

What Iowa Schools Won't Teach You: How Iowa Has Used Legislation to Weaponize Education Toward Students of Color

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I. INTRODUCTION

Iowa Governor Kim Reynolds described critical race theory (CRT) as “about labels and stereotypes, not education.”¹ She further described critical

¹ Katarina Sostaric, *Iowa Governor Signs Law Banning Some Concepts Related to Racism, Sexism, From*

race theory as “discriminatory indoctrination.”² The emerging attention directed toward the doctrine has sparked debate between politicians, educators, and scholars. Among schools that have incorporated CRT, educators have focused on providing alternative narratives of people of color. Many have found that most students are not negatively impacted by the concepts taught through CRT—white students do not leave the classroom feeling bad about themselves; rather, they leave the classroom with a new perspective on the world around them.³ For example, during a lesson on the New Deal, a Texan social studies teacher showed her students maps of housing patterns based on race attempting to show them the impact of the history they were learning.⁴

Education is a critical component on how students and future leaders view the world. Part II of this Note discusses surface level components of CRT and their application in the world at large. First, this section will address the current bans on CRT and House File (HF) 802 signed into Iowa law by Kim Reynolds. Next, Part II will address First Amendment concerns regarding CRT violations. Within this section, this Note explores the history of education on both a state level in Iowa and on the federal level. Finally, Part II will outline Title VI of the Civil Rights Act of 1964 and federal funding.

Part III of this Note will analyze Title VI cases in Iowa for alleged racial discrimination and the authority of the Office of Civil Rights (OCR) in the Department of Education when resolving these issues. Here, this Note argues that CRT bans should be within the jurisdiction of the OCR to investigate CRT bans. This Note then argues that the federal government should encourage state governments and schools to follow guidelines stemming from an interpretation that CRT bans violate Title VI. To do so, the federal government should not only provide guidelines but also provide a financial incentive to schools—especially schools with a significant population of students of color. Importantly, these incentives should not be performance based but rather be given to any school who follows guidelines for a best attempt at providing diverse narratives and CRT tenets in curriculums.

Diversity Trainings, School Lessons, IOWA PUB. RADIO (June 8, 2021, 8:15 PM), <https://www.iowapublicradio.org/state-government-news/2021-06-08/iowa-governor-signs-law-banning-some-concepts-related-to-racism-sexism-from-diversity-trainings-school-lessons> [https://perma.cc/7997-W23D].

² *Id.*

³ Ruth Terry, *Critical Race Theory Opens Up New Opportunities for Student Learning*, YES! SOLS. JOURNALISM (Mar. 8, 2022), <https://www.yesmagazine.org/social-justice/2022/03/08/critical-race-theory-student-learning> [https://perma.cc/4K33-ZS93].

⁴ *Id.*

II. BACKGROUND

A. Tenets of Critical Race Theory

Before Critical Race Theory became a popular topic in American politics, progressive scholars viewed the education system as operating through a multicultural lens—consisting of: (1) conservative multiculturalism, (2) liberal multiculturalism, (3) left-liberal multiculturalism, and (4) critical and resistant multiculturalism.⁵ Conservative multiculturalism aims to disavow racism while maintaining corporate power, while liberal multiculturalism advocates for “sameness” among races.⁶ Left-liberal multiculturalism differs in that it exoticizes cultural differences.⁷ Lastly, critical and resistant multiculturalism interprets different cultures as individualistic and generated by experiences.⁸

Racism is not only prejudice asserted by one individual onto another. Rather, Critical Race Theory asserts that race is socially constructed—it is given meaning by social structuring meant to advantage the white, elite members in society.⁹ From its foundation, the United States’ Constitution and democracy was built on racial slavery, specifically Black enslavement.¹⁰ Structural racism is “perpetuated through conscious intent, unconscious bias, or policies and practices that privilege one racial group over another.”¹¹ For example, school districts with predominantly students of color are under-resourced due to funding through property taxes.¹² The significant wealth gap and housing segregation has a direct effect on tax-payer funding for these schools.¹³ Critical race theorists define racism in a broader sense than other scholars, advocating for storytelling and the prioritization of narratives of women of color.¹⁴ By acknowledging the current societal structures perpetuating racism, it is impossible to eliminate discrimination by adopting

⁵ MIKE COLE, *CRITICAL RACE THEORY AND EDUCATION: A MARXIST RESPONSE* 65–67 (Palgrave Macmillan 1st ed. 2009).

⁶ *Id.* at 66.

⁷ *Id.* at 66–67.

⁸ *Id.* at 67.

⁹ David Gillborn & Gloria Ladson-Billings, *Critical Race Theory*, in *THEORETICAL FOUNDATIONS OF QUALITATIVE RESEARCH* 1, 2 (Paul Atkinson et al. eds., 2019).

¹⁰ VICTOR RAY, *ON CRITICAL RACE THEORY: WHY IT MATTERS & WHY YOU SHOULD CARE* xxix (Random House 1st ed. 2022).

¹¹ *Id.* at 18.

¹² *Id.* at 19.

¹³ *Id.* at 25.

¹⁴ See Gillborn & Ladson-Billings, *supra* note 9.

a “color-blind” approach.¹⁵ Advocates for the “color-blind” approach aim to assess race in neutral terms; however, by doing so it only incorporates biased practices or practices leading to biased consequences as “normal” in the American system.¹⁶

On the macro level, CRT argues that racism did not end with the desegregation of schools. In fact, the desegregation of America’s schools was in part due to the pressure of the Soviets during the Cold War.¹⁷ The Soviets used segregation as a way to highlight the negative aspects of American democracy; because of this, Derrick Bell, a CRT scholar, argued that many civil rights victories happen due to the “convergence of self-interest on the part of whites with the demands of people of color.”¹⁸ Desegregation acted as a tool to limit discussion and other necessary policies needed to advance substantive equality within educational institutions.¹⁹ Desegregation did not solve the issue of subpar education quality for Black students.²⁰ Policies remedying this do not advance the interest of whites, meaning that improving the quality of education threatens those with interests vested in the status quo.²¹

The narrative that racism ended with desegregation is supported by micro level practices within schools too. James Scheurich and Michelle Young, both education scholars, claim that there are four levels of analysis when considering racism: (1) the individual level, (2) the institutional level, (3) the societal level, and (4) the epistemological level.²² The individual level analyzes interpersonal relations, while the societal level analyzes the prevailing ethos of the nation.²³ Importantly, the institutional level

¹⁵ “Color blindness” is a concept in critical race theory scholarship that does not acknowledge race as a factor influencing societal structures. Scholars express concern that adopting a color-blind approach ignores the history of racism that persist in modern society. Adia Harvey Wingfield, *Color Blindness Is Counterproductive*, THE ATL. (Sept. 13, 2015), <https://www.theatlantic.com/politics/archive/2015/09/color-blindness-is-counterproductive/405037> (on file with author).

¹⁶ See Ray, *supra* note 10, at 37–38.

¹⁷ MARGARET M. ZAMUDIO ET AL., CRITICAL RACE THEORY MATTERS: EDUCATION AND IDEOLOGY 48 (2011).

¹⁸ *Id.* at 47.

¹⁹ *Id.*

²⁰ Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest Convergence Dilemma*, in FOUNDATIONS OF CRITICAL RACE THEORY IN EDUCATION 73, 73 (Edward Taylor et al. eds., 2009).

²¹ *Id.* at 81.

²² Mark V. Tushnet, *The “We’ve Done Enough” Theory of School Desegregation*, in FOUNDATIONS OF CRITICAL RACE THEORY IN EDUCATION, *supra* note 20, at 100; see also James Joseph Scheurich & Michelle D. Young, *Coloring Epistemologies: Are Our Research Epistemologies Racially Biased?*, 26 EDUC. RESEARCHER 4, 4 (1997) (discussing categories of racism and its relation to epistemological racism).

²³ Scheurich & Young, *supra* note 22, at 4–7.

acknowledges the institutions and structures that perpetuate and encourage racism.²⁴ The epistemological level analyzes how knowledge operates within an institution to perpetrate individual and societal ethos.²⁵ For example, this form of racism is shown through the content and histories taught, the kinds of students placed in advanced level courses, the prioritization of the English language, and through encouraging students of lower socioeconomic statuses to pursue different careers than students of higher socioeconomic statuses.²⁶

B. Current Bans on Critical Race Theory

Since its creation, CRT has been targeted by many states. In fact, Fox News mentioned it 1,300 times over a four-month period.²⁷ The inability of American leaders to distinguish individual identity from social institutions perpetuates the false narrative that CRT is a channel to call every white person “racist.”²⁸ As of June 2023, eighteen states successfully passed legislation banning CRT or limiting the discussion of racism and sexism in the classroom, and two states had a bill of that nature either proposed or moving through the state legislature.²⁹ Among the eighteen states that have banned CRT is the state of Iowa.³⁰ In June 2021, Governor Kim Reynolds signed House File (HF) 802, “limiting the ways that teachers can discuss race and gender.”³¹ Iowa’s law shows alarming similarities to then-former-President Trump’s executive order aimed at eliminating discussions of CRT in the Federal workforce or in the Uniform Services.³²

²⁴ *Id.* at 5–6.

²⁵ *Id.* at 7–11.

²⁶ *Id.* at 11–12.

²⁷ Rashawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*, BROOKINGS INST. (Nov. 2021), <https://www.brookings.edu/articles/why-are-states-banning-critical-race-theory> [https://perma.cc/N5K4-XLK5].

²⁸ *Id.*

²⁹ Sarah Schwartz, *Map: Where Critical Race Theory Is Under Attack*, EDUCATIONWEEK (Nov. 1, 2024), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> (on file with author).

