



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Ave., Suite 725, Milwaukee, WI 53202-3141
414-727-WILL
Fax 414-727-6385
www.will-law.org

Dr. Miguel A. Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue SW
Room 3C152
Washington, DC 20202

Re: Public Comment: Docket ID ED-2021-OESE-0033

Dear Secretary Cardona:

The Wisconsin Institute for Law & Liberty (WILL) is a non-profit public-interest law and policy organization dedicated to the rule of law, individual liberty, constitutional government, and a robust civil society. We are writing in opposition to your proposed priorities in American History and Civics Education. According to a notice in the federal register, you plan to use these priorities to distribute grants under 20 U.S.C. §§ 6661–6663.

Our Nation was founded on the principle of equality. For decades, schoolchildren have studied the Declaration of Independence, the Gettysburg Address, and Dr. Martin Luther King, Jr.’s “I Have A Dream” speech. These foundational texts teach students that no matter where they come from or who their parents are, everyone is created equal and should never be judged by the color of their skin. Equality under the law is a prerequisite to any free, open, and prosperous society.

To be sure, America did not achieve the fullness of this idea for far too long. Our founding ideals were realized incompletely, but they were nevertheless our ideals. They established a set of values that we ultimately could not evade. The call to judge everyone based on “the content of their character” and not “the color of their skin” constituted the moral force of the Civil Rights Movement. We remember this phrase almost sixty years later because of that moral force rooted in our founding ideals. Without those ideals, there would have been no Civil War or Civil Rights Movement. There would have only been the struggle for power.

Whether intended or not, the proposed rule would jettison our fundamental ideals. In its proposed rule, the Department lays out plans to change federally funded “American History and Civics Education” programs to focus on “the consequences of slavery” and “the ongoing national reckoning

with systemic racism.” The proposal will “incorporate anti-racist practices into teaching and learning.”

Despite this vague and seemingly well-intentioned language, the goal is to replace individual with group identity. We are to be seen as archetypes defined by our race: it is a return to the very mindset that we struggled so long to escape. It would accomplish this by entrenching something called “Critical Race Theory” in every public school in America through a generous grant program.

So what exactly is Critical Race Theory or “CRT”? Although it sounds like a heady academic theory, its most common elements are familiar to many and becoming more mainstream.

When deployed in public schools, CRT is rooted not in our individual identity or the content of our character, but in “racial identity.” Students are encouraged to think about their own race and the race of their classmates. Lessons on racial identity, starting as early as Kindergarten, fixate on each student’s membership in a racial group and teach students to elevate race above other identities. Through these lessons, individuality is dismantled, and racial group membership is prioritized.

Next, CRT teaches that children born white suffer from a malady called “whiteness” and are part of a “white supremacy” culture that sustains “systemic racism.” The idea behind “systemic racism” is that racism is everywhere, ingrained in governments, schools, legal system, businesses, and even families.

“Systemic racism” – to the extent it is explained and not merely recited – is fundamentally a historical narrative, focusing on America’s past racial failings and driving toward an inevitable conclusion: America is a racist country. Despite obvious, meaningful, and sustained progress since our independence in 1776, CRT theorists deny any progress. For example, one of CRT’s founders, Derrick Bell, wrote that racial progress “is largely a mirage obscuring the fact that whites continue, consciously or unconsciously, to do all in their power to ensure their domination and maintain control.” Under CRT, slavery and Jim Crow never ended – they just took on different forms.

Because of the indelible mark of “systemic racism,” white students, according to CRT, are infected with “white privilege,” which grants them apparently (and largely unexplained) advantages in society, and “unconscious bias,” which makes them predisposed against non-whites. On the other hand, non-white students are born without privilege – they are to be viewed as victims and oppressed and cannot do anything without the help of white “anti-racist” allies.

Under CRT, those who resist these ideas or refuse to publicly confess their own racism or privilege face scorn and ridicule. White people who feel

uncomfortable discussing their own racism have “white fragility,” according to a leading CRT theorist Robin DiAngelo. And refusing to talk about racism is evidence of racism: “silence is violence” is a frequent CRT refrain.

At full bloom, CRT challenges white students to become “woke” by publicly acknowledging their own privilege, racism, and bias and by rejecting “the very foundations of the liberal order,” as explained by another CRT founder, Richard Delgado. Delgado detailed that adopting CRT means rejecting “privacy,” “property interests,” “neutrality, objectivity, colorblindness, meritocracy,” “equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.” Since these principles merely sustain and promote racism, students must adopt these beliefs to be a true “anti-racist,” which is never quite attainable and always out of grasp. More work is always necessary for “White folks.”

