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May 19, 2021

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202

Docket ID ED-2021-OESE-0033

Dear Secretary Cardona:

We respectfully submit these comments in response to a Notice of Proposed Rulemaking (NPRM) to establish priorities under the American History and Civics Education programs authorized by the *Elementary and Secondary Education Act* (ESEA), which was published in the *Federal Register* on April 19, 2021.¹ As Members of the U.S. House of Representatives Committee on Education and Labor, we write to express our strong objections to the proposed priorities. These priorities violate prohibitions against the federal government's involvement in local schools' curriculum, advance racist and divisive ideologies, and advocate for false history and misinformation.

First, these priorities would inappropriately involve the federal government in local curriculum decisions contrary to prohibitions in federal law. The founding statute for the Department of Education (Department) is the *Department of Education Organization Act* (DEOA). From the beginning, the DEOA has prohibited the Department from influencing local curriculum. Specifically, section 103(b) of the DEOA says:

No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over

¹ <https://www.govinfo.gov/content/pkg/FR-2021-04-19/pdf/2021-08068.pdf>

any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.²

Additionally, section 438 of the *General Education Provisions Act* includes similar language³ and the ESEA has multiple longstanding prohibitions against federal meddling with local curriculum decisions. Further, those ESEA provisions were strengthened when the law was last reauthorized in 2015 by the *Every Student Succeeds Act* (ESSA) in order to clarify Congress' longstanding bipartisan intent that the Department avoid involvement in curriculum. ESSA clarified that federal influence of curriculum cannot take place through the use of grants, contracts, or cooperative agreements.⁴ Section 8527(b) of the ESEA reads as follows:

Notwithstanding any other provision of Federal law, no funds provided to the Department under this Act may be used by the Department, whether through a grant, contract, or cooperative agreement, to endorse, approve, develop, require, or sanction any curriculum...

This provision states simply that the Department cannot use grants authorized under the ESEA to, among other things, “endorse” curriculum.

The financial awards made under the American History and Civics Education programs are specifically identified as “grants” in the authorizing statutory language, making these programs subject to the prohibition above.⁵ Merriam-Webster’s dictionary defines “endorse” as “to approve openly,” or “to express support or approval of publicly and definitely.”⁶ No reasonable person could argue that the Department has not endorsed curriculum in these priorities. To use just one example, the narrative describing the priorities expresses specific approval of and support for the “1619 Project,” which is being taught in schools as “The 1619 Project Curriculum” as created by the Pulitzer Center.⁷ The Department’s effort to establish priorities in favor of certain versions of history and civics through this federal program violates both the spirit and the letter of these prohibitions by using grants to endorse a particular curriculum.

Second, these priorities advance a set of ideologies often identified collectively as critical race theory (CRT). CRT has been defined in different ways, but at its essence it argues that American society is and always has been fundamentally racist and that an individual’s race is determinative of his or her life outcomes. In seeking to divide Americans on racial grounds, CRT adherents share common cause with white supremacists in reducing the content of peoples’ character to the color of their skin.

In a 2017 essay for the New York Times, Thomas Chatterton Williams spoke specifically to this issue. Speaking of what he characterized as “leftist ‘woke’ discourse,” he said:

² 20 U.S.C. § 3403(b)

³ 20 U.S.C. § 1232a

⁴ 20 U.S.C. § 7907(b)

⁵ 20 U.S.C. § 6662(a), 20 U.S.C. § 6663(b)

⁶ <https://www.merriam-webster.com/dictionary/endorse>

⁷ <https://pulitzercenter.org/lesson-plan-grouping/1619-project-curriculum>

Though it is not at all morally equivalent, it is nonetheless in sync with the toxic premises of white supremacy. Both sides eagerly reduce people to abstract color categories, all the while feeding off of and legitimizing each other, while those of us searching for gray areas and common ground get devoured twice. Both sides mystify racial identity, interpreting it as something fixed, determinative and almost supernatural...It is a dangerous vision of life we should refuse no matter who is doing the conjuring.⁸

To be clear, this does not mean we should ignore our country's past sins. Black Africans were brought to America and enslaved for more than 240 years. Those slaves and their descendants suffered cruel and active discrimination for another 100 years. Our students should be taught this history. They should also be taught about the tremendous progress that has been made to prohibit discrimination and they should be encouraged to contemplate the work still necessary to advance a more perfect union.

Unfortunately, your proposed priorities will make that work harder. Dismantling oppression has never happened through competing forms of racism; it has happened by appealing to what Abraham Lincoln characterized as the "better angels of our nature."⁹ Practically, this has meant appealing to our country's ideals. Our founding document, the Declaration of Independence, lays out those ideals clearly. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."¹⁰ Our country has confronted racial injustice when we have recognized that our laws and our habits were inconsistent with our professed beliefs in equality and the unalienable rights of all Americans.

