



May 28, 2021

VIA EMAIL – EDFOIAManager@ed.gov

U.S. Department of Education
Office of the Executive Secretariat
FOIA Service Center
400 Maryland Avenue, SW, LBJ 7W106A
Washington, DC 20202-4536
ATTN: FOIA Public Liaison

Freedom of Information Act Request: Education Department’s Records Regarding “Antiracist Therapy”

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

I. Background

Critical race theory as applied to education holds that in the United States the education system is inherently racist and exists to create and maintain social, economic, and political inequalities between whites and nonwhites, especially African Americans. The theory’s proponents often seek to “problematize whiteness” or “deconstruct whiteness.” Proponents of CRT in education have argued that a focus on finding the right answer to a math problem is racist,¹ and that students must be taught to focus on race and power structures that allegedly benefit white people at the expense of all others.²

¹ John Hinderaker, *Why Math is Racist*, CLARION NEWS (February 13, 2021) <https://clarion.causeaction.com/2021/02/13/why-math-is-racist/>.

² Brian Duignan, *Critical Race Theory*, ENCYCLOPEDIA BRITANNICA (April 2, 2021) <https://www.britannica.com/topic/critical-race-theory>.

On September 22, 2020, President Donald Trump signed Executive Order 13950,³ banning the use of CRT by federal contractors, federal agencies, and federal grant recipients. States have also begun pushing back against this ideology in their schools, with Idaho, Oklahoma, and Indiana banning the ideology from being taught in public schools,⁴ and attorneys general from Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Texas, Utah, and West Virginia signing a letter in stating their opposition to teaching the idea in public schools.⁵

When President Biden took office on Jan 20, 2021, however, he immediately signed Executive Order 13985, throwing the full weight of the Federal government behind this radical idea and requiring federal contractors, grant recipients, and agencies to teach and implement CRT.⁶ Since then the Biden administration has signaled its support for CRT, specifically in education. The American Rescue Plan Act (ARPA) Pub. L. No. 117-2 requires that twenty percent of Education funds be used for “evidence-based” programs that “respond to students’ academic, social and emotional needs.” The Biden administration’s guidance documents state that “students’ social and emotional needs” include the disruption of “whiteness” and the propagation of critical race theory.⁷ These documents also suggest that districts should “require a commitment to learning from students, families and educators who disrupt Whiteness and other forms of oppression.” It further directs districts to provide “free, antiracist therapy for White educators and support staff,” and “free, radical self/collective care and therapy for educators and support staff of color.”

To understand, and share with the public, how and why the Biden-Harris Administration has chosen to pursue CRT despite its controversial nature, AFL requests access to the following records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552:

II. Requested Records

The timeframe for each request is January 20, 2021, to the date the requested records are processed.

³ 85 FR 60683.

⁴ Emily Crane, *The War on Wokeness in Schools*, DAILY MAIL (May 13, 2021) www.dailymail.co.uk/news/article-9575039/Three-GOP-states-banned-critical-race-theory.html

⁵Holly Hays, *These 20 States Oppose Critical Race Theory*, INDYSTAR (May 19, 2020) <https://www.indystar.com/story/news/politics/2021/05/19/indiana-ag-todd-rokita-critical-race-theory-schools-state-education/5171054001/>.

⁶ 86 FR 7009.

⁷ Max Eden, *Team Biden Wants White Teachers to Undergo Anti-racist Therapy*, NEW YORK POST (May 26, 2021) <https://nypost.com/2021/05/26/team-biden-wants-white-teachers-to-undergo-anti-racist-therapy/>.

- A. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the implementation of Executive Order 13985.
- B. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to antiracist therapy.
- C. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to remedying “past”, “previous”, “historical”, “institutional”, “systemic”, “legacy”, “structural”, or “longstanding” “discrimination”, “racism”, or “inequality”.
- D. All records, including but not limited to electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to “equity”, Executive Order 13985, or antiracist therapy from, to, or in the possession of any of the following custodians:
 - 1. Miguel Cardona
 - 2. Ian Rosenblum
 - 3. Donna Harris-Aikens
 - 4. Molly Petersen
 - 5. Suzanne Goldberg
 - 6. Rachel Thomas
 - 7. David Cantrell
 - 8. Mark Schneider
 - 9. Maureen A. McLaughlin
 - 10. Sandra Bruce
 - 11. Supreet Anand
 - 12. Cindy Marten
 - 13. Denise L. Carter
 - 14. Jason K. Gray
 - 15. Emma Leheny
 - 16. Julie Morgan
 - 17. Richard Cordray
 - 18. Michelle Asha Cooper
 - 19. Amy Loyd
- E. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to equity, antiracist therapy, or the implementation of Executive Order 13985 from, to, or in the possession of each of the following Department of Education components:
 - 1. Office of the Secretary and Deputy Secretary
 - 2. Office of Finance and Operations

3. Office of the Chief Information Officer
4. Office of Elementary and Secondary Education
5. Office of English Language Acquisition
6. Office of Special Education and Rehabilitative Services
7. Office for Civil Rights
8. Office of Planning, Evaluation, and Policy Development
9. Office of the General Counsel
10. Office of Legislative and Congressional Affairs
11. Office of Communications and Outreach
12. Center for Faith-Based and Neighborhood Partnerships
13. White House Initiative on American Indian and Alaska Native Education, White House Initiative on Educational Excellence for Hispanics
14. White House Initiative on Educational Excellence for African Americans
15. Institute of Education Sciences
16. Office of the Inspector General
17. Office of the Under Secretary
18. Office of Postsecondary Education
19. Office of Career, Technical, and Adult Education
20. Office of Federal Student Aid
21. Any person employed by or affiliated with the Office of the Secretary
22. Any person employed by or affiliated with the Office of the General Counsel

F. All correspondence between any person in the Executive Office of the President and any person in the Department of Education regarding, referring, or relating to equity, antiracist therapy, or the implementation of Executive Order 13985.

G. For the custodians identified in Requests D and E, all communications with any person affiliated with any of the following non-governmental groups: the American Civil Liberties Union (ACLU), Black Lives Matter (BLM), the National Association for the Advancement of Colored People (NAACP), the NAACP Legal Defense and Educational Fund, the Abolitionist Teaching Network, or the Movement for Black Lives (M4BL).

H. For all custodians identified in Request D, all communications with any email address ending in “.org”

I. For all custodians identified in Request D, records of any meetings with any group identified in Request G, to include calendar items, agendas, call summaries, readouts, handwritten notes, or otherwise, in the custodian’s

possession—whether or not the custodian was an invitee or an attendee of the meeting.

III. Redactions and Searches

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass 'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then Department of State must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, Department of Education should produce email attachments.

For requests D and E above, the search terms should include, but not be limited to, all the following:

1. Equity
2. Racist
3. Antiracist
4. Therapy
5. Privilege
6. Disproportionate
7. Underrepresent
8. Institutional
9. Systemic
10. Structural
11. Executive Order 13985
12. EO 13985
13. Whiteness
14. Abolitionist
15. Justice

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.

- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.64, AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your policies and practices will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest.

Second, waiver is proper as disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government." The public has a significant interest in understanding what the Department of Education is doing with regards to the education of our children. Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the federal government. This administration has repeatedly preached the values of tolerance, so if they are pushing a divisive ideology that makes children feel guilt on account of their race, that would be of significant public interest.

V. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis.

If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th Floor, Washington, D.C. 20005.

VI. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at info@aflegal.org. Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Gene P. Hamilton

Gene P. Hamilton

America First Legal Foundation