³⁰ *Id.*

³¹ *Id.*

³² Ian Richardson, *Iowa Gov. Kim Reynolds Signs Law Targeting Critical Race Theory, Saying She's Against 'Discriminatory Indoctrination'*, DES MOINES REG. (June 9, 2021, 7:41 AM), <https://www.desmoinesregister.com/governor-kim-reynolds-signs-law-targeting-critical-race-theory> [https://perma.cc/6QMV-9NGT]; see also Exec. Order No. 13950—Combating Race and Sex Stereotyping, 85 Fed. Reg. 60,683 (Sept. 22, 2020) (“This ideology is rooted in the pernicious and false belief that America is an irredeemably racist and sexist country; . . . Therefore, it shall be the policy of the United States not to promote race or sex stereotyping or scapegoating in the Federal workforce or in the Uniformed Services, and not to allow grant funds to be used for these purposes.”).

More specifically, Iowa's HF 802 prohibits discussion of racism as something that is inherently structural to the United States or the state of Iowa.³³ It prohibits teaching students about privileges that are innate to white people and the cis-male gender identity.³⁴ Broadly, it also prohibits teaching any content "[t]hat any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of that individual's race or sex."³⁵ HF 802 has, however, seen pushback from educators and agencies across the region.

Opponents argue that the K-12 ban on teaching CRT has had a negative downstream effect on diversity programs in Iowa's schools. Specifically, after HF 802 had passed, the state conference titled "What We Need Our Teachers to Know About Race" was cancelled.³⁶ The conference planned presentations regarding topics such as challenges for learners whose first language was not English, challenges and experiences of Native American students, and ways to adjust current curriculums to be more inclusive for marginalized students.³⁷ Additionally, Iowa State University published a frequently asked question (FAQ) post to address the impact of the new legislation.³⁸ Importantly, HF 802 may prohibit mandatory teachings as described, but this does not prohibit optional trainings.³⁹ Public universities and schools will need to be careful with the specific language used to promote these programs; rather than using mandatory language—such as "urging" or "encouraging"—schools should adhere to language such as "open to all" when referring to programming that may be prohibited by HF 802.⁴⁰

Along with bans on CRT in schools, advocates for eliminating affirmative action have been successful.⁴¹ Getting rid of affirmative action policies perpetuates anti-CRT principles by ignoring the structural disadvantages faced by people of color: the narrative that college admission must be apolitical "rests on an uncritical acceptance of the master narrative

³³ Act of June 8, 2021, ch. 163, 2021 Iowa Acts 416.

³⁴ *Id.*

³⁵ *Id.* at 417.

³⁶ Kalyn Belsha, *Iowa Scrapped Teacher Training on Equity. Students of Color Felt the Sting of That Decision*, CHALKBEAT (Mar. 11, 2022, 7:00 AM), <https://www.chalkbeat.org/2022/3/11/22970779/iowa-critical-race-theory-teacher-training-equity-diversity> [https://perma.cc/S5C9-ZAFC].

³⁷ *Id.*

³⁸ *Updated FAQ Explores Impact of House File 802*, INSIDE IOWA STATE (Aug. 12, 2021), <https://www.inside.iastate.edu/article/2021/08/12/hf802> [https://perma.cc/C7NY-D88D].

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See generally *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (holding affirmative action in college admissions programs violates the Equal Protection Clause).

that asserts our educational (and other) institutions have banished racism and bias after the passage of civil rights legislation in the 1950s and 60s.⁴² Not only are students of color being denied access to their histories, but they are also denied equity in a system that is built to disadvantage them.

C. First Amendment Arguments on Critical Race Theory (CRT) Bans in Schools

The First Amendment entitles American citizens the right to exercise freedom of speech.⁴³ Congress cannot pass laws that would unconstitutionally infringe on the right to “speak, write, and share ideas.”⁴⁴ Congress can, however, regulate certain types of speech such as that incite “imminent lawless action” and speech that is classified as “obscene.”⁴⁵ Historically, Critical Race theorists have anticipated two main First Amendment concerns regarding critical race theory (CRT): hate speech and the rights of non-English speakers to use their native languages in both schools and the workplace.⁴⁶ There is strong support for the claim that bans on CRT discussions in the classroom violate the First Amendment, but the lack of precedent of similar court cases along with the lengthy timeline present challenges for advocates to succeed on their claims. That is, the Court’s reliance on historical precedent would present a challenge to CRT advocates, as the first case addressing CRT bans—*Black Emergency Response Team (BERT) v. O’Connor*—has yet to be decided.⁴⁷

BERT was filed after Oklahoma passed a law prohibiting teaching ideologies such as implicit bias, systemic racism, and intersectionality.⁴⁸

⁴² ZAMUDIO ET AL., *supra* note 17, at 64.

⁴³ U.S. CONST. amend. I.

⁴⁴ *Freedom of Speech*, LEGAL INFO. INST. (June 2021), https://www.law.cornell.edu/wex/freedom_of_speech [<https://perma.cc/4HXY-34YE>].

⁴⁵ *What Does Free Speech Mean?*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does> [<https://perma.cc/39TD-Y4PB>].

⁴⁶ RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 125–29 (N.Y. Univ. Press 3rd ed. 2017).

⁴⁷ *Court Cases: Black Emergency Response Team v. O’Connor*, AM. CIV. LIBERTIES UNION (Oct. 29, 2021), <https://www.aclu.org/cases/bert-v-oconnor#> [perma.cc/4NTV-SUNM]; *see also* State Defendants’ Reply to Plaintiffs’ Response to State Defendants’ Motion for Judgment on the Pleadings at 5–8, *Black Emergency Response Team v. Drummond*, 2024 WL 3014659, at *3 (W.D. Okla. June 14, 2024) (No. 21-CV-1022-G), <https://www.aclu.org/cases/bert-v-oconnor?document=State-Defendants-Reply-in-Support-of-their-Motion-for-Judgment-on-the-Pleadings> [perma.cc/3KAW-6JQT] (arguing that Plaintiffs failed to “state a plausible claim under the First Amendment right to receive information”).

⁴⁸ Amended Complaint at 1, *Black Emergency Response Team v. Drummond*, 2024 WL 3014659, at *2 (W.D. Okla. June 14, 2024) (No. 21-CV-1022-G), <https://www.aclu.org/cases/bert-v-oconnor?document=amended-complaint-6> [perma.cc/D5B6-8637].

Plaintiffs argue that by banning these topics and penalizing educators for talking about important topics such as systemic racism, there is a clear freedom of speech violation.⁴⁹ Additionally, the statutes are facially unconstitutional by targeting accessibility to educational information and voices of people of color.⁵⁰ The Defendants argue that the Plaintiffs have failed to show that the Act is a “restriction on academic freedom,” and the Plaintiffs have failed to show that the “Act was enacted with a racially discriminatory purpose.”⁵¹ First, the Plaintiffs cannot show that the statute is overbroad in banning specific academic freedoms.⁵² That is, teachers have never had the freedom under the First Amendment to control their curriculum.⁵³ Second, racially discriminatory purpose cannot be proved due to the Plaintiff’s inability to prove race was a motivating factor behind the legislation.⁵⁴

After the infamous *Brown v. Board of Education*⁵⁵ decision, the United States saw a shift in issues involving race, moving from an argument of inclusion to an argument of free speech in schools (a “constitutional right to be racist”).⁵⁶ Numerous scholars advocated for hate speech to be categorized as a different facet of speech; however, the courts have yet to do so.⁵⁷ Mari J. Matsuda, a prominent lawyer and social justice advocate, presents three reasons racial speech must be categorized as a different facet of speech: (1) there is a message expressing racial inferiority; (2) the speech is “directed against a historically oppressed group”; and (3) there is a message that is “persecutory, hateful, and degrading.”⁵⁸ These messages cause significant legal results that are not addressed by courts. For example, failing to protect minorities from hate speech accepts the notion that there is only one form of liberty and equality—and it is not afforded to people of color.⁵⁹

⁴⁹ *Id.* at 2–6.

⁵⁰ *Id.* at 2.

⁵¹ State Defendants’ Motion for Judgement on the Pleadings at 3–4, Black Emergency Response Team v. Drummond, 2024 WL 3014659, at *3 (W.D. Okla. June 14, 2024) (No. 21-CV-1022-G), <https://www.aclu.org/cases/bert-v-oconnor?document=State-Defendants-Motion-for-Judgment-on-the-Pleadings> [perma.cc/9C6D-J6EK].

⁵² *Id.* at 4.

⁵³ *Id.*

⁵⁴ *Id.* at 5.

⁵⁵ *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

⁵⁶ MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 15 (Robert W. Gordon & Margaret Jane Radin eds., Westview Press 1993).

⁵⁷ *Id.* at 35.

⁵⁸ *Id.* at 36.

⁵⁹ *Id.* at 47–49.

Additionally, refusing to prosecute hate speech accepts a tolerance of racism at a state level.

More generally, cases regarding freedom of speech in schools have been brought to the Court. Prior courts have analyzed cases involving faculty and staff and the speech rights of public employees.⁶⁰ If pertaining to a public matter, courts would use a balancing test weighing public concerns and justifications by the employer.⁶¹ There are, however, many decisions that show a lack of consistency when analyzing First Amendment cases.⁶² First Amendment cases involving students have more consistent precedent, but there is still significant discretion given to the courts. For example, schools are not violating the First Amendment when prohibiting speech that would undermine the school's "basic educational mission."⁶³ Conversely, conduct that is not disruptive, along with behavior that is not meant to incite violence, is protected by the First Amendment.⁶⁴

Until courts finally decide to prevent hate speech with the intention to protect marginalized minorities, various counter remedies should apply in institutional settings. One example provided by scholars includes the acceptance of racism as a cultural and historical phenomenon.⁶⁵ Accepting that racism is a structural and shared history acts to collectively reject it in institutions of power. Tolerance of hate speech, along with the lack of acknowledgement of systemic racism, targets students and faculty of color—placing them in a position rooted in a lack of power and safety, along with the inability to feel heard in their own histories.

