Crisis Response: Addressing P.L. 2021 Ch. 32 and Setting the Record Straight on Critical Race Theory

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Presented by LEGAL ONE and FEA Professional Learning
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Disclaimer

This presentation is intended as a summary of law only, and is not meant as legal advice. Please consult your attorney to obtain legal advice.
Key Topics

● Overview of Current Legal Requirements
● Review of Key Terms and Concepts
● Responding to Potential Scenarios
● Q & A
● Resources & Next Steps
P.L. 2021, c.32 - What the Statute Says

C.18A:35-4.36a Curriculum to include instruction on diversity and inclusion.

1. a. Beginning in the 2021-2022 school year, each school district shall incorporate instruction on diversity and inclusion in an appropriate place in the curriculum of students in grades kindergarten through 12 as part of the district’s implementation of the New Jersey Student Learning Standards.

b. The instruction shall:
   (1) highlight and promote diversity, including economic diversity, equity, inclusion, tolerance, and belonging in connection with gender and sexual orientation, race and ethnicity, disabilities, and religious tolerance;
   (2) examine the impact that unconscious bias and economic disparities have at both an individual level and on society as a whole; and
   (3) encourage safe, welcoming, and inclusive environments for all students regardless of race or ethnicity, sexual and gender identities, mental and physical disabilities, and religious beliefs.

c. The Commissioner of Education shall provide school districts with sample learning activities and resources designed to promote diversity and inclusion.

2. This act shall take effect immediately. Approved March 1, 2021
Related Curriculum Requirements

P.L. 2019, C.6 (1/31/19) - Requires inclusion of instructional materials on the political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people, in an appropriate place in the curriculum of middle school and high school students as part of the district’s implementation of the New Jersey Student Learning Standards.

Board Member Reaction to New Law - Hackensack School Board Trustee allegedly sent emails to the acting Superintendent indicating that she was “disgusted and appalled” by the January 31, 2019 law requiring public schools to teach LGBTQ History.

"I find it repugnant that someone's sexual preferences have anything to do with their contributions or achievements in society."

"Everywhere I turn, this alternate lifestyle narrative is being shoved (down) our children's throats. Where does it end???

Emails were obtained through Open Public Records Act request.

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Related Curriculum Requirements

- Parental opt out limited to health, family education or sex education - See N.J.S.A. 18A:35-4.7
Related Legal Requirements

- Comprehensive Equity Plan - addresses all aspects of school district operations
- NJ’s Anti-Bullying Bill of Rights
- NJ Law Against Discrimination
- NJ’s Strengthening Gifted Education Act
- Title VI of the Civil Rights Act
- CROWN Act
- NJ School Ethics Act
- Donaldson and Weingarten Rights
- NJ Tenure and Seniority Rights
- Indemnification for school employees as long as acting in good faith
- First Amendment - Pickering and Tinker
- NJDOE Guidance - Supporting Transgender Students
Foreseeable Legal Issues Related to Implementing Ch. 32

- Student attempts to discuss current events that may be sensitive, potentially related to race, ethnicity, religion, gender identity, sexual orientation
- Parental objections, attempt to opt out
- Teacher/staff objections to implementing curriculum on religious/moral grounds
- Ill-conceived teacher assignments that cause harm for students
- Insensitive student comments linked to protected characteristics
- Students sharing personal experiences and information regarding peers related to acts of discrimination
- Board member objections, attempts to block implementation of curriculum
First Amendment Rights

Students - Focus on whether speech results in substantial disruption to the school environment - **Tinker v. Des Moines**. No protection for hate speech or speech that is threatening, lewd or vulgar, or promotes activities that are illegal or violation of district policy.

