



**Filed Electronically**

May 18, 2020

Hon. Miguel Cardona  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

**Re: Parents Defending Education’s Comments on the Office of Elementary and Secondary Education, Department of Education, Proposed Rulemaking, “Proposed Priorities: American History and Civics Education,” 86 Fed. Reg. 20348, Docket ID ED-2021-OESE-0033 (April 19, 2021)**

Dear Secretary Cardona:

Parents Defending Education (“PDE”) is a nationwide, nonpartisan, grassroots organization, whose members are primarily parents of school-aged children. PDE’s mission is to prevent—through advocacy, legislation, and, if necessary, litigation—the politicization of K-12 education. PDE submits these comments to raise serious concerns about Proposed Priority 1, *Projects That Incorporate Racially, Ethnically, Culturally, and Linguistically Diverse Perspectives into Teaching and Learning*<sup>1</sup> (the “Proposal”), and to request clarification about its scope and application.

The Proposal is misguided for several reasons:

**First**, it injects politically charged, divisive, and potentially discriminatory academic theories into K-12 classrooms. The Biden administration campaigned on promises to “unite” and “heal” cultural and political divisions in America; the Proposal does precisely the opposite. Children’s classrooms should be lively centers of discourse and learning, rather than battlegrounds for ideological wars waged by adults. The Proposal as written, however, places the weight of the federal government behind a single faction in one of the most contentious political debates in our society today: the insertion of Critical Race Theory into American classrooms. Critical Race Theory teaches that “racial inequality emerges from the social, economic, and legal differences that white people create between ‘races’ to maintain elite white interests in labor markets and politics.”<sup>2</sup> The “only remedy” to this “racist discrimination,” Critical Race Theory proponents say, “is

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<sup>1</sup> *Proposed Priorities—American History and Civics Education*, 86 Fed. Reg. 20348, 20348-49 (April 19, 2021).

<sup>2</sup> Critical Race Theory, Encyclopedia Britannica, [bit.ly/3dbiRWf](https://www.britannica.com/topic/critical-race-theory) (last accessed May 18, 2021).

antiracist discrimination.”<sup>3</sup> Likewise, Critical Race Theory advocates claim that the “only remedy to past discrimination” in America based on race is “present discrimination” based on race.<sup>4</sup> To support this position, the Proposal cites prominent Critical Race Theory proponent Ibram X. Kendi and approvingly quotes his theory of “antiracism” as an example of appropriate K-12 instruction.<sup>5</sup> Kendi believes that capitalism is a racist system and that “to truly be antiracist, you also have to truly be anti-capitalist. . . . And in order to truly be anti-capitalist, you have to be antiracist.”<sup>6</sup> He has also advocated for the reallocation of resources and opportunities in American society based on race.<sup>7</sup>

While these ideas may be consistent with Critical Race Theory’s origins in Marxist theory, they are un-American, highly divisive, and have no place in the classroom. For this reason, several states have recently proposed or passed legislation prohibiting public schools from teaching Critical Race Theory.<sup>8</sup> By adopting tenets of Critical Race Theory and recommending the works of its most prominent advocates, the Proposal (1) greenlights racial discrimination in American public schools; and (2) virtually guarantees that American classrooms will become more politicized and divided.

**Second**, the Proposal endorses publications that are ahistorical and discredited. The Proposal highlights the New York Times’ 1619 Project as an “example” of American History instruction that grant applicants should follow.<sup>9</sup> This decision is fundamentally flawed because the 1619 Project is not a work of history under any definition of the term. In fact, the primary author of the project herself admitted that her work was “*not a history*” of the United States, but an ideological “narrative.”<sup>10</sup> The 1619 Project should not be included in any American History curriculum for this reason alone, and it certainly should not be promoted as a model to be emulated.

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<sup>3</sup> Ibram X. Kendi, *How to Be an Antiracist* 19 (2019).

<sup>4</sup> *Id.*

<sup>5</sup> 86 Fed. Reg. at 20349.

<sup>6</sup> *How to Be an Antiracist: Ibram X. Kendi on Why We Need to Fight Racism the Way We Fight Cancer*, Democracy Now, Aug. 13, 2019, <https://bit.ly/2RRF6aW>.

<sup>7</sup> Katherine Doyle & Joseph Simons, *Biden pick to manage federal personnel promoted controversial racial theorist*, The Washington Examiner, April 22, 2021, <https://washex.am/33IV1uM>.

<sup>8</sup> Matthew Impelli, *North Carolina Seventh State Set to Ban Critical Race Theory in Schools*, Newsweek, May 11, 2021, <https://bit.ly/3oh0Xov>.