⁶⁰ Vanessa Miller et al., *The Race to Ban Race: Legal and Critical Arguments Against State Legislation to Ban Critical Race Theory in Higher Education*, 88 MO. L. REV. 61, 87–88 (2023).

⁶¹ *Id.* at 88.

⁶² *Id.* (“[P]ublic employee[s] [engaging] in speech as part of carrying out their official employment duties . . . is ineligible for First Amendment protection.”) (citing *Garcetti v. Ceballos*, 547 U.S. 410 (2006)).

⁶³ *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685 (1986).

⁶⁴ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969); *see also* *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (“[C]onstitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”) (footnote omitted).

⁶⁵ *See* MATSUDA ET AL., *supra* note 56, at 45.

D. History of Race and Education in the United States

1. Federal-Level Historical Background

Although *Brown v. Board of Education* is the case that declared segregation in schools unconstitutional, cases regarding school segregation were litigated beginning in 1849.⁶⁶ Leading up to the start of the 1830s was a shift of public opinion where education was used as a means to acquire a job—which meant that locations with high densities of labor workers often established common schools.⁶⁷ *Roberts v. City of Boston*⁶⁸ was the first school segregation case heard by a court.⁶⁹ The plaintiff's daughter was denied access four times from five different all-white schools.⁷⁰ She had applied because she lived closer in proximity to each school than she did to the all-Black school.⁷¹ The Court held in favor of the school: because the animosity toward Black people was an issue of public opinion, the judge wrote that it “is not created by law, and probably cannot be changed by the law.”⁷²

There are twenty-five school segregation cases that were recorded prior to *Brown* where plaintiffs usually lost, but there were occasional victories.⁷³ These victories, however, did not prove to be substantial within public policy due to lack of legislative support. Specifically, Iowa, Michigan, Kansas, and Illinois all decided cases favorably toward the plaintiff, whereas Missouri, Indiana, Ohio, Massachusetts, and New York upheld the constitutionality of “separate but equal.”⁷⁴

African Americans were not the only racial group to protest segregation. Cases involving segregating Native Americans never made it to the Supreme Court, but these cases provide evidence of judge-based perceptions based on skin tone and social relationships to determine whether a Native person should be allowed in a white-only school.⁷⁵ Cases regarding Chinese Americans were recorded beginning in the late 1800s.⁷⁶ Cases were analyzed

⁶⁶ MARISELA MARTINEZ-COLA, *THE BRICKS BEFORE BROWN: THE CHINESE AMERICAN, NATIVE AMERICAN, AND MEXICAN AMERICANS' STRUGGLE FOR EDUCATIONAL EQUALITY* 49 (The Univ. of Ga. Press 2022).

⁶⁷ *Id.*

⁶⁸ *Roberts v. City of Boston*, 59 Mass. (5 Cush.) 198 (Mass. 1849).

⁶⁹ MARTINEZ-COLA, *supra* note 66, at 49.

⁷⁰ *Id.* at 50.

⁷¹ *Id.*

⁷² *Id.* (footnote omitted).

⁷³ *Id.* at 50–51.

⁷⁴ *Id.*

⁷⁵ MARTINEZ-COLA, *supra* note 66, at 63–68.

⁷⁶ *Id.* at 70.

on a Black-white spectrum, placing Chinese Americans on a limited binary.⁷⁷ *Gong Lum v. Rice*⁷⁸ was the only segregation case with non-Black plaintiffs to make it to the Supreme Court.⁷⁹ The Court decided to adhere to stare decisis and held that so long as schools were adhering to the standard established in *Plessy v. Ferguson*⁸⁰ the behavior is constitutional.⁸¹ Lastly, Mexican Americans also faced disparate treatment despite being considered “white” based on citizenship status.⁸² In *Gonzales v. Sheely*,⁸³ for example, the plaintiff sued arguing that Mexican American schools were not equal to white schools.⁸⁴ Particularly, students were wrongly labeled as “retarded” in English and treated poorly in class.⁸⁵ The Court held this was discriminatory under the Fourteenth Amendment due to the failure to adhere to the “separate but equal” standard.⁸⁶

In 1954, the Supreme Court heard *Brown v. Board of Education*. *Brown* today presents the public with a false narrative that racism and segregation has been solved.⁸⁷ Prior to the *Brown* decision, the Court operated under the “separate but equal” doctrine.⁸⁸ After holding that separate is inherently not equal, the Court required schools to desegregate “with all deliberate speed.”⁸⁹ This requirement failed to address the structural inequities, such as housing disparities leading to students of color being districted to underfunded schools.⁹⁰ Specifically, school districts with higher concentrations of students

⁷⁷ *Id.*

⁷⁸ *Gong Lum v. Rice*, 275 U.S. 78 (1927).

⁷⁹ MARTINEZ-COLA, *supra* note 66, at 72.

⁸⁰ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁸¹ MARTINEZ-COLA, *supra* note 66, at 72.

⁸² *Id.* at 74–75.

⁸³ *Gonzales v. Sheely*, 96 F. Supp. 1004 (D. Ariz. 1951).

⁸⁴ MARTINEZ-COLA, *supra* note 66, at 75.

⁸⁵ *Id.*

⁸⁶ *Id.* at 76.

⁸⁷ See generally *Brown v. Board of Educ.*, 347 U.S. 483 (1954) (holding that separate is inherently unequal and that it is unconstitutional to have segregated schools).

⁸⁸ See, e.g., *Plessy*, 163 U.S. at 552 (holding that separate is equal regarding railway cars for Black and white riders).

⁸⁹ *Brown v. Board of Educ.*, 349 U.S. 294, 301 (1955).

⁹⁰ See generally Jason P. Nance, *The Justifications for a Stronger Federal Response to Address Educational Inequalities*, in *A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY* 35 (Kimberly Jenkins Robinson ed., N.Y. Univ. Press 2019) (establishing that there are various levels of inequity in the U.S. education system—especially for students of color and those living in poverty).

of color spend on average about \$2,000 less on their students than those districts with higher concentrations of white students.⁹¹ By failing to address such inequities, the Court implied that desegregating schools did not pertain to the access of quality education affected by structural inequities.⁹² Lower courts have addressed these structural inequities in very limited cases, with one case holding that property taxes that are used to fund schools, leading to the disadvantaging students of lower-socioeconomic status, does not violate the Constitution because there is no intentional or substantial discrimination against a group of students.⁹³

Despite the Court failing to recognize education quality as something protected under the Equal Protection Clause, many scholars have advocated for the federal government to assert quality education as a fundamental right. For example, historically, the U.S.'s focus on producing college-educated citizens has led to economic growth.⁹⁴ Conversely, there is a strong correlation between lack of education and involvement in the criminal justice system—providing a stronger incentive for the federal government to consider education a federal right in order to address the racial biases of mass incarceration.⁹⁵

On an international level, the United Nations' Universal Declaration of Human Rights uses Article 26 to assert education as a human right.⁹⁶ The Universal Declaration of Human Rights does not specify whether formal or informal education is something that is guaranteed.⁹⁷ It does, however, guarantee *accessible* education—which many scholars struggle to define.⁹⁸ One theory is that accessibility has three dimensions in this context: (1) educational institutions (not including higher education) must be accessible to students without discrimination, (2) physical accessibility ensures that the school is a reasonable and safe distance from the students' homes, and (3) schools must be economically accessible and affordable to all.⁹⁹ This means that an acceptable curriculum should be “relevant, culturally appropriate and

⁹¹ *Id.* at 36.

⁹² *See generally* *Brown v. Board of Educ.*, 347 U.S. 483 (1954) (holding racial segregation in public schools is unconstitutional, regardless of the quality of the education).

⁹³ *See* *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 56 (1973).

⁹⁴ Nance, *supra* note 90, at 39–40.

⁹⁵ *Id.* at 40–42.

⁹⁶ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [https://perma.cc/6DC8-2MNZ].

⁹⁷ *Id.*; *see also* MIEKE VERHEYDE, ARTICLE 28: THE RIGHT TO EDUCATION 12 (André Alen et al. eds., 2006) (“The text of Article 28(1) is also silent about the question whether Article 28(1) refers to both formal and non-formal education or only to formal education.”).

⁹⁸ VERHEYDE, *supra* note 97, at 15.

⁹⁹ *Id.* at 17–19.

of good quality.”¹⁰⁰ Defining what is “culturally appropriate” cannot be defined on the basis of a singular white culture—equal access to relevant education requires equal access to multiple viewpoints and perspectives.

In terms of educational institutions and rights, most courts have addressed financial inequities rather than academic content.¹⁰¹ Specifically, some studies have attempted to study the constitutionality of government financing of education institutions. In the *Campaign for Fiscal Equity in New York*, the Complainant brought a case against the underfunding of inner-city schools in New York City attempting to illustrate the discrepancies in educational opportunities for ethnic minority students.¹⁰² The Complainant brought two claims: (1) that the state’s formula to allocate funds to public schools violated Title VI of the Civil Rights Act, which prohibits policies that disproportionately harm racial minorities, and (2) the state breached the “right to education” mentioned in its State constitution.¹⁰³

The claim that the state violated the Civil Rights Act did not succeed; however, the Court of Appeals found that “the state had failed . . . to provide all students with a sound basic education as required by the Education Article of the New York State Constitution.”¹⁰⁴ This language suggests that any state guaranteeing a sound or quality education can be liable for violating their state constitution by not providing adequate funding to predominately Black and Brown school districts. That is, a basic education provides students with “literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants.”¹⁰⁵ If this is not being provided through state statutes, such as legislation attributing funding that provides such resources, a state can be held responsible. This judgement acknowledges “sound” education as a right without specifically comparing the educational experiences of students of color to white students in well-funded school districts. In response to the court, the Judge delegated the power to the state in designing an equitable program to allocate funds to

¹⁰⁰ *Id.* at 26.

