

POLICY NOTE

Know your rights – A guide to Critical Race Theory, anti-discrimination law and civil rights protections for everyone

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Key Findings

1. In April 2021, the Washington state legislature passed four bills mandating staff in public schools and colleges, and students in public medical schools, receive training in Critical Race Theory.
2. Critical Race Theory teaches people their individuality is not based on their intrinsic worth as human persons, but as a member of a group based on perceived outward appearance.
3. Critical Race Theory teaches that if people are identified as white, Jewish or Asian, they are oppressors.
4. Critical Race Theory teaches that if people are seen as black, Hispanic or part of another group, they are oppressed.
5. Critical Race Theory violates our core civil rights protections.
6. This study provides references to the legal provisions which protect the rights of all individuals to a safe working and learning environment, free of unfair treatment and racial discrimination.
7. Civil rights laws exist to protect the fundamental right of all persons to be free of bias and unfair treatment based solely on their outward appearance, and to be protected in particular from government-sponsored discrimination.

Introduction

In April and early May 2021, Governor Inslee signed SB 5044, SB 5227, SB 5228, and SB 5194, four bills passed by the Legislature to require public education employees to receive training in “diversity, equity, inclusion and anti-racism” as a condition of employment.¹

Under the bills, the following officials and public employees are required to attend these training sessions: All employees of public schools; all elected members of public school boards; all teachers, faculty members and other employees of state universities, colleges and technical schools; medical students at Washington’s public medical schools. Attendance at training sessions is mandatory. Failure to attend and participate can lead to penalties, suspension, expulsion from school, or termination of employment.

These bills impose requirements of “equity,” “cultural competency,” “institutional racism,” and other elements of Critical Race Theory ideology. Critical Race Theory teaches people that their individuality is not based on their intrinsic worth as human persons, but as members of a group based on their perceived outward appearance. Critical Race Theory says that if people are identified as white, Jewish or Asian they are oppressors. If they are perceived as black, Hispanic or part of another group, they are oppressed.

A floor amendment was offered to clarify that the bills do not teach that “...any one race or sex is inherently superior to any other” or “that any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of their race or sex” was voted down.²

1 SB 5044, “Concerning professional learning, equity, cultural competency, and dismantling institutional racism in the public school system,” signed May 5, 2021, at <https://app.leg.wa.gov/billsummary?BillNumber=5044&Year=2021&Initiative=false>.

SB 5227, “Requiring diversity, equity, inclusion, and antiracism training and assessments at institutions of higher education,” signed May 12, 2021, at <https://app.leg.wa.gov/billsummary?BillNumber=5227&Initiative=false&Year=2021>.

SB 5228, “Addressing disproportionate health outcomes by building a foundation of equity in medical training,” signed April 16, 2021, at <https://app.leg.wa.gov/billsummary?BillNumber=5228&Initiative=false&Year=2021>.

SB 5194, “Providing for equity and access in the community and technical colleges,” signed May 12, 2021, at <https://app.leg.wa.gov/billsummary?BillNumber=5194&Initiative=false&Year=2021>.

2 SB 5044, Amendment Number 568, at <http://lawfilesexternal.leg.wa.gov/biennium/2021-22/Pdf/Amendments/House/5044-S.E%20AMH%20WALJ%20WARG%20530.pdf>.

Implications

Critical Race Theory requires that education and administrative decisions be seen through a racial “equity” lens that favors group rights over individual rights. A major proponent calls for discriminating against people perceived as white as necessary to make up for past discrimination.³

These four “equity training” bills have clear implications regarding a hostile atmosphere at public institutions of learning and its harmful effects on the working conditions of public workers and the daily learning environment for students.

The concern is that these bills violate the civil rights provisions enacted at the international, national and state level for the protection of individuals against unlawful actions imposed by government programs and policies.

For these reasons, this study provides references to the legal provisions that are designed to protect the rights of all individuals to a safe working and learning environment free of unfair treatment, racial discrimination, or fear of official consequences that may result in loss of employment, professional sanctions, or lost learning opportunities.

Civil rights protections to which everyone is entitled

14th Amendment to the U.S. Constitution

“No state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...”

Title VI of the Civil Rights Act of 1964

“No 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 subjected to discrimination under any program or activity receiving Federal financial assistance.”

Title VII of the Civil Rights Act of 1964

“It shall be an unlawful employment practice... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, or national origin.”

Elementary and Secondary Education Act of 1965 (federal funding of state and local education)

“Nothing in this Act shall be construed to permit discrimination on the basis of race, color, religion, sex, national origin, or disability in any program funded under this Act.”

³ “How to be an anti-racist,” by Ibram X. Kendi, One World, Random House publisher, 2019, at <https://www.penguin.co.uk/articles/2020/june/ibram-x-kendi-definition-of-antiracist.html>. Excerpt: “The only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination.”

Protection of pupil rights – 20 United States Code, Section 1232h

“No student shall be required to reveal information concerning [in part]: Political affiliations or beliefs; sex behavior or attitudes; mental or psychological problems; anti-social, self-incriminating or demeaning behaviors; critical appraisals of parents or other close family relationships; religious practices, affiliations, or beliefs...”

Civil Rights Restoration Act of 1987, P.L. 100-259

Provides that federal anti-discrimination laws fully apply to an entire organization, such as a public school, technical school, state university or college, or state medical school, if any part of the organization receives federal funds.

Washington state constitution – Education.

“It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.”

Freedom of speech. “...every person may freely speak, write and publish on all subjects...”

Washington state law

RCW 49.60.030 – Freedom from discrimination. “The right to be free from discrimination because of race, creed, color, national origin, citizenship or immigration status, sex...is recognized as and declared to be a civil right.”

RCW 49.60.030(2) – “Any person...injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys’ fees or any other appropriate remedy...”

RCW 49.60.400 – The Washington Civil Rights Act – “The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”

RCW 49.60.400 – The Washington Civil Rights Act – “The remedies available for violations of this section shall be the same, regardless of the injured party’s race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.”

United Nations Universal Declaration of Human Rights

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”



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“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

Conclusion

Civil rights laws exist to protect the fundamental right of all persons to be free of bias and unfair treatment based solely on their outward appearance, and to be protected in particular from government-sponsored discrimination.

Yet the lawmakers who voted for passage of SB 5044, SB 5227, SB 5228, and SB 5194 did not support a public policy based on the inherent dignity of each individual, or create a work and learning environment free of discrimination. On the contrary, Critical Race Theory is designed to foster an atmosphere of suspicion, intimidation and discord. As proponents themselves put it:

“Critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.”⁴

The experience of other states shows that mandatory critical race training sessions do not reduce tensions or calm people's fear of threats, judgment or workplace bullying. Instead, the sessions impose a harmful ideology on public workers and students that clearly violate core civil rights protections against hate, inequality and racial discrimination.

For these reasons it is important for public employees, students and the general public to be aware of their legal protections and of their fundamental right to fair treatment, so that regardless of background or personal appearance, everyone can have equal access to work and learning opportunities without fear of state-mandated discrimination.

⁴ “Critical Race Theory, An Introduction,” by Richard Delgado and Jean Stefancic, New York University Press 2017, 3rd edition, page 3.