

May 7, 2021

The Honorable Miguel Cardona  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202  
Via <https://www.federalregister.gov>

Cc: Diana Schneider, Program Contact  
American History and Civics Academies  
U.S. Department of Education  
Office of Elementary and Secondary Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Docket ID ED-2021-OESE-0033

Dear Secretary Cardona:

This letter presents comments on the “Proposed Priorities—American History and Civics Education Programs” published by your department in the *Federal Register* (86 *Fed. Reg.* 20348, April 19, 2021; Document Number: 2021-08068). By prioritizing grant funding for programs that include tenets of Critical Race Theory generally, and “antiracism” training sessions specifically, the proposed rule undermines the intent of the American History and Civics Education programs, transmits a toxic message to children of all backgrounds, and, when applied in practice, violates federal civil rights laws.

Per the reasons raised in this letter and in the reports<sup>1</sup> footnoted<sup>2</sup> below<sup>3</sup> the Department of Education should rescind this proposed rule and not give priority to grants that would incorporate Critical Race Theory into applicants’ history and civics programs.

**The proposed rule perverts the purpose of the American History and Civics Education programs.** The American History and Civics Education programs (CFDA Number 84.422A; Title II, part B, subpart 3 of the Elementary and Secondary Education Act of 1965, as amended, the Every Student Succeeds Act, 20 U.S.C. 6662 and 6663) is a grant program intended to educate students about the Constitution, the Bill of Rights, and “traditional American history.” Instead, the proposed rule would have grant applicants “Take into account systemic

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<sup>1</sup> Jonathan Butcher and Mike Gonzalez, “Critical Race Theory, the New Intolerance, and Its Grip on America,” Heritage Foundation *Backgrounder* No. 3567, December 7, 2020, <https://www.heritage.org/civil-rights/report/critical-race-theory-the-new-intolerance-and-its-grip-america>.

<sup>2</sup> Jonathan Butcher and Mike Gonzalez, “Keep Racist Critical Race Theory Ideology Out of K-12 Classrooms,” The Daily Signal, April 22, 2021, <https://www.dailysignal.com/2021/04/22/keep-racist-critical-race-theory-ideology-out-of-k-12-classrooms/>.

<sup>3</sup> Jonathan Butcher and Lindsey M. Burke, “Seven Steps to Combatting ‘Critical Theory’ in the Classroom,” Heritage Foundation *Issue Brief* No. 6064, March 22, 2021, <https://www.heritage.org/education/report/seven-steps-combatting-critical-theory-the-classroom>.

marginalization, biases, inequities, and discriminatory policy and practice in American history.” These are revisionist views of American history, which are being contested by renowned historians across the political spectrum, and by no means represent a consensus view of actual events.

For example, in contrast to American Founding documents and existing program goals, this proposed rule quotes Ibram X. Kendi’s book *How to Be an Antiracist*, in which Kendi also states: “The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination.”<sup>4</sup> Such a philosophy does not align with the programs’ intended purpose, and is fundamentally at odds with the 14<sup>th</sup> Amendment to the U.S. Constitution, which states that “no state shall make or enforce any law which shall abridge the privileges and immunities of citizens.”<sup>5</sup>

Public employees are also prohibited from practicing discrimination, according to Title VI of the Civil Rights Act of 1964, which states that,

No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.<sup>6</sup>

“Teacher training programs” are included in the definition of “Education and training programs and activities” in this law.

The rule also references as a model *The New York Times*’s ahistorical 1619 Project, a series of essays on race in America that historians from institutions such as Northwestern University, Princeton, and elsewhere have denounced.<sup>7</sup> Among the project’s most misleading contentions, and from which the effort derives its name, is that America’s birthdate is not signified by the signing of the Declaration of Independence in 1776, but by the arrival of the first enslaved Africans in 1619 on the shores of what would later become the United States. The project rejects the document that outlines America’s creed that “all men are created equal.”

The project also contains factual inaccuracies, along with misleading interpretations of American history. In fact, Spanish explorers brought slaves to what are today South Carolina, Florida, and Texas nearly a half-century before 1619.<sup>8</sup> Another of the 1619 Project’s errors—one from which

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<sup>4</sup> Ibram X. Kendi, *How to Be an Antiracist*, One World (New York: Penguin Random House, 2019).

<sup>5</sup> U.S. Const. amend. XIV.

<sup>6</sup> 42 U.S.C. § 2000d (1964).