¹⁰¹ Joshua E. Weishart, *Protecting a Federal Right to Educational Equality and Adequacy*, in *A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY*, *supra* note 90, at 315.

¹⁰² Helen Taylor, *Conceptualizing and Enforcing the Right to Quality Education for Minorities and Disadvantaged Groups: Reflections on the Campaign for Fiscal Equity Litigation*, in *HUMAN RIGHTS & EQUALITY IN EDUCATION: COMPARATIVE PERSPECTIVES ON THE RIGHT TO EDUCATION FOR MINORITIES AND DISADVANTAGED GROUPS* 131, 133 (Sandra Fredman et al. eds., Bristol Univ. Press 2018).

¹⁰³ *Id.* at 133–34.

¹⁰⁴ *Id.* at 135.

¹⁰⁵ *Id.*

underfunded districts to the New York legislature, with the Judge overseeing the process.¹⁰⁶

Scholars have advocated for all state constitutions to guarantee not only access to education but access to *quality* education. This leads to the question of who and what education is for. While a color-blind approach protects the feelings of white students, it ignores the underfunding of predominately Black and Brown schools. For example, Black and Brown students are disproportionately sorted into lower ranked groups when schools sort students into intelligence-based groups.¹⁰⁷

Besides race affecting academic placement, stereotypes regarding race have a negative effect on academic performance as well.¹⁰⁸ Stereotypes regarding intelligence lead to internalized inferiority, which impact measures such as standardized test scores.¹⁰⁹ In a study regarding standardized test scores, Black participants significantly underperformed white participants when they were required to record race.¹¹⁰ When participants were not required to note race, however, Black participants generally performed the same as white participants.¹¹¹ To reduce this stereotype threat, many scholars advocate for schools to (1) affirm belongingness for students of color, (2) immerse students in multiple perspectives, and (3) encourage diverse role models.¹¹²

To do so would require the federal government to have a more prominent role in the public education system. Schools with the highest concentration of students of color are spending \$2,000 less per students than schools with highest concentrations of white students.¹¹³ Relevant legislation, such as Title I from the Elementary and Secondary Act of 1965, does not account for these concentrated poverty levels.¹¹⁴ Adequacy theorists “assert that all children should have access to a quality education . . . enough to acquire the capabilities . . . to function as equal citizens and avoid political, economic, and social subjugation.”¹¹⁵ Seemingly, this should include

¹⁰⁶ *Id.* at 137–38.

¹⁰⁷ David Gillborn, *Education Policy as an Act of White Supremacy: Whiteness, Critical Race Theory, and Education Reform*, in FOUNDATIONS OF CRITICAL RACE THEORY IN EDUCATION, *supra* note 20, at 61.

¹⁰⁸ See Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, in FOUNDATIONS OF CRITICAL RACE THEORY IN EDUCATION, *supra* note 20, at 164.

¹⁰⁹ *Id.* at 174–75.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 182–83.

¹¹³ Nance, *supra* note 90, at 36.

¹¹⁴ *Id.* at 47.

¹¹⁵ Weishart, *supra* note 101, at 305, 310.

knowledge of histories that can be used to fight against oppression toward people of color. Besides funding, the federal government has a role to play in terms of the quality of the curriculum—which can be indicated through “opportunities to learn.”¹¹⁶ This should include access to well-rounded curriculums.

2. Historical Values of Education in Iowa

Schooling in Iowa began in the 1830s, with parents paying instructors to teach writing, reading, and math skills to their children.¹¹⁷ After the development of schools, Iowan students went to “grammar schools” where they learned the same basic writing, reading, and math skills.¹¹⁸ Learning to read was especially important for students in Iowa, as it allowed them to read the Bible.¹¹⁹ As the population grew, however, the Iowa Legislature passed the “Free School Act” granting public schools funding from property taxes—allowing for the expansion of schools at a quicker rate.¹²⁰

Importantly, scholars have considered Iowa to be one of the states that was socially progressive regarding school segregation prior to the infamous *Brown* case.¹²¹ In 1868, the Supreme Court of Iowa heard *Clark v. Board of Directors*.¹²² The Court held that the statutory text had been amended to read: “The board of education shall provide for education of *all the youths of the State*, through a system of common schools.”¹²³ Rather than relying on the inherent right of education, the Court relied on the fact that the Constitution had been amended to require schools to educate children regardless of race.¹²⁴ Following *Clark*, in 1875, the Supreme Court of Iowa heard *Dove v. Independent School District of Keokuk*.¹²⁵ *Dove* held that the evidence provided illustrate that the plaintiff was denied entry into the school based on race and that, if he

¹¹⁶ Linda Darling-Hammond, *Assuring Essential Educational Resources Through a Federal Right to Education*, in A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY, *supra* note 90, at 253.

¹¹⁷ *Iowa Pathways: Education*, IOWA PBS, <https://www.iowapbs.org/iowapathways/mypath/2722/education> [https://perma.cc/3A64-B8SH].

¹¹⁸ *Iowa Pathways: The Development of High Schools*, IOWA PBS, <https://www.iowapbs.org/iowa-pathways/mypath/2512/development-high-schools> [https://perma.cc/GJ5D-GZP5].

¹¹⁹ *Iowa Pathways: Before the Formal Education System*, IOWA PBS, <https://www.iowapbs.org/iowa-pathways/mypath/2741/formal-education-system> [https://perma.cc/N2PZ-78UQ].

¹²⁰ *Id.*

¹²¹ MARTINEZ-COLA, *supra* note 66, at 52.

¹²² *Clark v. Board of Sch. Dirs.*, 24 Iowa 266 (Iowa 1868).

¹²³ *Id.* at 271.

¹²⁴ *Id.* at 271–74.

¹²⁵ *Dove v. Indep. Sch. Dist. of Keokuk*, 41 Iowa 689 (Iowa 1875).

was white, he would have been admitted.¹²⁶ While *Dove* relies on *Clark*, here, the Court shifts their reasoning to be based on discriminatory intent rather than interpreting the statute.¹²⁷ That same year, the Supreme Court of Iowa ruled on *Smith v. Directors of the Independent School District of Keokuk*,¹²⁸ relying on the same justification in *Clark* but altering the reasoning to focus on discriminatory intent rather than statutory language.¹²⁹

Despite many Midwest schools asserting that the lack of slavery equated to a lack of racism, Black workers were limited in employment opportunities.¹³⁰ For example, some employers prohibited Black men and women to even apply for jobs.¹³¹ Between 1865 and 1880, Black Iowans were “concentrated at the bottom of the occupational ladder, and only a very small proportion practiced a profession,” and they were not allowed in the industrial employment sector.¹³² Black women in particular were more likely to live in households with other servants.¹³³ Many Black workers in the state were under the age of eighteen.¹³⁴ Specifically, among African Americans working in white households, over 20% identified as under the age of sixteen.¹³⁵

In the Midwest—and even in the state of Iowa—many graduate students and scholars have attempted to discern the opinions of Iowans on K-12 and higher education. Tracking Black history in the state of Iowa has been difficult given the indifference by many state scholars, despite 45% of Iowa’s Black population being congregated in the bigger cities including Des Moines, Davenport, Waterloo, and Cedar Rapids.¹³⁶

At the University of Iowa, Ralph D. Minard published a dissertation in 1930 studying the attitudes of children in Iowa toward race. In particular, Minard used five elements to analyze attitudes toward race: (1) moral judgements; (2) emotional prejudice; (3) information; (4) opinion; and (5)

¹²⁶ *Id.* at 693.

¹²⁷ *Id.* at 692–93.

¹²⁸ *Smith v. Dirs. of the Indep. Sch. Dist. of Keokuk*, 40 Iowa 518 (Iowa 1875).

¹²⁹ *Id.* at 519.

¹³⁰ LESLIE A. SCHWALM, EMANCIPATION’S DIASPORA: RACE AND RECONSTRUCTION IN THE UPPER MIDWEST 138 (Waldo E. Martin & Patricia Sullivan eds., The Univ. of N.C. Press 2009).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 139.

¹³⁴ *Id.* at 139–40.

¹³⁵ *Id.*

¹³⁶ Ashley Howard, *Race and Iowa History*, 80 ANNALS IOWA 377, 380 (2021).

rational thinking.¹³⁷ Children had variances among racial attitudes (i.e., personal preferences or feelings), but it generally deviated from the standard for “race attitudes” among adolescents—likely due to the fact that as children get older, they develop a new social consciousness as they are exposed to diverse groups.¹³⁸ Notably, the average Iowan high school student had racial values falling below the attitudes of the average expert opinions.¹³⁹

Years later, historical effects are still affecting Iowans’ negative racial biases. In 2008, Black Iowans (who moved from Chicago to Iowa) indicated that they experience stigmatization.¹⁴⁰ Particularly, because those in Iowa associate Chicago with drugs, violence and crimes, racism is escalated.¹⁴¹ For example, one respondent indicated having trouble finding a job, stating that it seems like “[those in the community] think that [B]lack people don’t have no professional skills.”¹⁴² This has become a prevalent problem with the more frequent migration of Chicago to Iowa, particularly Iowa City, due to Chicago’s high cost of living.¹⁴³ Many Black women have been migrating to Iowa hoping for more benefits and less stigmatization.¹⁴⁴

Stigmatization followed Black Iowans into the COVID-19 pandemic. Shawn Burrage, a PhD candidate at the University of Arizona, studied the debate behind the Des Moines Register’s coverage, specifically by journalist Ian Richardson, on teaching and CRT during 2020–21.¹⁴⁵ Richardson’s news articles attempted to present CRT as a device to implement racism towards whites by teaching the history of racism in the United States as opposed to “defending American heritage and patriotism.”¹⁴⁶ In particular, among Richardson’s articles, he refers to CRT as a means to “indoctrinate students” over forty times.¹⁴⁷ Despite the Republican Party receiving the most coverage in the Des Moines Register regarding CRT, some Iowan students have

¹³⁷ Ralph D. Minard, *Race Attitudes of Iowa Children* 44 (Aug. 1930) (Ph.D. dissertation, University of Iowa) (ProQuest).