<sup>9</sup> 86 Fed. Reg. at 20349.

<sup>10</sup> Nikole-Hannah Jones, Twitter, @nhannahjones, July 27, 2020, *archived at* <https://bit.ly/3hlwAeX> (“I’ve always said that the 1619 Project is not a history.”) (emphasis added); *see also* Becket Adams, *1619 Project founder claims her project is simply an ‘origin story,’ not history*, The Washington Examiner, July 28, 2020, <https://washex.am/3ybLN8i>.

According to the Proposal, the purpose of the Department of Education’s American History and Civics Education programs is to improve:

(1) the quality of American history, civics, and government education by educating students about the history and principles of the Constitution of the United States, including the Bill of Rights; and (2) the quality of the teaching of American history, civics, and government in elementary and secondary schools including the teaching of traditional American history.<sup>11</sup>

An ideological narration that makes no pretense of accurately recounting the American founding cannot possibly improve “the quality” of public education about “traditional American history” or “the principles of the Constitution.”

But even if the 1619 Project did purport to be a traditional account of American history, its inclusion in the Proposal would be no less problematic. The project’s scholarship has been roundly criticized by preeminent historians from across the political spectrum. Victoria Bynum, James McPherson, James Oakes, and Gordon Wood, for example, reviewed the project and were “dismayed at some of the factual errors” it contained. They described its contents as “a displacement of historical understanding by ideology.”<sup>12</sup> These scholars noted that the 1619 Project’s central claim—that “America’s founders declared the colonies’ independence of Britain ‘in order to ensure slavery would continue’”—is simply “not true,” and that “every statement offered by the project to validate it is false.”<sup>13</sup> The Proposal emphasizes “the importance of including, *in the teaching and learning of our country’s history*, ... the consequences of slavery.”<sup>14</sup> Promoting a publication as thoroughly discredited as the 1619 Project is incompatible with those goals. If the Department is committed to fulfilling the purpose of its American History and Civics Education programs, then it must exclude the 1619 Project from any federal grants that purport to improve the quality of American History education in public schools.

**Third**, the Proposal recommends ideologies that are antithetical to the guarantees of the Equal Protection Clause and federal civil rights law. “At the heart of the Constitution’s guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class.” *Miller v. Johnson*, 515 U.S. 900, 911 (1995). Curriculums based upon Critical Race Theory—which often teach students that all

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<sup>11</sup> 86 Fed. Reg. at 20349.

<sup>12</sup> David North & Eric London, *The 1619 Project and the falsification of history: An analysis of the New York Times’ reply to five historians*, World Socialist Web Site, Dec. 28, 2019, <https://bit.ly/3w4JguV>.

<sup>13</sup> *Id.*

<sup>14</sup> 86 Fed. Reg. at 20349 (emphasis added).

white or Asian children are “privileged” or that all members of specific races perpetuate “systemic racism”—cannot be reconciled with this principle.

School districts that have incorporated Critical Race Theory into their curricula have instructed students to, among other things, document their “white privilege,” fill out “privilege scorecards,” and rank themselves according to their racial “power and privilege.”<sup>15</sup> At least one school district that uses Critical Race Theory has sent parents an “oppression matrix” to help them teach their children that “white people” are a “privileged social group” and that people of other races are “oppressed.”<sup>16</sup> Other examples of Critical Race Theory-inspired curricula include coursework requiring second graders to have “explicit conversations about race” and identify the problems caused by “white culture,”<sup>17</sup> and an “Emancipation Curriculum” telling students that “all white children play a part in perpetuating systemic racism.”<sup>18</sup> For good reason, policies of this nature have recently become a topic of litigation in state and federal courts across the country.<sup>19</sup>

The Proposal’s requirement that grant applicants foster “‘identity safe’ learning environment[s]” is equally disturbing.<sup>20</sup> According to the authors of this concept (who are mentioned by name in the Proposal), creating an “identity safe” classroom necessarily requires teachers to classify students based upon their race.<sup>21</sup> Any attempt to implement this theory likely violates the Equal Protection Clause. The Supreme Court has repeatedly held that the Fourteenth Amendment prohibits government entities from “distribut[ing] burdens or benefits on the basis of individual racial classifications” and that “one form of injury under the Equal Protection Clause is being forced to compete in a race-based system.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007).

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<sup>15</sup> See generally Parents Defending Education *IndoctriNation Map*, <https://bit.ly/3y8M9wu> (last accessed May 18, 2021).

