

[Docket ID ED-2021-OESE-0033]

The Honorable Miguel Cardona
U.S. Secretary of Education
Ms. Mia Howerton
U.S. Department of Education
400 Maryland Avenue SW
Room 3C152
Washington, D.C. 20202



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Submitted via Federal eRulemaking Portal at www.regulations.gov

RE: Comment by the Foundation Against Intolerance & Racism on Proposed Priority 1 of “Proposed Priorities -- American History and Civics Education,” 34 CFR Chapter II

The Foundation Against Intolerance & Racism (FAIR) submits these comments regarding Priority 1 of the U.S. Department of Education’s “Proposed Priorities -- American History and Civics Education,” published in the Federal Register on April 19, 2021. We urge the Department to reject or amend Priority 1, as specified below in Section VI.

FAIR is a nonpartisan organization dedicated to advancing civil rights and liberties for all Americans, and promoting a common culture based on fairness, understanding, and humanity. We stand for compassionate, pro-human anti-racism that celebrates our cultural and individual diversity. We also stand for respectful disagreement and open-mindedness that recognizes both the existence of objective truth and the necessity of open discourse to reach that truth. We believe in an optimistic realism, whereby we acknowledge injustices as well as our continued progress and commitment to our ideals. Those principles are not only FAIR’s; they are the ideals of America, despite the original and recurrent failures to live up to them in our past and present.

We believe Priority 1 honors neither the truth of American history nor the ideals enshrined in our Constitution and civil rights laws. By focusing only on the injustices in the American story, Priority 1 will fund projects that ignore or minimize our progress and the many ways in which Americans of all races have lived up to our ideals. And by encouraging children to define and group themselves and others primarily by skin color and other immutable characteristics, it will underwrite programs that cause further racism and intolerance. In doing so, these programs will violate the Equal Protection clause and the Civil Rights Act. The ideas set forth in Priority 1 will also worsen societal division, will psychologically damage our children, and are widely opposed by the American public. For those reasons, FAIR asks the Department to reject or amend Priority 1.

I. The Text and Background of Priority 1

By referencing diversity, anti-discrimination, and anti-racism, Priority 1 may appear positive and beneficial. But closer analysis shows that the policies it promotes will inculcate a divisive racial essentialism that dehumanizes children and should not be in our schools.

A. **Priority 1 Promotes the Pessimistic Ideas of Kendi, the 1619 Project, and the Smithsonian**

In an effort to implement an “ambitious whole-of government equity agenda,” Priority 1 would fund school programs that “take into account systemic marginalization, biases, inequities, and discriminatory policy and practice in American history,” “critically analyze the diverse perspectives of historical and contemporary media,” and create “identity-safe learning environments.” This language sounds anodyne, but is problematic upon closer examination. The Background section clarifies that “diversity” is to be understood and applied in accordance with the 1619 Project and Smithsonian. The 1619 Project views the entirety of U.S. history, institutions, and society -- past and present -- predominantly through the lens of slavery.¹ It portrays even the abolition of slavery not as an achievement consistent with our founding ideals, but as a smokescreen to enable anti-black oppression by other means.² The 1619 Project also assumes anti-black racism “runs in the very DNA of this country.”³ Inasmuch as DNA is unchangeable and present in every cell of the body, the 1619 Project propounds the pessimistic and cynical view that anti-black racism exists everywhere and in everyone, and can never be eliminated.

The Smithsonian’s understanding of diversity is an exercise in crude racial stereotyping. In 2020 it published an exhibit claiming the scientific method, rational thinking, politeness, and conflict avoidance are “aspects of whiteness.”⁴ It continues to feature on its website a lengthy list of the problems with “whiteness” and a video of Robin DiAngelo lecturing on “the white mind,” “the white experience,” and “the white perspective.”⁵ Moreover, these terms suggest there are such things as “the black mind,” “the black perspective,” and “the black experience” -- as though black Americans are a monolith who all believe, act, and live the same way, rather than 45 million individuals with differing views, beliefs, and cultural backgrounds. DiAngelo, of course, is famous for her proposition that every American of European descent is inherently racist, can never deny their racism because denial proves it, and can never overcome it and must devote their lives to “the work” of complying with her orthodoxy. In its dogma, unfalsifiability, and concept of original sin, DiAngelo’s view is scarcely different from a religion.