¹³⁸ *Id.* at 127.

¹³⁹ *Id.* at 133.

¹⁴⁰ Danya E. Keene & Mark B. Padilla, *Race, Class, and the Stigma of Place: Moving to “Opportunity” in Eastern Iowa*, 16 *HEALTH & PLACE* 1216, 1218 (2010).

¹⁴¹ *Id.*

¹⁴² *Id.* at 1219.

¹⁴³ *Id.* at 1218–19.

¹⁴⁴ *Id.* at 1220.

¹⁴⁵ Shawn Burrage, *Critical Race Theory in Iowa: An Analysis of the Des Moines Register’s Coverage* 5 (May 16, 2023) (M.A. thesis, University of Arizona) (ProQuest).

¹⁴⁶ *Id.* at 34.

¹⁴⁷ *Id.* at 35.

advocated for diversity within their school's curriculum. For example, in Ankeny, students advocated for diversifying the curriculum.¹⁴⁸ This led to the Ankeny School District to host a voluntary staff course aimed at addressing white privilege and the effect it has on student learning.¹⁴⁹

Besides stigmatization of students based solely on race, there is an important intersectionality between race and disability. Since the 1970s, education cases have not had good outcomes. Historically, Iowa has failed to implement regulations to help file claims against schools for inadequate education in special needs programs.¹⁵⁰ Importantly, students of color are less likely to have their needs met regarding their disabilities.¹⁵¹ The underfunding of these programs contributes to the educational gap by creating another barrier to access quality education for students of color.

E. Civil Rights Act of 1964 Title VI and Educational Institutions

1. History of Title VI

In 1964, Congress passed the Civil Rights Act to prohibit discrimination based on race, color, religion, sex, and national origin.¹⁵² Programs that receive federal assistance are subject to Title VI rules and regulations.¹⁵³ This means that programs receiving federal financial assistance from the United States Department of Education are covered under Title VI.¹⁵⁴ The sponsors of Title VI viewed the legislation as an “exercise of the unquestioned power of the Federal Government to fix the terms on which federal funds are disbursed.”¹⁵⁵ These programs cannot operate in a discriminatory manner,

¹⁴⁸ *Id.* at 38.

¹⁴⁹ *Id.*

¹⁵⁰ Diana Christine Pullin, *The Right to Education and the Educationally Handicapped of Iowa 1* (July 1977) (Ph.D. dissertation, University of Iowa) (ProQuest).

¹⁵¹ Amanda Litvinov, *Students of Color With Disabilities Face Deep Inequities Made Worse by Pandemic*, NAT'L EDUC. ASS'N (Apr. 14, 2022), <https://www.nea.org/nea-today/all-news-articles/students-color-disabilities-face-deep-inequities-made-worse-pandemic> [<https://perma.cc/A4Z3-NJWK>]; see also DANIEL J. LOSEN ET AL., THE CENTER FOR CIVIL RIGHTS REMEDIES, *DISABLING INEQUITY: THE URGENT NEED FOR RACE-CONSCIOUS RESOURCE REMEDIES 4–9* (2021) (discussing “the gross inadequacies and racial inequities” in special education before and after the COVID-19 pandemic).

¹⁵² Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

¹⁵³ Civil Rights Act § 602.

¹⁵⁴ *Education and Title VI*, U.S. DEP'T OF EDUC. (July 2, 2024), <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html> [<https://perma.cc/G2JJ-2SLA>].

¹⁵⁵ Bureau of Nat'l Affs., *Description of Title VI and Summary of and Excerpts from the Legislative History*, in *MATERIALS RELATING TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964* 5 (Paul Bender ed., 1965); see also *Title VI of the Civil Rights Act of 1964*, U.S. DEP'T OF JUST. (Sept. 14, 2024), <https://www.justice.gov/crt/fcs/TitleVI> [<https://perma.cc/4TJH-L8K3>] (“[Title VI] prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.”).

including “admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, and housing [and employment].”¹⁵⁶

This leads to the question of how discrimination is defined by the agencies enforcing Title VI. Section 601 has limited agencies’ capabilities of regulation, only allowing for mandates toward intentional discrimination.¹⁵⁷ Section 602 uses broad language which has stemmed into two interpretations.¹⁵⁸ First, it could allow agencies to extend regulations to reach unintentional discrimination.¹⁵⁹ This “reasonable relation view” would simply require any regulation to be “reasonably related” to the antidiscrimination purpose of that statute.¹⁶⁰ The Court has generally given great deference to agencies in administering their goals, as agencies are experts in the field they are creating rules and regulations for.¹⁶¹ Second, judges such as former-justice Scalia, have argued that “regulations under Section 602 must instead fit more closely with the particular purpose of Section 601: ridding federally funded programs of intentional discrimination.”¹⁶² That is, the narrowness of Section 601 limits the work agencies can do.¹⁶³

The Department of Education’s Office of Civil Rights views claims made against any of the categories (admissions, recruitment, financial aid, etc.) within a federally funded program.¹⁶⁴ Originally, guidance to interpret the bill was published in March 1968 by both the Department of Health, Education, and Welfare (HEW) and the Department of Justice (DOJ).¹⁶⁵ According to

¹⁵⁶ *Education and Title VI*, *supra* note 154.

¹⁵⁷ JARED P. COLE, CONG. RSCH. SERV., R45665, CIVIL RIGHTS AT SCHOOL: AGENCY ENFORCEMENT OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 10 (2019).

¹⁵⁸ *Id.* at 11.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 12.

¹⁶¹ *Id.* at 11. While the Supreme Court has recently overruled the *Chevron* doctrine, *Skidmore* deference still applies. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2262–63 (2024). Under *Skidmore*, agency interpretations “constitute a body of experience and informed judgment” that courts may “properly resort [to] for guidance.” *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). Therefore, courts will continue to rely on governmental agencies, like the Department of Education, for their expertise and insight.

¹⁶² *Id.* at 14; *see also* *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001) (“[I]t is similarly beyond dispute—and no party disagrees—that § 601 prohibits only intentional discrimination.”).

¹⁶³ COLE, *supra* note 157, at 14.

¹⁶⁴ *Id.* at 19.

¹⁶⁵ Dep’t of Health, Educ., & Welfare, *Policies on Elementary and Secondary School Compliance With*

the HEW guidelines, equal educational opportunity did not require schools to offer identical programs or match funding to the dollar.¹⁶⁶ Rather, federally funded schools cannot deny educational opportunities through programs or funding on the basis of race, color, or national origin.¹⁶⁷ The DOJ specified that, should a federally funded school fail to comply with the regulation, “the objective should be to secure prompt and full compliance so that needed Federal assistance may commence or continue.”¹⁶⁸ How to secure this compliance, however, presents a complex issue.

2. Guidance and Enforcing Title VI in 2023

Today, Title VI has expanded to include—among a list of other grievances—access to educational opportunity and supporting racial diversity.¹⁶⁹ Other discrimination covered under Title VI includes: bullying and harassment, equal educational opportunities for English learners, equal rights to public education regardless of immigration or citizenship status, racial discrimination in school discipline, racial discrimination in special education, retaliation, shared ancestry discrimination, and supporting racial diversity.¹⁷⁰ States, school districts, and schools must not implement policies providing educational resources that disproportionately affect students based on race, color, or national origin.¹⁷¹ An entity may do so only when the policies are necessary, with no effective alternatives that will reach the same goals with “less adverse effect.”¹⁷²

The Department of Education along with the Office of Civil Rights regularly publishes articles on regulation guidance. The Department of

Title VI of the Civil Rights Act of 1964, in MATERIALS RELATING TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, *supra* note 155, at 18; U.S. Dep’t of Just., *Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964*, in MATERIALS RELATING TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, *supra* note 155, at 22.

¹⁶⁶ *Id.* at 19.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 22.

¹⁶⁹ *Education and Title VI*, *supra* note 154.

¹⁷⁰ *Race, Color, or National Origin Discrimination Overview*, U.S. DEP’T OF EDUC. (Sept. 24, 2024), <https://www2.ed.gov/policy/rights/guid/ocr/raceoverview.html> [<https://perma.cc/3A98-9DGM>]; *see also* Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Education Effectuation of Title VI of the Civil Rights Act of 1964, 34 C.F.R. § 100.1 (1980) (“[N]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Education.”).

¹⁷¹ U.S. DEP’T OF EDUC., OFF. FOR C.R., FACT SHEET: ENSURING STUDENTS HAVE EQUAL ACCESS TO EDUCATIONAL RESOURCES WITHOUT REGARD TO RACE, COLOR, OR NATIONAL ORIGIN 1 (2014), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-resource-comp-201410.pdf> [<https://perma.cc/K88G-95EP>].