<sup>16</sup> Parents Defending Education, *San Mateo-Foster City Schools distributes ‘Oppression Matrix’ and ‘Social Justice books’*, <https://bit.ly/3og7yiI> (last accessed May 18, 2021).

<sup>17</sup> Parents Defending Education, *2nd Graders required to have “explicit conversations about race,” will learn to identify “white culture”*, <https://bit.ly/3vVD3l0> (last accessed May 18, 2021).

<sup>18</sup> Jonathan Butcher & Mike Gonzalez, *Keep Racist Critical Race Theory Ideology Out of K-12 Classrooms*, The Heritage Foundation, April 22, 2021, <https://heritag.org/3bnfz0a>.

<sup>19</sup> John Murawski, *Critical Race Theory Is About to Face Its Day(s) in Court*, RealClearInvestigations, April 27, 2021, <https://bit.ly/3uKPe3L>.

<sup>20</sup> *Id.*

<sup>21</sup> Vargas & Steele, *CCC Five Part Series on Identity Safety*, Center for the Collaborative Classroom (2015), <https://bit.ly/3hlaIAm> (criticizing and rejecting a “color-blind” approach to public education).

Based on the foregoing concerns, PDE opposes the Proposal in its entirety. At a minimum, any final version of the Proposal should include two primary clarifications about its scope and application.

**I. The Department should clarify that schools and school districts are not required to teach Critical Race Theory or related theories as a condition for requesting or accepting grants under the Proposal.**

The Proposal states that grant applications “must describe” how proposed academic programs will:

(a) Take into account systemic marginalization, biases, inequities, and discriminatory policy and practice in American history; (b) Incorporate racially, ethnically, culturally, and linguistically diverse perspectives and perspectives on the experience of individuals with disabilities; (c) Encourage students to critically analyze the diverse perspectives of historical and contemporary media and its impacts; (d) Support the creation of learning environments that validate and reflect the diversity, identities, and experiences of all students; and (e) Contribute to inclusive, supportive, and identity-safe learning environments.<sup>22</sup>

The plain text of this provision indicates that schools and school districts are not required to include Critical Race Theory, Ibram Kendi’s “antiracist” teachings, the 1619 Project, or any similar theories in their proposed programs, nor are they required to include any such material as a condition for accepting grants. The tenor of the Proposal and the examples it cites, however, strongly suggest that material of this nature is necessary for a successful grant application and that grant recipients should use federal dollars to teach Critical Race Theory and related ideologies. For this reason—and although the Department should abandon the Proposal altogether—any final agency action should at least specify: (1) that proposed educational programs do not need to include Critical Race Theory or similar ideologies to be considered for grants; and (2) that grant recipients are not required to use the federal funds they receive to teach Critical Race Theory or similar ideologies.

**II. The final version of the Proposal should include safeguards for ensuring that federal grant money is not used for unlawful, unconstitutional, or otherwise discriminatory lessons or programs.**

The Proposal states in vague terms that federal grants should be used for “teaching and learning practices that ... [t]ake into account systemic marginalization, biases, [and] inequities” in America. By referencing Ibram Kendi, the 1619 Project, and “identity-safe

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<sup>22</sup> 86 Fed. Reg. at 20349.

learning environment[s],” the Proposal implies, but does not outright state, that these lessons should emphasize the concepts of “systemic racism” and Critical Race Theory. As noted, *supra*, 4, lessons based on Critical Race Theory often categorize students by race and define some races as “oppressors” and other races as those they “oppress.” Legal scholars have noted that these lessons—and any other lessons that categorize students based on race—are likely unconstitutional and unlawful under any reasonable interpretation of the Fourteenth Amendment and Title VI.<sup>23</sup>

Thus, to ensure that taxpayer money will not be used to fund unconstitutional and unlawful discrimination, any final version of the Proposal should specify that grants may not be used for instruction that teaches (1) that any race is inherently superior or inferior to another; (2) that any individual’s moral character or worth is determined by his or her race; (3) that any individual is inherently racist or oppressive—whether consciously or unconsciously—by virtue of his or her race; (4) that any individual is “privileged” solely by virtue of his or her race; (5) that any individual participates in or perpetuates “systemic racism” by virtue of his or her race; or (6) that any individual, because of his or her race, bears responsibility for the actions committed by other members of his or her race.

PDE would be happy to supply the Department with additional information regarding any of the matters discussed in this comment.

Respectfully submitted,

/s/ Nicole Neily

Nicole Neily  
President  
Parents Defending Education

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<sup>23</sup> Butcher & Gonzalez, *supra*, n.18.