“Systemic marginalization” is to be interpreted consistent with the teachings of Ibram Kendi, according to the Background section. Kendi is well known for his assertion (as fact) that every disparity in outcome between groups is entirely due to systemic racism, soluble only by racially discriminating against other groups.⁶ He also urges the establishment of a federal “Department of Anti-Racism” that would have unprecedented power to pre-clear and monitor all local, state, and federal policies to ensure they mirror the racial composition of their respective community, and monitor all public officials (presumably without regard to the Fourth Amendment⁷) to determine if they express or have ever expressed Kendi’s definition of a “racist idea.”⁸ Because Kendi defines as racist any person who does not adopt and agitate for his ideas, a vast number of individuals would qualify for federal monitoring.

¹ Nikole Hannah Jones, “America Wasn’t a Democracy Until Black Americans Made it One,” *New York Times Magazine* (Aug. 2019).

² *Id.*

³ *Id.*

⁴ Marina Watts, “In Smithsonian Race Guidelines, Rational Thinking and Hard Work Are White Values,” *Newsweek* (July 2020).

⁵ “Talking About Race: Whiteness,” *Smithsonian* (2020).

⁶ Ibram Kendi, *How to Be an Antiracist* (One World, 2019), p. 19.

⁷ The Fourth Amendment prohibits searches without probable cause. Kendi’s proposed monitoring completely disregards that essential civil liberty.

⁸ Kendi, “Pass an Anti-Racist Constitutional Amendment,” *Politico Mag.* (2019).

“Identity-safe learning environments” mean those set forth by Dorothy Steele and Becky Cohn-Vargas, who reject the liberal notion of equality without regard to skin color in favor of “color-consciousness.” According to color-consciousness, it is morally wrong to treat and view people as individuals. Rather, we must see, understand, and treat our fellow human beings (and ourselves) based on the skin color group of our birth. In the cynical view of these authors, whose ideas shape and inform Priority 1, every American is and always has been tainted by racism, which can only be ameliorated (but never cured) by perceiving and treating each other not as individuals but as members of skin color groups.

B. Priority 1 in Action

We support diversity, equity, anti-racism, and inclusion rooted in dignity and our common humanity, and consistent with our civil liberties. However, the above authors and institutions have re-interpreted those concepts in a pessimistic way that dehumanizes, divides, and undermines years of civil rights progress. Evidence of this is already available, as schools across the nation have been teaching the ideas of Kendi and the 1619 Project for the past several years. Thus, we already have a picture of what curricula and classrooms look like when those ideas are implemented. It shocks the conscience. In the name of “anti-racism,” children (and their parents) are being racially segregated for school meetings and student groups.⁹ Kindergarteners are asked to compare their skin color to crayons and shown macabre videos of dead children purportedly speaking from beyond the grave about the danger of police.¹⁰ Elementary school students are forced to march and chant for “black power.”¹¹ Students are divided into groups of “oppressors” and “oppressed” based solely on their immutable characteristics.¹² They are being taught the following: the U.S. was founded for the purpose of “impoverish[ing] people of color and enrich[ing] white people”¹³; each student must identify as a member of a skin color group because it “gives [them] power over [their] oppressors”¹⁴; “race is an essential part of one’s identity”¹⁵; only white Americans can be racist¹⁶; racism is “what white people do to people of color”¹⁷; Americans with white skin are inherently “dominant” and “oppressive”¹⁸; calling the police is an act of “white supremacy”¹⁹; “disruption is the new world order” and the only means by which “those who are denied power [can] access power”;²⁰ and any student who disagrees is a “white supremacist” (if white) or “in denial” (if not white).²¹ And those are just the lessons that have been made public. Almost certainly, a great many more

⁹ <https://will-law.org/wp-content/uploads/2021/04/Final-Madison-Letter.pdf>; Max Eden, “Ban Critical Race Theory Now,” *Newsweek* (May 2021).

¹⁰ Christopher Rufo, “Failure Factory,” *City Journal* (Feb. 2021).