¹⁷² *Id.*

Education also published guidance for race and school programming in August 2023.¹⁷³ It acknowledges that racial discrimination still occurs despite “facially neutral policies.”¹⁷⁴

Particularly, recent decisions regarding topics such as affirmative action have led to new publications from these departments. During the 1960s, the United States adopted affirmative action policies to remedy real-world effects of racism.¹⁷⁵ These policies received public pushback from conservatives, resulting in critical race theorists to advance arguments that admission based on “merit” alone disregards the issue that the education system often does not provide students of color adequate resources to succeed on “merit.”¹⁷⁶

In 2023, the Department of Education cosigned a “Dear Colleague” letter regarding the Students for Fair Admission (SFFA) cases in August 2023.¹⁷⁷ Public and private colleges receiving federal financial assistance must follow the same requirements regarding the Equal Protection Clause: students cannot be admitted based on their race, and schools must be able to attribute any benefit a student receives to their individual experiences.¹⁷⁸ In a post-*SFFA* world, school districts located within underfunded communities—teaching primarily students of color—colleges and universities should strive now more than ever to partner with these underfunded schools to continue to work toward equal access to education.¹⁷⁹

3. The Role of the Office of Civil Rights (OCR)

The Office of Civil Rights (OCR) was established “to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.”¹⁸⁰ OCR does this through resolving complaints of discrimination and by assisting institutions in

¹⁷³ See generally U.S. DEP’T OF EDUC., OFF. FOR C.R., RACE AND SCHOOL PROGRAMMING (2023) (providing guidance on how to develop curriculum that is racially inclusive while adhering to Title VI and its corresponding regulations).

¹⁷⁴ *Id.* at 3.

¹⁷⁵ DELGADO & STEFANCIC, *supra* note 46, at 130–32.

¹⁷⁶ *Id.* at 132.

¹⁷⁷ U.S. DEP’T OF EDUC., OFF. FOR C.R., *supra* note 171, at 2.

¹⁷⁸ U.S. DEP’T OF EDUC., OFF. FOR C.R., QUESTIONS AND ANSWERS REGARDING THE SUPREME COURT’S DECISION IN STUDENTS FOR FAIR ADMISSIONS, INC. v. HARVARD COLLEGE AND UNIVERSITY OF NORTH CAROLINA 1 (2023), https://www.justice.gov/d9/2023-08/post-sffa_resource_faq_final_508.pdf [<https://perma.cc/WJ8S-R4PU>].

¹⁷⁹ U.S. DEP’T OF EDUC., OFF. FOR C.R., *supra* note 171, at 2.

¹⁸⁰ *About OCR*, U.S. DEP’T OF EDUC. (May 26, 2023), <https://www2.ed.gov/about/offices/list/ocr/aboutocr.html> [<https://perma.cc/8MTP-EH8T>].

achieving voluntary compliance with the laws OCR enforces—one of these laws being Title VI of the Civil Rights Act of 1964.¹⁸¹ Complaints are filed by “anyone who believes that an education institution that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age.”¹⁸² Importantly, these reports influence the Civil Rights Data Collection (CRDC) in order to measure “factors that impact education equity and opportunity for students” in public schools across the country.¹⁸³

To measure complaints, OCR first conducts a jurisdictional evaluation to determine whether the allegation has both enough of and the right kind of information.¹⁸⁴ If OCR determines that there is sufficient information, the complainant has jurisdiction, and the allegation is timely (filed within 180 calendar days of the incident), then a formal investigation will be opened.¹⁸⁵ If parties do not want to participate in a facilitated resolution guided by OCR, then the investigation will ensue.¹⁸⁶ Both parties must agree to an “acceptable resolution agreement . . . ensuring OCR access to ‘data and other information in a timely manner’” to ensure compliance.¹⁸⁷ Only if there is no compliance or acceptable resolution agreement do parties go through an administrative proceeding or are referred to DOJ for litigation.¹⁸⁸

III. ANALYSIS

In this section, this Note will argue that (1) schools will not regulate racist practices on their own; (2) the history of complaints sent to OCR in the state of Iowa suggests that the Department of Education can regulate certain aspects of school programs, other than the content itself; (3) OCR should have the ability to regulate curriculum in a limited capacity since it has the ability to regulate content in other specified circumstances and in order to eliminate racial discrimination embedded in existing curriculum; and (4) revoking federal funding in districts refusing to comply with Title VI would incentivize legislatures to implement more equitable school policies.

A. Failure to Regulate Racist Practices in Iowan Schools

Schools in Iowa have been failing to regulate racist behavior among both students and faculty even before HF 802 went into effect. This failure

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ COLE, *supra* note 157, at 17.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 18.

¹⁸⁷ *Id.* at 19.

¹⁸⁸ *Id.*

suggests that the current methods to ensure fair treatment toward students of color need to be changed. In 2016, faculty at Iowa State University released data proving that students of color at Valley High School (in West Des Moines, Iowa) were two times more likely to be categorized as “special needs” and three times more likely to be categorized as “at risk” compared to white students.¹⁸⁹ Being categorized into these groups perpetuates the harmful stereotype that students of color cannot succeed in school in comparison to their white peers. This report was published less than a year after a plethora of fights occurred, stemming from a social media post by a student threatening to “shoot the [B]lack kids at school.”¹⁹⁰

Additionally, this study revealed that Black students at Valley High School were four times more likely to be disciplined than white students.¹⁹¹ White students and faculty told researchers that they “did not perceive an issue with race or inequity.”¹⁹² Unlike white students, students of color “reported being called racist names, being the target of stereotyping and being avoided by their white peers.”¹⁹³ This resulted in many students of color remaining silent in class as a tool to survive.¹⁹⁴

Then, in 2021, Iowa City West High School students posted an abundance of racist social media posts—one video went as far as threatening another student by using a racial slur.¹⁹⁵ Another student posted a photo of themselves in blackface.¹⁹⁶ While the District attempted to address the racism, former students of West High commented on the pattern of racist behavior at the school.¹⁹⁷ Despite the equity reforms implemented in 2018, it is clear that the actions by Iowa City school districts were not successfully deterring racist behavior.¹⁹⁸

¹⁸⁹ Kim Norvell, *Report: ‘Deep Racial Disparities’ Exist at Valley*, DES MOINES REG. (Sept. 13, 2016, 9:58 AM), <https://www.desmoinesregister.com/story/news/local/west-des-moines/2016/09/12/report-deep-racial-disparities-exist-valley/90256538> (on file with author).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Travis Breese, *Parents Say Racist Social Media Posts Are Part of a Trend at Iowa City West High School*, KWWL.COM (Nov. 12, 2021), https://www.kwwl.com/news/iowa-city/parents-say-racist-social-media-posts-are-part-of-a-trend-at-iowa-city-west/article_f7a0b6b0-4374-11ec-a864-d36bc420de2b.html [<https://perma.cc/V4QV-563L>].

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

Since then, Iowa City schools have been hearing complaints from Indigenous peoples regarding mistreatment in schools.¹⁹⁹ False narratives surrounding the traditions of Indigenous people—including “incorrectly imitating traditional/powwow singing” and “mocking ceremonial and cultural songs without interruption from the teacher”²⁰⁰—have been repeatedly occurring at schools. Parents report continuously asking teachers to excuse their children for lessons projecting false narratives on Thanksgiving and Christopher Columbus in an effort to protect their children from the normalization of violence and erasure of Indigenous communities.²⁰¹

While teachers enjoy the freedom to misinform students about the violence toward and genocide of Indigenous peoples, other teachers are facing repercussions for desire to teach diverse content (such as CRT).²⁰² Greg Wickenman, for example, quit his job after receiving no support or response from the school district he worked for after introducing diverse curriculum into his classroom.²⁰³ Prior to HF 802, Wickenman taught *Stamped From the Beginning* by Ibram X. Kendi, which left his students yearning for a deeper understanding of the issues present in the book.²⁰⁴ After the anti-CRT law was passed, however, many teachers stopped teaching books presenting an alternative narrative regarding race due to fear of being penalized by the administration.²⁰⁵ Wickenman eventually quit due to the inability to teach students the critical thinking skills that inspired him to go into teaching in the first place.²⁰⁶

Despite the severity of these reports, the OCR did not review these complaints. The OCR has only reviewed a handful of cases in Iowa, and these cases, combined with the news articles. These limitations highlight the need for structural change in Iowa schools.

¹⁹⁹ Kate Perez, *Indigenous Parents, Students Call Out Iowa City Schools, Iowa City for Racism*, THE DAILY IOWAN (Jan. 25, 2023), <https://dailyiowan.com/2023/01/25/indigenous-parents-students-call-out-iowa-city-schools-iowa-city-for-racism> [<https://perma.cc/YVF8-M2YP>].

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Mary Harris, “I Heard We Can’t Learn About Black People This Year,” SLATE (Apr. 24, 2023, 10:30 AM), <https://slate.com/news-and-politics/2023/04/iowa-critical-race-theory-curriculum-slavery-holocaust-teacher-quit.html> [<https://perma.cc/SYR9-MMPJ>].

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

B. History of OCR Complaints in Iowa

1. Iowa City Community District Complaint (2013)

OCR should be able to evaluate programs and the effect these programs have on students. OCR already has evaluated who enters specific programs along with the demographics of those enrolled in specific programs. For example, in 2013, a complaint was filed against Iowa City Community School District alleging that the District discriminated on the basis of race through the disproportionate referral and evaluation of Black students for special education programs.²⁰⁷

When reviewing complaints, OCR analyzes the issue holistically. Here, OCR relied on both statistics regarding the special education program and testimony given by faculty and staff.²⁰⁸ That is, during the 2009–10 school year, 30.9% of the total African American students within the district were enrolled in the special education program, and 35% of the African American students were referred for evaluation to be eligible for the program, resulting in 37.2% of those students determined as eligible.²⁰⁹ The 2012–13 statistics had marginal differences with 29.4% of African American students enrolled in special education programs within the District.²¹⁰ The process for developing plans for evaluating students for special education programs varied across the District with no specific timeframe, leading to confusion among faculty.²¹¹ Ultimately, OCR found that the District consistently found African American students eligible for special education programs due to behavior issues; these students were also in the special education program for longer periods of the day than their white classmates.²¹²

Because of this, the District entered into a settlement agreement with OCR agreeing to have an expert evaluate the special needs academic program along with instructions and training for teachers to recognize the overrepresentation of African American students in special needs programs in order to ensure that students are not inappropriately referred for the program.²¹³ Additionally, the District agreed to evaluate records on students

²⁰⁷ U.S. Dep't of Educ., Off. for C.R., Opinion Letter to Dr. Stephen F. Murley, Superintendent of Iowa City Cmty. Sch. Dist., on OCR Case #05-10-5004 1 (Sept. 20, 2013).

