,811 total members) have agreed to abide by this policy. So, for example, Baptist student groups are open to Presbyterian students; Jewish student groups are open to Christian students; the Italian Club is open to Korean students; and the Black Student Movement is open to white students. Further, the University does not require all student associations to be recognized. It simply requires recognition for groups that want access to student fee funds and priority access to University meeting facilities.

The following membership rules are permissible under the University’s recognition process:

- While an organization -- religious or otherwise -- cannot require members to have a “status” [e.g. “be a Presbyterian,”], it can require members to have an interest in the subject matter of the organization and to support its work [e.g. “I affirm that I am joining the College Republicans because I have an interest in learning more about the organization and because I support its objectives.”];
- An organization may require apprentice members to pass an objective test on the subject matter with which the organization is concerned in order to become a full member;
- An organization whose activities center around a core of beliefs may require that its officers subscribe to the tenets of the organization.



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Alpha Iota Omega requires its members to be male Christians. In accordance with the exemption provisions in Title IX (nondiscrimination on the basis of sex), we asked Alpha Iota Omega to demonstrate their tax-exempt status under section 501(a) of the Internal Revenue Code of 1954. They did not do so. We mentioned a possible provision that a student's membership involvement in an organization reflect support of the organization's goals. They did not pursue this possibility. At one point, they signed the recognition application agreeing to abide by the nondiscrimination policy, but told us that, although they had signed the application, they would not follow the nondiscrimination policy. We did not find this acceptable. Therefore we did not renew their recognition. The options described above are still open to the group, should they wish to pursue them.

There is sometimes a tension between the First Amendment to the Constitution and the equal protection provisions of the Fourteenth Amendment to the Constitution. The U.S. Supreme Court has not yet addressed this issue in the context of student groups at public universities. At present, therefore, all public institutions must strive to balance constitutional rights and protections. We believe that our approach to recognition in general and our demonstrated willingness to work with the members of Alpha Iota Omega to achieve their goals strikes a proper balance between the interests of nondiscrimination and free association.

Sincerely,

James Moeser