

ACLU Kansas
Hot Topics Series

Ensuring Educational Equity

The truth on Critical Race Theory,
separating fact from fiction and how
CRT (doesn't) relate to Kansas classrooms.

Ensuring Educational Equity

Over the last year, there has been a growing outcry over the teaching of “critical race theory” in K-12 and higher education. Much of this outcry confuses what is and isn’t being taught and strives to outlaw simply teaching our nation’s real and important legacy of slavery and racial inequality.

What is this debate truly about? And what are the constitutional implications of legislation targeting the teaching of our racial history in school?

This overview provides answers to these questions and more.

What is Critical Race Theory?

Critical Race Theory (“CRT”) is a legal academic framework that examines the ways in which racism is embedded in US laws and institutions, and how it affects our legal system today. CRT is not taught in K-12 schools in Kansas¹, although there may be some college-level or professional school courses that incorporate CRT principles. Unfortunately, CRT has become a catch-all phrase used by people hoping to ban schools from teaching or discussing issues such as racism and inequality; gender identity; and other topics deemed “divisive.”²

Who determines curriculum for K-12 schools?

The K-12 curriculum is set by local school boards based on input from district staff, parents, and other important stakeholders.³ The Kansas Department of Education and Kansas State Board of Education set curriculum standards, which provide school districts with guidance on what students should know and do at different grade levels. Decisions about what to teach and how to teach it are made at the local level, provided the general state-wide standards are met. Many districts have curriculum committees that help evaluate curricular choices or changes to current curricular content.

What is educational equity, and why is it important?

Educational equity means that students have access to the resources they need at the right moment of their education, regardless of race, sexual orientation, gender identity, disability, ethnicity, language, religion, or family background. Educational equity can include practices aimed at social-emotional learning, cultural awareness, and restorative justice.

Educational equity ensures that learning environments expose students to ideas and practices that promote success. All young people, especially students of color, deserve an equitable education and the right to learn and talk about issues that impact their lives, such as gender and race. Studies show that equitable education can increase cultural understanding and awareness that helps to build empathy, affirm diversity, and foster greater connection between all students.⁴

¹“Critical race theory is not a part of Kansas’ academic standards and as never been a part of Kansas’ academic standards”. Kansas State Board of Education response to critical race theory claims, Kan. St. Bd. Of Ed. (July 14, 2021), <https://www.ksde.org/Home/Quick-Links/News-Room/kansas-state-board-of-education-response-to-critical-race-theory-claims-1>. “[CRT] is not included in the Kansas History, Government, or Social Studies Standards, which provide guidance to districts.” Kan. Assoc. School Bds. (Jul. 21, 2021), <https://www.kasb.org/45132?articleID=79528>.

²See generally NAACP Legal Def. Fund, Critical Race Theory FAQ, <https://www.naacpldf.org/critical-race-theory-faq/>.

³Kan. Assoc. School Bds., Creating Curriculum Transparency, https://files.gabbart.com/2391/kasb_critical_race_theory_and_curriculum_guide.pdf.

⁴See generally, Nat. School Climate Cntr., School Climate and Equity (Feb. 2013), <https://schoolclimate.org/wp-content/uploads/2021/05/sc-brief-equity.pdf>.

Do K-12 schools teach about slavery and systemic racism, and if so, does this harm students?

Although CRT is not included in the K-12 curriculum, many school districts have curriculum that includes topics such as slavery and racism. This is an important part of social studies and history curriculum at all grade levels—slavery and racism are facts and should be taught as such.

Kansans and people across the country have begun to claim that the teaching of racism and how it impacts individuals and institutions causes harm to non-minority students, including to their mental health or academic achievement. Most, if not all, of these claims are anecdotal. The ACLU of Kansas is aware of no research showing that teaching about racism in K-12 schools negatively impacts students' mental health or academic performance. Although it may be difficult to come to terms with our nation's racial history, there is no evidence that learning about this history in schools directly contributes in a negative way to the vast majority of students' mental health.

Conversely, the teaching of issues such as systemic barriers to equality or discrimination against racial minorities is an important component of educating students about topics that affect their everyday lives. Banning conversations about race, gender, sexuality, or other “divisive subjects” may create or maintain educational environments that are unwelcoming or deeply uncomfortable for students of color and other minority groups. Contrary to the claims that teaching these topics harms academic performance, culturally relevant education can improve academic performance of all students.⁵ Kansas schools must be inclusive learning environments that offer exposure to diverse viewpoints and equitable education for all students.

What are the legal implications of censoring the teaching of racism or other “divisive subjects”?

The First Amendment protects the right to share ideas, including the right of listeners to receive information and knowledge. Legislation that attempts to censor classroom discussions of race/ racism and/or gender/sexuality run afoul of the First Amendment rights of

students to receive this information and share ideas.⁶ Curricular mandates that prohibit student groups from forming or meeting, based on the topics discussed in those student groups, may also violate the First Amendment.⁷ Laws that explicitly censor the discussion of the lived experience of racial minorities may also violate the Equal Protection Clause of the Fourteenth Amendment.⁸

At the higher education level, university professors have a significant right to control their academic speech. Legislation targeting the teaching of racism, inequality, or gender issues within universities run counter to principles of academic freedom and the First Amendment.⁹

These types of bills are also ripe for litigation. Recently, the ACLU of Oklahoma filed a lawsuit against the state regarding the legislature's recently-passed classroom censorship bill. The lawsuit challenges the censorship bill under the First and Fourteenth Amendment, and on the grounds that it is unconstitutionally vague and overbroad.¹⁰

⁵See, e.g. Christy M. Boyd, Does Culturally Relevant Teaching Work? An Examination from Student Perspectives, SAGE Open (July-Sept. 2016), <https://journals.sagepub.com/doi/pdf/10.1177/2158244016660744>; Brittany Aronson and Judson Laughter, The Theory and Practice of Culturally Relevant Education: A Synthesis of Research Across Content Areas, 86 Rev. Ed. Research, Vol. 1, pp. 163-206 (Mar. 2016), <https://journals.sagepub.com/doi/pdf/10.1177/2158244016660744>. ⁶Arce v. Douglas, 793 F.3d 968, 981 (9th Cir. 2015); Bd. Of Education, Island Trees Union Free Sch. Dist. no. 26 v. Pico, 457 U.S. 853, 866-87 (1982). ⁷Widmar v. Vincent, 454 U.S. 263 (1981); 20 U.S.C. § 4071 et seq. ⁸Pers. Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 279 (1979) (an act violates equal protection if the legislators acted “at least in part ‘because of,’ not merely ‘in spite of,’ [the] adverse effects upon an identifiable group.”) ⁹Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967); Sweezy v. New Hampshire, 354, U.S. 234, 250 (1957). ¹⁰ACLU, ACLU of Oklahoma, Lawyers Committee File Lawsuit Challenging Oklahoma Classroom Censorship Bill Banning Race and Gender Discourse, Oct. 19, 2021, <https://www.acluok.org/en/press-releases/aclu-aclu-oklahoma-lawyers-committee-file-lawsuit-challenging-oklahoma-classroom>.