¹¹ Christopher Rufo, “Bad Education,” *City Journal* (Feb. 2021).

¹² Paul Rossi, “Opinion,” *New York Post* (Apr. 13, 2021).

¹³ *Id.*

¹⁴ <https://schoolhouserights.org/the-lawsuit/complaint/>.

¹⁵ <https://assets.documentcloud.org/documents/20494464/arizona-department-of-education.pdf>

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹

<https://aarjb2jw4n53e35fhhbquj418-wpengine.netdna-ssl.com/wp-content/uploads/2020/06/Screen-Shot-2020-06-02-at-2.29.36-PM.png>

²⁰ “Teachers Told to Give Fake Curriculum to Parents Who Complain of ‘Indoctrination,’” *Citizens Journal* (May 2021).

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<https://aarjb2jw4n53e35fhhbquj418-wpengine.netdna-ssl.com/wp-content/uploads/2020/06/Screen-Shot-2020-06-02-at-2.29.36-PM.png>; <https://schoolhouserights.org/the-lawsuit/complaint/>

instances remain hidden in classroom-only materials that are not shared with parents and kept behind a veil of opacity -- sometimes deliberately.²²

II. Priority 1 Will Fund Programs that Violate the Equal Protection Clause and Civil Rights Act

If adopted, Priority 1 would likely result in violations of both the Fourteenth Amendment and Title VI of the Civil Rights Act. The Fourteenth Amendment provides that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV § 1. State-funded racial classifications and stereotyping virtually always violate the Equal Protection guarantee. *Shelley v. Kraemer*, 334 U.S. 1, 22 (1948); *Shaw v. Hunt*, 517 U.S. 899, 908 (1996); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion). They will be upheld only if they pass “strict scrutiny.” That is, the government must produce strong evidence that its racial classification advances a “compelling state interest” and is “narrowly tailored” to further that interest. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995); *Croson*, 488 U.S. at 493-4, 500; *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 277 (1986) (plurality opinion). Similarly, Title VI prohibits racial discrimination in any federally-funded program, including public schools. 42 U.S.C. § 2000d, d-4a(2). Because Title VI is derived from the Equal Protection clause, the Equal Protection analysis applies to claims under Title VI. *Grutter v. Bollinger*, 539 U.S. 306, 343-4 (2003).

Based on what has been occurring in classrooms over the past several years, there is little question Priority 1, if adopted, will fund programs that inculcate racial stereotypes. Schools that have already effectuated the concepts of Priority 1 have instituted blatant racial classifications, portraying whites as inherent oppressors, people of color as inherently oppressed, whites as embodying the evil of “whiteness,” white supremacy as a common feature of white Americans, whites as a class oppressing people of color as a class, and people of color as suffering from “internalized oppression” if they disagree. Moreover, some schools have engaged in outright racial segregation in furtherance of this ideology. Proponents of these methods and classifications often attempt to make them more palatable by claiming everyone is born or socialized into a racist system and thus, nobody is necessarily personally culpable. That is reminiscent of the very same pernicious stereotypes historically pinned onto black Americans: they were “born that way” and “couldn’t help it.” One cannot sanitize a racial stereotype by claiming it is simply the way certain people were born or socialized. In fact, by-birth and by-nature claims are the very essence of unlawful race-based stereotypes.

The racial essentialism and de facto segregation encouraged by Priority 1 and already underway in our schools is not akin to positive measures intended to rectify past discrimination or ensure a diverse student body. *Cf. Grutter*, 539 U.S. at 325-6 (upholding racial classifications for the benign purpose of ensuring a diverse student body). Rather, based on what has already occurred, Priority 1 will fund the teaching of racial tropes that serve no beneficial purpose whatsoever, much less a compelling one. In fact, there is no legitimate educational purpose at all in caricaturing certain races of students as oppressors and other races as their hapless victims. Nor is there evidence that inculcating children with those “values” (if they could be so described) leads to better educational outcomes: it does not develop curious and inquisitive students, improve reading or math levels, increase college attendance or graduation rates, or lead to a diverse student body. There is no evidence it will lead to anything but resentment, racial balkanization, and hatred.