²⁰⁸ *Id.* at 4.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* at 5.

²¹² *Id.* at 7.

²¹³ U.S. DEP'T OF EDUC., OFF. FOR C.R., SETTLEMENT AGREEMENT: CASE #5-10-5004 1–2, 4–5 (2013).

and their eligibility for respective IEPs, along with maintaining data on these programs.²¹⁴

If OCR can analyze disparate impact by a program's numbers, then they should also be able to evaluate programs themselves and the effect schooling programs have on students—especially students of color. There can be a significant impact of OCR requiring DEI training for students and staff compared to requiring schools to teach alternative histories rooted in the tenets of CRT. Schools, for example, may decide to operate DEI programs by taking a color-blind approach. Failing to acknowledge present biases and the effects of structural discrimination undercut the conscious effort to prevent discrimination. That is, how can one prevent discrimination if they refuse to acknowledge that it exists in society? Compare this to a program that is required to discuss race and how alternative histories present structural biases: this type of program enlightens attendees of why certain behaviors are discriminatory and will likely produce a conscious effort in recognizing discrimination and preventing it. Rather than denying the existence and prevalence of continued racial discrimination, regulating the content being taught in programs would address the issue of racism on its face. Through attacking the root of the issue, OCR would have the ability to at least attempt to prevent future discrimination toward students of color.

2. Lewis Community School District Complaint (2017)

OCR has also regulated training for administration pertaining to discrimination—particularly requiring that certain themes be addressed. If OCR can regulate the content of anti-discrimination training, specifically requiring diversity training and mentions of race, then they should be able to regulate the content being taught to students as well. Ensuring that the tenets of CRT are taught in classrooms is similar to requiring diversity training for staff: both are rooted in teaching complex histories and ways to acknowledge unconscious bias. Because the educational institution is unlikely to implement this kind of curriculum on their own volition, the OCR should have the ability to impose these regulations to directly advocate for anti-racist and non-hostile school environments. The goal is to make the system easier for those in power who will be receiving these complaints. To attack the root of the problem would be to educate children on systemic racism and provide an educational program uplifting other cultures rather than the dominant Western narrative. This, however, is not directly beneficial to those in power within the education system.

Solely regulating diversity training for staff and faculty did not seem to mitigate the effects of racist behavior by students. Four years after the 2013 Iowa City Complaint, a parent filed a complaint on behalf of their child in Lewis Central Community School District—alleging that the District

²¹⁴ *Id.* at 5–8.

subjected the student to a racially hostile learning environment.²¹⁵ Despite being aware of the harassment, the District failed to adequately resolve the issue.²¹⁶ Student A—an African American student—told Students B and C they did not want their face written on.²¹⁷ Despite crying out “no!” Students B and C drew on Student A.²¹⁸ The bus driver heard, but they did not attempt to stop Students B and C or provide aid to Student A.²¹⁹ Following the incident, Student A was repeatedly teased and threatened because of the report their parents filed in response to the harassment.²²⁰ After speaking with school officials, students, and parents, the OCR found that Student A was subject to race-based discrimination and the District did not take adequate steps to resolve this issue.²²¹

After the investigation, the District signed a resolution agreement with the OCR agreeing to implement four main solutions to prevent race based discrimination.²²² First, the District will provide training to administration and staff with a focus on prohibiting bias based on race.²²³ Second, those in the District in charge of investigating the complaint must receive training on how to effectively recognize potential racial harassment.²²⁴ Third, the District will provide preventative training that promotes respect and attempts to eliminate hostile environments.²²⁵ Fourth, the District will provide all students in this incident access to counseling and social work.²²⁶

Requiring staff participation in programs that highlight critical race theory driven issues is similar to requiring students to learn multiple perspectives, the faults of the U.S. system, and the lack of accountability for the aftermath and continuation of slavery and racism. For example,

²¹⁵ U.S. Dep’t of Educ., Off. for C.R., Opinion Letter to Superintendent of Lewis Central Cmty. Sch. Dist. on OCR Case #05-17-1386 1 (Dec. 19, 2017).

²¹⁶ *Id.*

²¹⁷ *Id.* at 3.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* at 5.

²²¹ U.S. Dep’t of Educ., Off. for C.R., *supra* note 215, at 6.

²²² See generally U.S. DEP’T OF EDUC., OFF. FOR C.R., RESOLUTION AGREEMENT: LEWIS CENTRAL COMMUNITY SCHOOL DISTRICT OCR CASE NO. 05-17-1386 (2017) (discussing the training of district personnel and students, and student-focused remedies the District agreed to implement).

²²³ *Id.* at 1–2.

²²⁴ *Id.* at 2.

²²⁵ *Id.* at 2–3.

²²⁶ *Id.* at 3.

explaining to administrators the disproportionate rate of Black students being disciplined or labeled as “aggressive” in schools supports the argument that racism is normal and embedded in society and the interest convergence theory.²²⁷ The subconscious categorization of Black students into these negative categories illustrates how embedded racism is in schools. When white students behave in identical ways and are not identified as “aggressive” at the same rates as Black students, it suggests that race is a motivating factor in these categorizations. Only teaching these concepts to administrators or teachers supports the interest convergence theory. That is, teaching staff these concepts benefit the institution by “checking a box” and limiting complaints made against students perpetuating racist ideals.

3. Ottumwa Community School District Complaint (2022)

A few years later, OCR issued a response letter regulating a program for students in response to racial harassment. The letter did not regulate the content of the program, but it required the school to issue a program to the students. If OCR can require a program in response to racial harassment, they should also be allowed to require schools to teach alternatives histories rooted in CRT tenets. They can do so without specifying how exactly it would be taught, and this would be very closely aligned to a response they issued in 2022.

In 2022, the Ottumwa Community School District failed to adequately respond to complaints of race-based harassment during the 2020–21 school year.²²⁸ Specifically, the OCR determined that the “student was subjected to harassment that created a hostile environment based on his race and that the District failed to take reasonable responsive action to eliminate the hostile environment and prevent its recurrence, as required by Title VI.”²²⁹

The harassment toward the student began in 2020, when the parent of Student A (complainant) sent an email to Student A’s teacher expressing concern over classmates raising their fists to mock Black power.²³⁰ Along with this incident, Student A was subjected to lots of “N-word usage, [and] Black Lives Teasing.”²³¹ The Principal at the time used a restorative script following the first few incidents; however, the usage of racially derogatory language continued.²³² After George Floyd was murdered in May 2020, Student A’s classmates knelt on bottles with dark liquid and began calling

²²⁷ Bell, Jr., *supra* note 20, at 75.

²²⁸ U.S. Dep’t of Educ., Off. for C.R., Opinion Letter to Superintendent Mike McGrory, Superintendent of Ottumwa Cmty. Sch. Dist., on OCR Case #05-21-1162 1 (Dec. 5, 2022).

²²⁹ *Id.*

²³⁰ *Id.* at 4.

²³¹ *Id.*

²³² *Id.*

Student A “cotton picker.”²³³ The students harassing Student A repeatedly referred to themselves as a part of the “Kool Kids Klub” abbreviating it to KKK.²³⁴ Following this incident, Complainant submitted a harassment intake form to request a trauma-informed therapist for Student A.²³⁵ Following the report, the Principal concluded that only some instances constituted harassment due to the timing being spaced out in a way suggesting a lack of “repeated behavior.”²³⁶ Importantly, no formal training was provided to prevent racial harassment.²³⁷

The lack of a holistic approach to combat the racial harassment along with the absence of formal training to combat racially motivated bullying guided OCR into entering a resolution agreement.²³⁸ When reviewing the complaint, the OCR provided the following legal test to prove racial discrimination in violation of Title VI: (1) a hostile environment based on race existed; (2) the institution had actual or constructive notice of a race-based hostile environment; and (3) the institution failed to respond adequately to the hostility.²³⁹ Here, a hostile environment based on race existed, proven by the harassment being rooted in racial slurs. The school also had actual notice of the harassment being taken place, as the student’s mother had contacted the school multiple times regarding the attacks toward her child. The institution failed to adequately respond because the discrimination continued from 2020 to when the final complaint was filed. The principal also refused to acknowledge the instances as racial harassment after it was reported.

The resolution agreement proposed by the OCR had a plethora of components—many of which pose similarities to requiring CRT to be taught in classrooms. First, the District had to reimburse the complainant for outside measures.²⁴⁰ Second, the District will make a public statement regarding anti-harassment within its schools.²⁴¹ Third, the District will update their policies concerning: nondiscrimination, reporting complaints and procedures (including the definition of harassment and retaliation conduct),

²³³ *Id.* at 6.

²³⁴ U.S. Dep’t of Educ., Off. for C.R., *supra* note 228, at 6.

²³⁵ *Id.*

²³⁶ *Id.* at 7–10.

²³⁷ *Id.* at 12.

²³⁸ *Id.*

²³⁹ *Id.* at 2.

²⁴⁰ U.S. DEP’T OF EDUC., OFF. FOR C.R., RESOLUTION AGREEMENT: OTTUMWA COMMUNITY SCHOOL DISTRICT OCR CASE NO. 05-21-1162 1 (2022).