<sup>7</sup> Lindsey M. Burke, Jonathan Butcher, Emilie Kao, and Mike Gonzalez, “The Culture of American K-12 Education: A National Survey of Parents and School Board Members,” Heritage Foundation *Special Report* No. 241, January 11, 2021, <https://www.heritage.org/sites/default/files/2021-01/SR241.pdf>; Leslie M. Harris, “I Helped Fact-Check the 1619 Project. The Times Ignored Me,” *Politico*, March 6, 2020, <https://www.politico.com/news/magazine/2020/03/06/1619-project-new-york-times-mistake-122248>; Victoria Bynum et al., “Letter to the Editor RE: The 1619 Project,” *The New York Times*, December 20, 2019, <https://www.nytimes.com/2019/12/20/magazine/we-respond-to-the-historians-who-critiqued-the-1619-project.html>; and Tom Mackaman, “An Interview with Historian Gordon Wood on the New York Times’ 1619 Project,” World Socialist Web Site, November 28, 2019, <https://www.wsws.org/en/articles/2019/11/28/wood-n28.html>.

<sup>8</sup> Nicquel Terry Ellis, “Forget What You Know About 1619, Historians Say. Slavery Began a Half-Century Before Jamestown,” *USA Today*, January 1, 2020, <https://www.usatoday.com/in-depth/news/nation/2019/12/16/american->

*The New York Times* later backed away—was that the colonists fought the Revolution because they feared that Britain would end the practice of slavery.<sup>9</sup> Yet another error was that slavery begat America’s form of capitalism, which was then exported to the rest of the world.<sup>10</sup>

As we have discussed in our research,

This leads to [a] pedagogical problem with the 1619 Project: The editors’ refusal to make substantive corrections elevates the project’s chosen narrative about slavery, even when it contains factual errors, over accurate instruction. This re-orientes the ultimate objective of teaching and scholarship away from the pursuit of truth and toward ideological ends based on false claims.<sup>11</sup>

*Critical Race Theory in the classroom.* There are numerous examples of this ideology making its way into classrooms across the country. Learning for Justice, an organization that operates under the Southern Poverty Law Center, creates K-12 civics content that claims that, “White supremacy culture...appears in any organization that is not actively and effectively working to dismantle it” and, “Rather than refuting the existence of white supremacy, educators are acknowledging how it is embedded into the fiber of our nation and our schools.”<sup>12</sup>

The proposed rule also recommends material created by the National Museum of African American History and Culture, part of the Smithsonian Institution, in July 2020. The museum’s website hosted a now-removed document claiming that “hard work,” “objective, rational, linear thinking,” and following “rigid time schedules” are exclusively elements of white culture rather than human practices that lead to success.<sup>13</sup> The Smithsonian’s National Museum of American History, for its part, created a civics lesson called “Teen Resistance to Systemic Racism” that encourages teens to “claim power” because there is “systemic injustice” in America.<sup>14</sup>

These examples demonstrate that civics content using “Critical” ideas compels teachers and students to take proscribed positions on public policy issues of the day even if activism is not their chosen method of responding to current events.

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slavery-traces-roots-st-augustine-florida-not-jamestown/4205417002/, and Ciara Torres-Spelliscy, “Everyone Is Talking About 1619. But That’s Not Actually When Slavery in America Started,” *The Washington Post*, August 23, 2019, <https://www.washingtonpost.com/outlook/2019/08/23/everyone-is-talking-about-thats-not-actually-when-slavery-america-started/>.

<sup>9</sup> Harris, “I Helped Fact-Check the 1619 Project. The Times Ignored Me.”

<sup>10</sup> Phillip W. Magness, “The Case for Retracting Matthew Desmond’s 1619 Project Essay,” in *The 1619 Project: A Critique*, by Phillip W. Magness (Great Barrington, MA: American Institute for Economic Research, 2020).

<sup>11</sup> Burke, Butcher, Kao, and Gonzalez, “The Culture of American K-12 Education: A National Survey of Parents and School Board Members.”

<sup>12</sup> Natalie Odom Pough, “A Flaw in the Foundation,” *Teaching Tolerance*, Issue 66 (Spring 2021), <https://www.learningforjustice.org/magazine/spring-2021/a-flaw-in-the-foundation>.

<sup>13</sup> Marina Watts, “In Smithsonian Race Guidelines, Rational Thinking and Hard Work Are White Values,” *Newsweek*, July 17, 2020, <https://www.newsweek.com/smithsonian-race-guidelines-rational-thinking-hard-work-are-white-values-1518333>.

<sup>14</sup> National Museum of American History, “National Youth Summit—Teen Resistance to Systemic Racism,” September 22, 2020, <https://americanhistory.si.edu/national-youth-summit/teen-resistance-systemic-racism>.