²² In response to parents’ objections to these materials, an administrator in Missouri’s Rockwood School District instructed teachers to go “old school” and hide or alter lesson plans so parents could not see them. “Teachers Told to Give Fake Curriculum,” *supra* at fn.20.

Nothing in Priority 1 tempers the enmity it will likely create. That is, there is no mention of the value of individualism, the importance of our constitutional liberties, or our common humanity. Nor is there any limiting principle to prevent the racial stereotyping and racial animosity that have been occurring in our schools for several years now. We can discuss historical and contemporary injustices without dividing based on our immutable characteristics or dehumanizing individuals as incapable of thinking, acting, or experiencing in their own way. We can include and honor the uniqueness of individuals of various ancestral and cultural backgrounds in a way that celebrates our common humanity. And we can incorporate the histories, contributions, and experiences of people of diverse backgrounds into the American story without foreclosing civic unity. American history is not innocent, but this should not cause us to lose sight of the precious American ideal articulated best by Frederick Douglass: the U.S. as “the perfect national illustration of the unity and dignity of the human family.”²³

III. Priority 1 Will Foster the Telling of a One-Sided and Incomplete Story

Priority 1 should be rejected for the further reason that the funded programs teach only one perspective of a multi-faceted and complex American story. For example, Priority 1 will fund programs teaching Kendi’s view that white supremacy is the exclusive explanation for unequal outcomes, whether social, political, or economic.²⁴ A great many scholars dispute this view and acknowledge the complexity in why outcomes are often disproportionate,²⁵ but none of them is referenced in the Priority. The ideas of the 1619 Project -- that all American history and social relations should be interpreted against the backdrop of anti-black racism and slavery -- are also widely contested²⁶ -- but again, Priority 1 makes no mention of that. Government-funded programs should encourage the open exchange of diverse ideas. Students should be able to consider the pessimistic views of authors such as Kendi, DiAngelo, and Nikole Hannah-Jones. However, they must not be taught that those views are indisputable facts, and must be exposed to the multitude of scholars and authors who disagree. Otherwise, schools become ideological centers that teach students not *how* to think, but *what* to think.

The story advanced by Priority 1 is not only one-sided, but incomplete. By focusing exclusively on historical injustices, it ignores the systemic *opposition* to injustices that has occurred (and continues to occur) in our history. It would commit an error precisely opposite to that committed by many previous historical accounts, which often excluded stories of marginalization and oppression. What is needed is a complete depiction of American history that includes both; an account that is honest about historical injustices and how the American people, when acting true to our ideals, have made significant progress in rectifying many of those injustices.

IV. Priority 1 Will Result in Psychological Harm and Division

Additionally, Priority 1 will fund programs that teach racial shame and victimization. Schools that have already adopted the concepts behind Priority 1 have done just that, by claiming whites as a group horribly oppress people of color as a group to this very day. Instilling racial guilt and victimization, however, is psychologically damaging. A 2021 study showed that black Americans who read a single passage of Ta-Nehisi Coates experienced a 15-point drop in feelings of personal empowerment and control over their lives.²⁷ If just one passage of that narrative carries such a disabling effect, an entire

²³ Frederick Douglass, “Our Composite Nationality” (Dec. 7, 1869).

²⁴ “Definition of Systemic Racism in Sociology,” *Newsela* (Jan. 2018).

²⁵ Thomas Sowell, *Wealth, Poverty and Politics* (2d ed., Basic Books, 2016); Glenn Loury, “Unspeakable Truths About Racial Inequality in America,” *Quillette* (Feb. 2021); John McWhorter, “The Better of the Two Big Antiracist Books,” *Education Next*, vol. 1, no. 21 (2021); Walter Williams, *The State Against Blacks* (McGraw-Hill, 1982).

²⁶ See, e.g., Phillip Magness, *The 1619 Project: A Critique*, American Inst. for Econ. Rsrch. (2020).

²⁷ Eric Kaufman, “The Social Construction of Racism in the United States,” Manhattan Inst. (2021).

curriculum would be devastating. A 2019 article in *Scientific American* set forth evidence that people who are deliberately shamed are more likely to suffer from depression and anxiety disorders.²⁸ A 2017 study showed likewise.²⁹ Furthermore, social scientists in 2013 found that beliefs of racial essentialism close the mind and impede creativity.³⁰ This study also suggested that racial beliefs are malleable. While that is an optimistic forecast regarding those who hold essentialist beliefs, it is disturbing regarding those who typically don't -- our children -- yet who are regularly fed racial essentialism by their schools.