The endgame for CRT is summarized in one simple word: “equity.” A truly Orwellian term, “equity” means nothing like “equality.” Harkening back to its Marxist roots, CRT teaches that America must undo systemic racism by turning the tables on the oppressors and creating a new system of equitable discrimination. Ibram X. Kendi, the current leading light of the CRT gospel, explains it like this: “The only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination.”

In a nutshell, CRT advances the theory that America is an inherently racist country and the only solution is future discrimination against “Whites” in order to make up for past racism against “people of color.”

The Department of Education’s proposed new policy embraces this dangerous anti-American theory. According to the Department’s rulemaking notice, grant-funded teachers must emphasize racial “identities” and create an “identity-safe learning environment.” Next, teachers must teach all the tenets of CRT: “systemic racism, biases, inequities, and discriminatory policy and practice in American history.” Finally, teachers will be required to emphasize “equity” as the solution and reject Dr. King’s vision of a colorblind society.

Thus, by incorporating these ideals into a federally funded grant program, the Biden Administration is indicating their belief that America is a racist country, and that this belief should be the foundation of “American History and Civics.” No more Thomas Jefferson, Abraham Lincoln, or Martin Luther King, Jr. Those American titans were “racist,” which is a word one CRT author used to describe Dr. King’s dream of a colorblind society.

Not only is government-sponsored CRT poisonous, pernicious, and demeaning to all Americans, it is also illegal in many ways. The United States Constitution guarantees the equal protection of the laws. This foundational principle protects all individuals against discrimination or harassment based

on race by the government. And so, it is no surprise that a theory that rejects “colorblindness” and “neutral principles of constitutional law” would also run afoul of the foundational principle of equality under the law. Public school teachers who treat students differently because of their race undoubtedly violate the guarantee of equal protection.

Moreover, the Constitution protects a “freedom of conscience,” meaning that government schools cannot force students to adopt a certain point of view, such as those core propositions of CRT about white supremacy, white privilege, or systemic racism. Relatedly, the Constitution prohibits “compelled speech,” meaning that teachers cannot force a student to speak a certain message, such as a confession that “I am a racist.”

More broadly, federal and state laws protect students from racial discrimination. This means that students cannot be treated differently because of their race. For example, if a student is made to feel “white guilt” in public school, then that child has probably been the victim of race discrimination as defined by Title VI of the Civil Rights Act of 1964 and numerous state laws.

Public schools who violate these basic guarantees open themselves up to lawsuits, discovery, and potential liability. The U.S. Department of Education is therefore doing them no favor by sending them into classrooms with this discriminatory curriculum, which will almost certainly face strict constitutional scrutiny in a court of law.

Yet putting aside these powerful legal arguments, CRT should be rejected on a moral level. When used in public schools, CRT lessons literally teach young children racism. They are placed in groups, labeled oppressors and victims, and taught that America’s system is rigged against persons of color. These are destructive lies that have no place in American schools.

CRT is based on the fantastical assumption – disproved by the Civil Rights Movement itself – that people can be criticized or treated differently based on the color of their skin and not react against it. CRT will not lead to racial harmony but, in attacking a large part (actually a majority) of the population, will lead to a war of all against all. White students and parents will not – and should not – accept their denigration any more than minority students and parents. A CRT curriculum will not bring us together. It will drive us apart.

Our schools are places of reason, facts, discovery, and the scientific method (all concepts that CRT rejects as racist). CRT is, at bottom, a Marxist experiment to remake society through class struggle. It is not an educational tool and certainly should not be funded with our tax dollars. The U.S. Department of Education should abandon this foolhardy social experiment and remove any reference to CRT from these grant programs. Instead, America must, once again, rededicate itself to the principle of equality and reject the false promises of “equity.”

Sincerely,

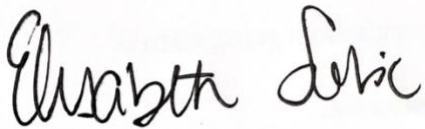
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A handwritten signature in black ink, appearing to read "Rick Esenberg", written over a horizontal line.

Rick Esenberg
President and General Counsel

A handwritten signature in black ink, appearing to read "Daniel P. Lennington", written over a horizontal line.

Daniel P. Lennington
Deputy Counsel

A handwritten signature in black ink, appearing to read "Libby Sobiech", written over a horizontal line.

Libby Sobiech
Director of Education Policy