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May 19, 2021

Submitted Electronically to
Regulations.gov
Hon. Miguel Cardona
U.S. Department of Education
400 Maryland Avenue, SW
Room 3C152
Washington, DC 20202

Re: Proposed Priorities – American History and Civics Education
Docket ID No. ED-2021-OESE-0033
86 Fed. Reg. 20348 (Apr. 19, 2021)

Dear Secretary Cardona:

[Southeastern Legal Foundation](#) (SLF) appreciates the opportunity to submit these comments on the [Proposed Priorities](#) “American History and Civics Education” to the Department of Education. SLF is a nonprofit legal organization dedicated to defending liberty and Rebuilding the American Republic©. Since, 1976, SLF has advocated for limited government, individual liberties, and the free enterprise system in the courts of law and public opinion. SLF believes that the U.S. Constitution is a complete document, creating limits on government. When the government goes beyond those limits, we hold the government accountable.

Today, we find ourselves on multiple battlegrounds fighting to save the American Republic. One of the most important battlegrounds is the fight against illegal and unconstitutional curriculum in our K-12 schools that treat our children differently based on race. It divides our country. It is not healthy. It erases decades of progress. And it pits our children against each other, teaching them to hate one another. For the reasons explained in this letter, we urge the Department to reconsider the proposed priorities.

But even more, we urge parents to stay alert because these proposed priorities are just the beginning of the federal government’s aggressive attempt to control our nation’s K-12 classrooms and replace history (and objective truth) with identity politics and a warped view of American civics and institutions. In many cases, teachers are told to hide the racially divisive curriculum from parents. In others, students are encouraged to report the words and views of their parents and caretakers as examples of institutional racism. The initial goal is the indoctrination of young minds,

but the long view is to aggregate power behind an alien political worldview that fed the dehumanizing machines of the Soviet Union and communist China.

The Department is prioritizing critical race theory and anti-traditional education over traditional education, specifically history and civics.

In its proposed priorities, the Department of Education proposes prioritizing federal tax dollars for K-12 schools that replace traditional education, specifically history and civics, with “culturally responsive teaching and learning” – more commonly referred to as critical race theory. The Department picks up where it left off in 2016, breathing new life into the decades-long effort to control local schools and press a progressive indoctrination agenda on our children. With the power of taxpayer-funded purse strings, the proposed priorities send a message to public schools throughout our nation that if they want financial aid, they must “teach” critical race theory and prioritize its ideologically anti-American, anti-traditional over traditional (and accurate) education.

At its core, critical race theory is the false idea that the United States is a fundamentally racist country and that all of our nation’s institutions – the law, culture, business, economy, education – are designed to maintain white supremacy. And the proposed priorities assume this too. They assume that America is a country of “systemic marginalization, biases, inequities, and discriminat[ion].” Politicians and pundits, and now apparently the Department, market critical race theory as an inclusive teaching, one that promotes understanding and tolerance—both of which, in their true forms are laudable goals that we as human beings should strive for. But when the truth is exposed, they try to repackage it in a series of euphemisms, including anti-racism, equity, or culturally responsive teaching. The very “scholars” cited to by the Department who created the related “anti-racist” rhetoric—the true believers like Ibram X. Kendi and the 1619 Project—admit the truth. We know this because countless school districts – including some states – already require critical race theory to be taught across many, if not all, subject matters and at all grade levels.

Through the proposed priorities, the Department seeks to prioritize curriculum that promotes critical race theory and tells students they fall into one of two categories—the oppressed or the oppressor—based solely on the color of their skin. Plain and simple.

The proposed priorities encourage curriculum that will treat students, parents, and teachers differently solely because of the color of their skin.

Christopher F. Rufo (writer, filmmaker, and senior fellow at Manhattan Institute), recently completed an [eleven-part series](#) on critical race theory in education. His investigative reporting not only changed the national conversation on education but highlighted key examples of how the proposed priority curriculum works in practice. Below is a list of his key findings as he describes them:

- [Seattle Public Schools](#) tells teachers that the education system is guilty of “spirit murder” against black children and that white teachers must “bankrupt [their] privilege in acknowledgement of [their] thieved inheritance.”
- [San Diego Public Schools](#) accuses white teachers of being colonizers on stolen Native American land and tells them “you are racist” and “you are upholding racist ideas, structures, and policies.” They recommend that the teachers undergo “antiracist therapy.”
- A [Cupertino, California](#), elementary school forces third-graders to deconstruct their racial and sexual identities, then rank themselves according to their “power and privilege.” They separate the eight-year-old children into oppressors and oppressed.
- A middle school in [Springfield, Missouri](#), forces teachers to locate themselves on an “oppression matrix,” claiming that white heterosexual Protestant males are inherently oppressors and must atone for their “covert white supremacy.” Link
- A [Philadelphia](#) elementary school forces fifth-graders to celebrate “Black communism” and simulate a Black Power rally to “free Angela Davis” from prison. At this school, 87 percent of students will fail to achieve basic literacy by graduation.
- [Buffalo Public Schools](#) teaches students that “all white people” perpetuate systemic racism and forces kindergarteners to watch a video of dead black children warning them about “racist police and state-sanctioned violence” who might kill them at any time.
- The [Arizona Department of Education](#) created an “equity” toolkit claiming that babies show the first signs of racism at three months old and that white children become full racists—“strongly biased in favor of whiteness”—by age five.
- The [California Department of Education](#) passed an “ethnic studies” curriculum that calls for the “decolonization” of American society and has students chant to the Aztec god of human sacrifice. The solution, according to one author, is “counter-genocide.”
- [North Carolina’s largest school district](#) launches a campaign against “whiteness in educational spaces”—and encourages teachers to subvert families and push the ideology of “antiracism” directly onto students without parental consent.
- [Santa Clara County Office of Education](#) denounces the United States as a “parasitic system” based on the “invasion” of “white male settlers” and

encourages teachers to “cash in on kids’ inherent empathy” in order to recruit them into political activism.

Reading through these examples—and countless others across our country— a common theme emerges: critical race theory training and curriculum treats students, parents, and teachers differently solely because of the color of their skin.

The proposed priorities reward schools for illegal and unconstitutional race-based discrimination.

As the Department [already knows](#), it is both illegal and unconstitutional to treat people differently because of their race. First, the Constitution forbids discrimination by the government against any citizen because of his race. U.S. Const. amend. XIV § 1. Second, Title VI of the Civil Rights Act of 1964 forbids programs or activities that receive federal financial assistance—including our nation’s 50 state education agencies—from discriminating based on race, color, or national origin. 42 U.S.C. § 2000(d) *et seq.* And third, the Department’s own regulations implementing Title VI also prohibit race-based discrimination. 34 C.F.R. Part 100. These protections apply to *all persons*, without exclusion.

Because implementation of critical race theory in the classroom frequently results in treating students differently because of their race, it violates the law. For example, when a school segregates students by race in class or at a school-sponsored activity, it violates the law. Or, when a school tells white students that they are oppressors, racist, white-supremacists, and privileged because of their skin color and tells black students that they are oppressed, victims, marginalized, and suffer trauma because of their skin color, it violates the law. And, when a teacher targets a student in class because of his race, it violates the law.

Notably, the Department itself has found that critical race theory, when implemented through programs like those in the proposed priorities violates federal law. According to a [New York Post](#) article, in January 2021, the Department found that the Evanston, Illinois school district violated federal law when it (1) separated administrators into two groups based on race (white and non-white) in a professional development training; (2) offered various “racially exclusive affinity groups” that separated students, parents, and community members by race; (3) implemented a disciplinary policy that included “explicit direction” to staffers to consider a student’s race when meting out discipline; (4) held a “Colorism Privilege Walk” that separated middle school students into different groups based on race. Although the Department has since tried to erase all traces of the its letter of finding, it has yet to publicly justify its assumed withdrawal. That is because it cannot do so without also acknowledging that withdrawal of the letter of finding could only be justified by concluding that the Civil Rights Act protects some, but not all. Such an argument is implausible and could never be supported by law.

In addition to resulting in race-based discrimination, implementation of the proposed priorities would result in violations of students, parents, and teachers First Amendment rights. The

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First Amendment guarantees the freedom of speech, which comprises both the freedom to choose what to say and what to not say. U.S. Const. amend. I. The government violates the First Amendment when it requires a person to speak things that he does not want to speak. For example, a school cannot require students to pledge allegiance to the flag or to say that America is the greatest country in the world. Likewise, a school cannot require its students, through an assignment, survey, or exam, to attest and affirm the fundamental principles and proposals of our country's critical race theorists.

Conclusion

We urge the Department to reconsider the proposed priorities and instead of prioritizing funding for illegal and unconstitutional programs, protect all students from racial discrimination through its power to enforce the Civil Rights Act.

Yours in Freedom,

A handwritten signature in black ink that reads "Kimberly S. Hermann". The signature is written in a cursive, flowing style.

Kimberly S. Hermann
General Counsel
Southeastern Legal Foundation