The damage is not only psychological, but societal. Racial relations in the U.S. have steadily deteriorated as more and more schools have been teaching concepts of inherent racial oppression. In a 2014 Gallup poll, 43% of respondents stated they worry about race relations. That figure climbed each subsequent year to the whopping 73% it is today.³¹ In 2014, only 35% of respondents were dissatisfied with race relations. Again, that number increased each year and now stands at 71%. This should not be surprising, for utilizing curricula that pits racial groups against each other could lead to no other result.

Some authors and educators have sold the oppressor/oppressed narrative as “empowering” and “liberating” for all Americans. If that were so, one would have expected at least some improvement in race relations to have occurred by now, several years after this narrative was widely introduced. Instead, relations have markedly declined each year to the dismal place they are now. We could expect nothing else, for history has repeatedly shown that racial categorizing, dehumanizing, and tribalizing produces little if any good.³²

V. Priority 1 Will Fund Pedagogies and Ideologies that Lack Public Support

Given the corrosive nature of these teachings, it is not surprising that few Americans support them. In a 2021 poll, 74% of respondents stated they oppose teaching children that “white people are inherently privileged, while black and other people of color are inherently oppressed and victimized.”³³ Furthermore, an overwhelming 84% of respondents agreed that schools should not “[t]each students that achieving racial justice and equality between racial groups requires discriminating against people based on their Whiteness.”

Consistent with these polls, parents and students have increasingly vocalized their opposition to the ideology behind Priority 1. In the past few years, countless groups and organizations with diverse memberships have formed to challenge race reductionist ideology being taught in schools. Indeed, FAIR itself was recently founded and advocates for unity and civil discourse amidst a climate where they are being actively undermined. Letters written by parents and teachers objecting to racializing pedagogy have gone viral.³⁴ Lawsuits and civil rights complaints have been filed to challenge these teachings under Title VI, Title VII, the First Amendment, and the Fourteenth Amendment.³⁵ At least three states -- Idaho,

²⁸ Lewis Andrews, “The Other Problem with Woke Schooling,” *Real Clear Policy* (Apr. 2021).

²⁹ Annette Kammerer, “The Scientific Underpinnings and Impacts of Shame,” *Scientific American* (Aug. 2019).

³⁰ “Racial Essentialism Reduces Creative Thinking By Making People More Close-Minded,” *Ass’n for Psychological Science* (Jan. 2013).

³¹ Gallup, *Race Relations* (U.S., Mar. 2014-Mar. 2021).

³² Allison Skinner, “The Slippery Slope of Dehumanizing Language,” *The Conversation* (June 2018); Agata Blaszcak-Boxe, “How the Dehumanization of Certain Groups Leads to a ‘Vicious Cycle’ of Hate,” *Live Science* (2017).

³³ Competitive Edge, *Education Culture Poll* (U.S., Apr. 2021).

³⁴ See, e.g., Bari Weiss, “You Have to Read This Letter,” *Common Sense With Bari Weiss* (Apr. 2021); Paul Rossi, “Opinion,” *New York Post* (Apr. 13, 2021).

³⁵ See, e.g., *Clark v. State Pub. Charter Sch. Auth.*, Case No. 2:20cv2324 (D. Nev. Dec. 22, 2020); *Californians for Equal Rts. Found. v. San Diego Unif. Sch. Dist.* (Office for Civ. Rts. Apr. 2021); *Fair Educ. Santa Barbara, Inc. v.*

Oklahoma, and Arkansas -- have banned the teaching of these divisive concepts, and at least ten other states and the U.S. Senate have introduced similar bills.³⁶ The message is clear: pushing racial division is not only morally wrong, but also very unpopular.

VI. Proposed Changes

For the foregoing reasons, FAIR requests that the Department take one of the following actions:

A. Reject Priority 1 in its entirety. As explained above, Priority 1 as written funds programs that violate the Equal Protection clause and Title VI of the Civil Rights Act, paint an incomplete, cynical, and pessimistic picture of American history, psychologically harm students, further damage race relations, and are overwhelmingly opposed by the American public.