Such appeals only work when Americans know our country's founding ideals in the first place. Unfortunately, too few students are being successfully taught these ideals in our schools. In the most recent National Assessment of Educational Progress for civics, only 24 percent of American eighth graders scored proficient or above. For history, only 15 percent were proficient or better.¹¹

Fixing this problem is primarily a state and local responsibility. However, the American History and Civics Education programs exist in ESEA because creating a citizenry well-educated about our nation's history and founding principles is of national interest. The stated purpose of these programs is, in large part, "to improve 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."¹² In other words, the statutory language already lays out these programs' priority, and it is to help schools provide students a basic understanding of the country's founding documents and the principles they contain. Nowhere in the statutory language did Congress contemplate or authorize the Department to undermine the programs' basic purpose so it can advance ideologies of racism and division.

⁸ <https://www.nytimes.com/2017/10/06/opinion/ta-nehisi-coates-whiteness-power.html>

⁹ https://avalon.law.yale.edu/19th_century/lincoln1.asp

¹⁰ <https://www.archives.gov/founding-docs/declaration-transcript>

¹¹ https://www.nationsreportcard.gov/geography/supporting_files/2018_SS_infographic.pdf

¹² 20 U.S.C. § 6661(a)

Finally, we must note the absurdity of your second proposed priority in the context of the full NPRM. In part, the second proposed priority is for grant proposals “designed to support students in...[u]nderstanding how inaccurate information may be used to manipulate individuals, and developing strategies to recognize accurate and inaccurate information.” As discussed above, the NPRM also endorses the 1619 Project.

The central thesis of the 1619 Project was that 1619 was the year of America’s true founding rather than 1776. The original introduction to the project stated:

The 1619 project is a major initiative from The New York Times observing the 400th anniversary of the beginning of American slavery. It aims to reframe the country’s history, understanding 1619 as our true founding, and placing the consequences of slavery and the contributions of black Americans at the very center of our national narrative.¹³

The 1619 Project came under significant scrutiny from renowned historians who pointed out the historical inaccuracies of the project and its central claim.¹⁴ The New York Times initially ignored those concerns.¹⁵

The New York Times continues to ignore many of the historical inaccuracies of the project, but it did address criticisms of the 1619 Project’s central claim. At some point last summer, the New York Times edited out references to 1619 being the true founding of America but did not disclose those edits or the reasons for them.¹⁶ Given the original historical inaccuracies, and the stealth edits made to the project’s thesis, it is odd to see the 1619 Project endorsed in an NPRM alongside a focus on helping students identify misinformation. Perhaps a clever school should submit a grant application under the second priority to fund the teaching of this NPRM as an example of how ideological biases can cause people to promote inaccurate and misleading information.

Mr. Secretary, we urge you to withdraw these proposed priorities. They violate prohibitions against federal involvement in curriculum, advocate for a racist and divisive ideology, and promote historically inaccurate and misleading information. Schools should address the abysmal performance of American students in civics and history and we would eagerly work with you on that bipartisan goal. Any effort from the federal level must respect state and local control of curriculum, be free of ideological bias, and focus on instilling in our students an understanding of, and appreciation for, our nation’s founding principles of equality and unalienable rights.

Sincerely,

¹³ <https://quillette.com/2020/09/19/down-the-1619-projects-memory-hole/>

¹⁴ <https://www.theatlantic.com/ideas/archive/2020/01/1619-project-new-york-times-wilentz/605152/>

¹⁵ Ibid.

¹⁶ <https://quillette.com/2020/09/19/down-the-1619-projects-memory-hole/>



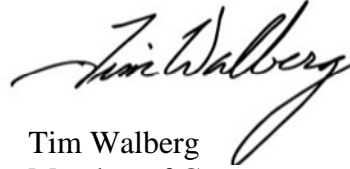
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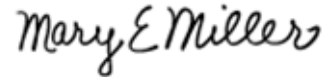
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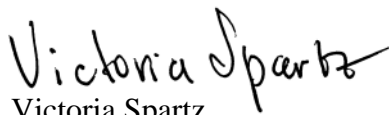
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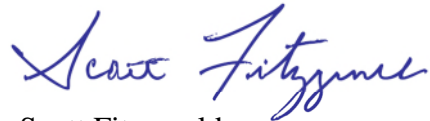
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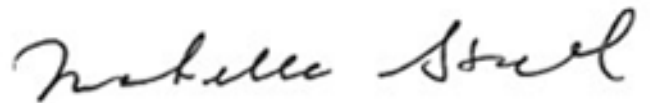
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