**Critical Race Theory sends a toxic message to children of all backgrounds.** Critical Race Theory is a worldview that believes that any events and ideas in society—from politics to education to the workplace, and beyond—can only be understood in terms of racial identity, and contends that discrimination always ensues as a result. You are either oppressed or an oppressor—a designation predetermined by the immutable characteristic of race.

The Department of Education should reject the idea that schoolchildren should be taught that America is a racist country. Such instruction causes harm to children of all races and backgrounds, transmitting to them a theory that teaches them to pit Americans against Americans.

As one New York City teacher recently explained of Critical Race Theory, “Racist incidents happen. And bias can influence relationships. All true. But addressing such problems with a call to ‘undo history’ lacks any kind of limiting principle and pairs any allegation of bigotry with a priori guilt.”<sup>15</sup> He goes on to explain how Critical Race Theory is applied in practice in his school: “The morally compromised status of ‘oppressor’ is assigned to one group of students based on their immutable characteristics. In the meantime, dependency, resentment and moral superiority are cultivated in students considered ‘oppressed.’”<sup>16</sup>

As one frustrated father of a child in a New York City private school recently wrote in a letter after pulling his daughter from the school over the school’s “anti-racism pledge” and policies: “I cannot tolerate a school that not only judges my daughter by the color of her skin, but encourages and instructs her to prejudge others by theirs.”<sup>17</sup>

The Department of Education released findings in January 2021 after an Illinois teacher filed a complaint that a school was using “affinity groupings,” which divided students according to color and presented students with different academic content based on their race. According to the department’s report, the school district implemented a school disciplinary policy that directed staffers to “consider a student’s race when meting out discipline,” which would violate the federal provisions cited above in 42 U.S.C. § 2000d.<sup>18</sup> As a federal Dear Colleague Letter from 2014 explains, Titles IV and VI of the Civil Rights Act “prohibit schools from intentionally disciplining students differently based on race.”<sup>19</sup>

Similarly, if schools and school districts are engaging in activities that make children uncomfortable in their own skin (literally), they are inflicting emotional distress on children. And, in embracing Critical Race Theory, they are undermining their shared American identity.

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<sup>15</sup> Paul Rossi, “I Refuse to Stand By While My Students Are Indoctrinated,” Common Sense with Bari Weiss, April 13, 2021, <https://bariweiss.substack.com/p/i-refuse-to-stand-by-while-my-students>.

<sup>16</sup> Ibid.

<sup>17</sup> Bari Weiss, “You Have to Read This Letter,” Common Sense with Bari Weiss, April 16, 2021, <https://bariweiss.substack.com/p/you-have-to-read-this-letter>.

<sup>18</sup> Carl Campanile, “U.S. Dept. of Education Curbs Decision on Race-Based ‘Affinity Groups,’” *New York Post*, March 7, 2021, <https://nypost.com/2021/03/07/education-dept-curbs-decision-on-race-based-affinity-groups/>.

<sup>19</sup> U.S. Department of Education, Office for Civil Rights, and U.S. Department of Justice, Civil Rights Division, “Joint ‘Dear Colleague’ Letter on the Nondiscriminatory Administration of School Discipline,” January 8, 2014, citing 42 U.S.C. §§ 2000c et seq. and 42 U.S.C. §§ 2000d et seq. (1979 and 1964, respectively), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

Such practices should not be codified in programs that are part of the Elementary and Secondary Education Act, the largest federal law governing K-12 education in the United States. The Department of Education should not encourage more of this.

**The application of Critical Race Theory violates federal civil rights laws.** No law should bar schools from teaching what Critical Race Theory *is*, but schools do violate existing civil rights laws when they operationalize Critical Race Theory in ways that treat students differently because of their skin color, national origin, or sex, or claim that children are guilty of oppression because of these immutable characteristics. Such applications violate existing law, such as Title VI of the Civil Rights Act. The proposed rule supports policies and practices that would take the country backwards on the protections enshrined for all Americans in the 14<sup>th</sup> Amendment and the Civil Rights Act.

We must continue to condemn and address racism and discrimination whenever it emerges, but we cannot let politics destroy the value of our institutions. The Department of Education should not advance official federal policies, through rules and regulations, that support teaching students that they have little capacity to determine their lives because of the color of their skin. Nor should the Department of Education fund programs that teach children that they are oppressors or victims due to their skin color, as Critical Race Theory does. We urge the Department of Education to abandon this proposed rule.

Sincerely,

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