B. Alternatively, amend Priority 1 to ensure the funded programs will not result in unlawful discrimination and will reflect an accurate account of U.S. history. FAIR proposes the following specific amendments to achieve that goal:

1. “Background,” second paragraph: Strike the final sentence (“This acknowledgement ... African-American history.”) and replace it with, “Slavery and Jim Crow were devastating injustices to the African-American community. It is important to acknowledge, however, the great yet imperfect progress that has been made since the Civil War, including the abolition of slavery and the passage of many civil rights laws in the 20th century that outlawed discrimination and attempted to rectify these injustices, such as the Civil Rights Act, the Voting Rights Act, the Equal Credit Opportunity Act, the Community Reinvestment Act, the Emmett Till Unsolved Civil Rights Crime Act, and others.”
2. “Background,” third paragraph: Strike the second, third, and fourth sentences (“As the scholar Ibram X. Kendi ... experiences of all students.”) and replace them with, “Anti-racist practices are practices that oppose racism. Scholars and academics disagree over what causes unequal outcomes, and this issue should be explored from diverse and contending perspectives. It is crucial that the teaching of American history and civics creates learning experiences that validate and reflect the diversity, identities, histories, contributions, and experiences of all students, while also emphasizing the students’ common humanity.”
3. “Background,” fourth paragraph: Strike the first two sentences (“In turn ... success in the classroom”) and replace them with, “Teachers should strive to keep their own opinions on disputed or controversial topics out of the classroom, to maintain open and civil discourse, and to ensure an environment of mutual respect.”
4. “Proposed Priority,” opening paragraph: Replace “inclusive, supportive, and identity-safe learning environments” with “environments of mutual respect, wherein each student who voices their opinion in a respectful manner feels they can do so without negative consequences.”
5. “Proposed Priority,” section (a): Add at the end, “while also acknowledging the progress that has been made which, while imperfect and incomplete, is an important step towards fully realizing American ideals.”
6. “Proposed Priority,” section (b): Add at the end, “and incorporate a reasonable range of diverse opinions, particularly on disputed or controversial topics.”

Santa Barbara Unif. Sch. Dist., Case No. 19cv01875 (Cal. Sup. Ct. June 21, 2019); *Shaw v. Smith College* (Mass. Comm’n Against Discrim. Feb. 24, 2021).

³⁶ Arizona, Iowa, Mississippi, Missouri, New Hampshire, North Carolina, Rhode Island, South Dakota, Texas, and West Virginia.

7. “Proposed Priority,” section (d): Add at the end, “while acknowledging their common humanity.”
8. “Proposed Priority,” section (e): Strike the language in its entirety and replace it with, “Contribute to environments where each student feels valued, supported, and free to share their opinions without negative consequences, provided such opinions are delivered in a respectful manner.”
9. “Proposed Priority,” end: After section (e) add, “No program shall teach or promote racial, religious, ethnic, cultural, sex, or gender hierarchies, teach or promote stereotypes based on any of the foregoing characteristics, or teach or promote that any student should feel guilt, blame, or victimization solely because of their membership in a racial, religious, ethnic, cultural, sex, or gender group.”

FAIR believes those amendments will reduce the likelihood that any funded program will unlawfully discriminate against any student, and will help ensure the funded programs promote an accurate rendering of American history that empowers all students, encourages their participation in the learning process, and is supported by the American public.

VII. Conclusion

American history and society are multi-faceted and complex. They cannot be reduced to a single narrative but instead must be examined from varying points of view and with attention to diverging opinions. There have been many injustices, both historically and at present, which should be critically studied. However, great moral, cultural, and social progress has been made by the nation as a whole and by individual Americans of all races, ethnicities, and abilities. Schools can and must tell that full history without making oversimplified, racist, divisive, and unlawful categorizations. For those reasons, FAIR respectfully requests that the Department reject or amend Priority 1 in favor of a pro-human approach that acknowledges and honors our common humanity.

Respectfully submitted,

The Foundation Against Intolerance & Racism