Critical Race Theory in Arkansas Schools: What School Boards Can Expect Next Academic Year

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Recently, state legislatures all over the country have proposed or passed state laws seeking to ban the teaching of Critical Race Theory (CRT) in public school classrooms, sparking legal challenges and public outcry on both sides of the issue. One recent count shows that 26 states have attempted banning CRT in some form.[1]

Generally, CRT is an academic concept that teaches that racism is a social construct embedded in society, rather than bias or prejudice of individuals or groups. As an academic idea, secondary schools largely have not taught CRT.[2] More recently, however, the term has become a catchall label for discussions about concepts like systemic racism, white privilege, and more general equity issues.

Earlier this year, Arkansas legislators filed a bill to ban teaching CRT in Arkansas public schools.[3] This legislation was tied to state funding, so the bill would have controlled curriculum in public K-12 and public higher education institutions in Arkansas. If enacted, the bill would have banned more than just CRT. It targeted teaching that promotes division based on race, gender, social class, political affiliation, and other characterizations. The broad nature of the bill sparked criticism over its consequences and possible unconstitutionality.[4] In light of this criticism, the bill died in committee and the Arkansas General Assembly did not pass a CRT bill in education. They did, however, succeed in passing a similar bill prohibiting the teaching of "divisive concepts," including CRT, in trainings to state employees, set to take effect next year.[5]

Arkansas legislators may raise the issue again, whether framed as an anti-CRT law or some other iteration of the same general idea. This is not the first attempt of Arkansas lawmakers to influence classroom curriculum.[6] But for now, an attempt at another anti-CRT law is not imminent given that the Arkansas General Assembly is in recess. However, as the anti-CRT interest remains in the press, the battle in Arkansas may move from the Capitol in Little Rock to local school boards, administrative offices, and classrooms. This blog post provides guidance on what school board members, administrators, and educators may face this coming school year in Arkansas.

Parent Input in the Classroom. Schools may anticipate increased parent questions and demands about classroom curriculum and an increase in freedom of information act requests regarding CRT. For example, one group in Nevada demanded that teachers wear mandatory body cameras to patrol for the teaching of CRT.[7] Elsewhere, activists have peppered schools with freedom of information act requests, demanding to see curriculum and all evidence of lessons teaching on issues of race. In Arkansas, at least one school has already been sued by a parent seeking under the Arkansas Freedom of Information Act all

records, curriculum, communications, etc. having to do with CRT in the district.[8] As the 2021-2022 school year approaches, these requests will likely become more numerous.

Contentious School Board Meetings. Elsewhere across the nation, recent weeks have seen contentious takeovers of school board meeting agendas, as well as protests, threats, and violence. Board meetings have been disrupted or shut down by parents.[9] These actions sometimes cross the line of criminality.[10] Arkansas schools need to plan and prepare for all of these contingencies. This involves balancing the constitutional free speech rights of parents and the public's interest in free and open meetings with the need to avoid violence. Schools could be forced to make difficult decisions and should do so while seeking to avoid legal consequences and resulting litigation.

Increased Competition in School Board Elections. Communities may see petitions for recall elections of sitting school board members and increased spending in school board elections funded by CRT opponents. In Arkansas, particularly in our many rural school districts, oftentimes school board elections are not contested races. That could suddenly change in light of this debate over CRT.

Increased Politicization of School Boards. Like it or not, CRT has become a political issue. School board elections in Arkansas are non-partisan races, though candidates speak freely about their position on any given issue. The debate over CRT has the potential to brand school board members and candidates as "R" or "D," despite the board's non-partisan nature. While Arkansas school board elections are not going to become expressly partisan, this issue has the potential effectively to make them so.

Legal Challenges. On both sides of the issue, legal challenges are likely. Schools that ban CRT open themselves up to lawsuits from CRT proponents, and schools that allow CRT open themselves up to lawsuits from the CRT opponents. The legal theories of those lawsuits vary, but the potential is there on both sides. An important legal defense could include that prior to taking action, a school provided due process and an opportunity to be heard. In other words, the process was fair, even though the outcome upset people. Navigating these difficult procedures laced with constitutional issues can be an incredibly delicate balance, especially when lawsuits lurk in the background at every turn. Schools would be wise to consult their lawyers when addressing CRT policies and related issues, as well as those diversity and equity issues that, while not expressly about CRT, may nonetheless touch this issue.

Although CRT is not new, teaching about it has been newly politicized. Although the Arkansas legislature failed to ban teaching CRT at a statewide level, that is not the end in this State. The race to control the teaching of CRT is quickly evolving, and Arkansas schools are likely to be on the front lines.

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[1] https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06

[2] https://www.edweek.org/leadership/what-is-critical-race-theory-and-why-is-it-under-attack/2021/05

[3] https://www.arkleg.state.ar.us/Bills/FTPDocument?path=%2FBills%2F2021R%2FPublic%2FHB1218.pdf

[4] https://www.arkansasonline.com/news/2021/jan/30/absurdity-on-way/

[5] https://www.arkleg.state.ar.us/Bills/FTPDocument?path=%2FBills%2F2021R%2FPublic%2FSB627.pdf

[6] https://www.arkleg.state.ar.us/Bills/Document?type=pdf&chamber=HB&source=Bills&bill=1834&ddBienniumSession=2017%2F2017R

[7] https://www.newsweek.com/nevada-family-alliance-wants-teachers-wear-body-cameras-keep-critical-race-theory-out-schools-1599233

[8] *Ila Campbell v. Fayetteville Public Sch. Dist.*, Case no. 72cv-21-1367 (Washington Cnty. Cir. Ct. June 25, 2021).

[9] https://www.nbcnews.com/news/us-news/wealthy-loudoun-county-virginia-parents-face-threats-battle-over-equity-n1269162

[10] https://thehill.com/homenews/559762-2-arrested-during-virginia-school-board-meeting-on-critical-race-theory