²⁴¹ *Id.* at 2.

and commitment to prevent reoccurrence of racial harassment.²⁴² The District will also be required to maintain any data regarding conduct that could be considered racial discrimination.²⁴³ A notice will be sent to the parents and families pertaining to these updated policies.²⁴⁴ Fourth, the District will provide training to employees on these updated policies along with providing an annual training on investigation procedures aligned with these revised policies.²⁴⁵ After this training, the District will survey faculty regarding the effectiveness of the training.²⁴⁶ There will also be a climate survey sent out along with the creation of a group of advocates who will voice opinions to the District regarding racial harassment in schools.²⁴⁷ Pertaining to the students, there will be a creation of a program for students addressing racial harassment.²⁴⁸ The District will be audited to ensure compliance to the resolution agreement.²⁴⁹

The program addressing racial harassment shares similar tenets to what would be included in a CRT course or analysis. For example, explaining why racially derogatory terms constitute racial harassment must be explained by looking toward the historical aspect of racism and how using such language exemplifies that such racism has lasted through history. Likewise, addressing the racial hostility and cruelty of reenacting George Floyd's murder in front of a Black student connects to the argument among CRT scholars that racism is systemic and exists beyond an individualized level. That is, a singular police officer may not be "bad," but the structure of policing throughout U.S. history is rooted in policing Black people, particularly dating back to before the abolition of slavery, ensuring that they remain enslaved.²⁵⁰ If the OCR can regulate and enforce a program that addresses such issues, they should also be allowed to regulate incorporating anti-racist content into curriculum. It seems more logical to address racism and harassment throughout school curriculum rather than solely as a result of racial harassment. Addressing structural racism could prevent subsequent racial harassment, providing the OCR a legitimate reason to regulate school curriculum.

²⁴² *Id.* at 3–5.

²⁴³ *Id.* at 10–11.

²⁴⁴ *Id.* at 9.

²⁴⁵ *Id.* at 5–7.

²⁴⁶ U.S. DEP'T OF EDUC., OFF. FOR C.R., *supra* note 240, at 7.

²⁴⁷ *Id.* at 9–10.

²⁴⁸ *Id.* at 7–8.

²⁴⁹ *Id.* at 8–9.

²⁵⁰ See Leslie Alexander & Michelle Alexander, *Fear*, in NIKOLE HANNAH-JONES, THE N.Y. TIMES MAG., THE 1619 PROJECT: A NEW ORIGIN STORY 97, 101–02 (Caitlin Roper et al. eds., 1st ed. 2021).

C. Incentivizing States through Federal Funding

Before revoking federal funding from schools that ban CRT and similar curricular programs, incentivizing states such as Iowa to alter curricula to maintain federal funding under Title IV *along with* receiving an additional grant for maintaining these programs may provide enough economic incentive to advocate for minority students. Providing grants to schools encouraging the development of CRT teaching and similar programs in their curriculum will encourage schools to either reform their curriculum to embrace diversity or risk losing federal resources. It is essential that such financial incentives are not based on student performance, as incentives based on performance will more likely go to well-funded schools with pre-existing resources that allow for success, as opposed to schools that are underfunded and need this funding the most. Incentives are not a complete reform to the education system—rather, incentivizing schools to encourage CRT-based curricula provide students access to tools that create a space to discuss solving systemic racism. That is, incentives themselves are not a means in themselves to close the racial achievement gap.²⁵¹ Second, this funding must be allocated to schools from the federal government.²⁵² Title VI is federal legislation, and, given the legislative history in the state of Iowa, it would be nearly impossible to implement a state-based incentive due to leaders such as Kim Reynolds.²⁵³

Historically, schools have been motivated based on economic incentives. The issue is not whether to fund schools, rather it is how to allocate the money.²⁵⁴ Prior legislation has focused on incentivizing schools with money so long as their students perform at a particular threshold.²⁵⁵ Famously, the No Child Left Behind Act (NCLBA), was passed by former-President George W. Bush in January 2002.²⁵⁶ The NCLBA aimed to improve performances of certain groups of students—specifically poor and minority

²⁵¹ BRADLEY M. ALLEN & ROLAND G. FRYER JR., *THE HAMILTON PROJECT, THE POWER AND PITFALLS OF EDUCATION INCENTIVES* 21 (2011).

²⁵² *Id.*

²⁵³ Sostaric, *supra* note 1.

²⁵⁴ See Eric A. Hanushek, *Outcomes, Costs, and Incentives in Schools*, in *IMPROVING AMERICA'S SCHOOLS: THE ROLE OF INCENTIVES* 29, 31 (Eric A. Hanushek & Dale W. Jorgenson eds., Nat'l Acad. Press 1996).

²⁵⁵ Elaine McArdle, *Right on the Money*, HARV. ED. MAG. (Jan. 22, 2010), <https://www.gse.harvard.edu/ideas/ed-magazine/10/01/right-money> [<https://perma.cc/YJ7P-8H7P>].

²⁵⁶ Alyson Klein, *No Child Left Behind: An Overview*, EDUCATIONWEEK (Apr. 10, 2015), <https://www.edweek.org/policy-politics/no-child-left-behind-an-overview/2015/04> (on file with author).

students.²⁵⁷ States were to set a “proficiency level” for their students.²⁵⁸ States had until the 2013–14 school year to reach those levels; however, by 2010, a plethora of schools were far from reaching their set proficiency goals, as 38% of schools were not making “adequate yearly progress.”²⁵⁹ Despite the failure of the NCLBA, many schools opted into the program due to the inherent risk of losing federal funding.²⁶⁰

Results of the NCLBA did not close the racial achievement gaps, even in wealthier urban schools.²⁶¹ For example, at Riverside High—a school with strong resources—researchers still see a racial achievement gap along with “patterns of racialized interaction that leave [B]lack and Latino students at a disadvantage.”²⁶² The perpetuated societal norms surrounding race have led students of color at the school to feel less “accepted and valued citizens of the institution” compared to their white counterparts.²⁶³ Comparatively, the Netherlands, which is notorious for their welfare programs, is often attributed to a “lightheartedness” not present in American schools.²⁶⁴ While the racial demographic is even more white than the U.S., student attendance in Amsterdam proves to be higher than in New York school districts.²⁶⁵ Additionally, students in Amsterdam were less likely to change schools and were less likely to be homeless.²⁶⁶

The focus of government funds must shift to providing a quality education for students—especially those students living in lower-income neighborhoods. Requiring schools to meet specific standards may help mitigate this issue. These standards should not be solely based on performance, however, because it puts students who are not native-English speakers or accustomed to Western society at a particular disadvantage. That is, by making funding performance based, it neglects the fact that many students from lower-income neighborhoods are students of color who do not have access to resources that wealthy school districts have. This presents a circular argument: how can students be expected to perform well in order to receive money if they do not have the initial funding that allows for stellar performance?

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ Darnell Leatherwood & Charles Payne, *Putting No Child Left Behind Behind Us: Rethinking Education and Inequality*, 90 SOC. SERV. REV. 562, 565 (2016).

²⁶² *Id.*

²⁶³ *Id.* at 565–66.

²⁶⁴ *Id.* at 567.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

IV. CONCLUSION

As of 2024, thirty states have proposed updated restrictions on what schools can teach about America's complicated history.²⁶⁷ These changes have denied students of color a right to learn their own history. The importance of knowing one's history is well connected with what Peggy McIntosh describes as the "Invisible Knapsack"²⁶⁸—an analogy that highlights the subconscious privileges that white people have that grant them certain advantages in society. Ask yourself whether the following questions are true:

When I am told about our national heritage or about "civilization," I am shown that people of my color made it what it is. . . . I can be sure that my children will be given curricular materials that testify to the existence of their race. . . . I can remain oblivious of the language and customs of persons of color who constitute the world's majority without feeling in my culture any penalty for such oblivion.²⁶⁹

For people of color, the answer is often a resounding "no." All of these questions illustrate a sense of comfort in moving through the world with a sense of self—something that is subconsciously taught to children outside of schools. That is, students of color are denied this sense of self by an institution that has been defined by society as providing a place for children to learn about themselves and the world around them.

What does this mean for Iowans? In a majority-white state, students of color are automatically made to feel "othered." That is where the danger of legislation such as HF-802, banning the discussion of history that sheds light on structural racism, comes into play. Banning these conversations reinforces an ideology that people of color are not a part of the country's history in a significant enough way for their stories to be told. How can a student envision themselves in a world where they are not perceived by their classmates or teachers? This goes against the mission of the Department of Education Office of Civil Rights: "[T]o ensure equal access to education and to promote educational excellence."²⁷⁰

²⁶⁷ Russell Contreras & Sommer Brugal, *Educators Wrestle with New Limits on Teaching Black History*, AXIOS (Feb. 1, 2024), <https://www.axios.com/2024/02/01/teachers-black-history-month-crt-backlash> (on file with author).

²⁶⁸ PEGGY MCINTOSH, *THE SEED PROJECT, WHITE PRIVILEGE: UNPACKING THE INVISIBLE KNAPSACK* 1 (1989).

²⁶⁹ *Id.* at 2.

²⁷⁰ *Office for Civil Rights (OCR)*, U.S. DEPT OF EDUC. (Oct. 21, 2024), <https://www.ed.gov/about/ed-offices/ocr> [<https://perma.cc/5GP6-NC6N>].

This Note has argued that the Department of Education has the duty to provide not only access to equal, equitable, and diversity-based education to all students, but to also ensure that this access allows students to excel. This must include requiring a school's curriculum to teach multiple histories, including and uplifting those of marginalized communities. Title VI funding provides an economic incentive for schools to comply with these standards, and funding incentives should be utilized by the government. While the issue of race and equal education is a structural issue, this Note presents one way toward advancing society by uplifting the voices of people of color. Education has long been a tool to uplift groups of white people and provide them with economic and social advantages. Providing people of color these same opportunities is long overdue.