Staff Speech Key Questions - **Pickering**

- Did the statement concern a matter of general public concern?
- Was the employee speaking as a private citizen or during the course of his duties?
- Was the statement likely to disrupt a close working relationship?
Case Law / Potential Legal Ramifications

- **Melnyk** - No First Amendment rights for teacher to alter required curriculum
- **Czapinski** - Security guard terminated for comments related to police officer shooting
- **O’Brien** - First grade teacher terminated based on comments regarding students
- **D.K. v. Readington** - Asian Student targeted, but not HIB - appropriate to consider impact on targeted student in determining if HIB occurred
- **Gina Priano-Keyser Tenure Charges** - “Can of Squirms” case, failure to monitor lesson plans
Legal Duty of Care

- Promote a school environment conducive to learning for ALL students
- Protect students from foreseeable harm
- Ensure staff are properly trained to understand and implement requirements
- Engage in progressive supervision as needed to ensure safety of students and other stakeholders and implement legal requirements and best practices
- Ensure that all key stakeholders have necessary information to respond to issues that may occur during implementation
- Ensure that the due process rights of all staff members are protected while carrying out their responsibilities
Inequities

“We can’t fix what we refuse to acknowledge”.

Dr. Anita Hill, Good Morning America, 9/27/21
CRITICAL RACE THEORY
is an academic concept and a way of understanding how American racism has shaped public policy and law.

BASIC TENETS OF CRT
- Recognizes that racism is a social construct
- Addresses biases and other forms of marginalization
- Critically examines law and policies

CRT DOES NOT ACCUSE ONE INDIVIDUAL OF BIAS OR PREJUDICE.
- CRT says that racism is part of everyday life, so people, white or nonwhite, make choices that can fuel racism.
- CRT analyzes disparities in law enforcement, health, wealth, housing and education.

CRT IS NOT THE SAME AS CULTURALLY RESPONSIVE PEDAGOGY.
- Culturally responsive pedagogy affirms students' ethnic and racial backgrounds through integration of academic rigor in content, curricula and representation.

CRT HAS BEEN:
- Politicized
- Targeted
- Labeled anti-American and divisive

Critical race theory does not promote propaganda, hatred of America, or a leftist ideology that threatens the American way of life.

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Review of Key Terms

- Institutional Racism/Discrimination
- Implicit Bias
- Explicit Bias
- Racism
- Diversity
- Equality
- Equity
- Justice
- Culturally Responsive Teaching
- Critical Race Theory
- Fear
Working Definitions

Implicit (Unconscious) Bias: An unconsciously held set of associations about a social group. It’s possible to unconsciously associate positive or negative traits to a person’s identity marker.

Explicit (Conscious) Bias: Individuals are aware of their prejudices / biases and attitudes towards certain groups of people.

Racism: A system of oppression that emerges from beliefs that one race is superior to another based on biological characteristics.

Institutionalized Racism: Racism perpetrated by social and political institutions such as schools, the courts, and the military. Also referred to as systemic racism.
Working Definitions

**Diversity**: The practice of including and recognizing people from a range of different social, ethnic, cultural backgrounds and of different genders, etc.

**Justice**: A concept on ethics and law that means that people behave in a way that is fair, equitable, and balanced for everyone.

**Fear**: Alerts us to the presence of danger or the threat of harm, whether that danger is physical or psychological. Fear is a human emotion.

**Culturally Responsive Teaching**: A pedagogy that recognizes the importance of including students’ cultural reference in all aspects of learning.

**Critical Race Theory**: An academic concept that is more than 40 years old. The core idea is that race is a social construct, and that racism is not merely the product of individual bias or prejudice, but also something embedded in legal systems and policies.
Equality

The assumption is that everyone benefits from the same supports. This is equal treatment.

Equity

Everyone gets the supports they need (this is the concept of “affirmative action”), thus producing equity.

Justice

All 3 can see the game without supports or accommodations because the cause(s) of the inequity was addressed. The systemic barrier has been removed.
Equality and Equity

- **Equality**: Each individual or group of people is given the same resources or opportunities.
  - Equality is about sameness. It focuses on making sure that everyone gets the same thing.

- **Equity**: Recognizes that each person has different circumstances and allocates the exact resources and opportunities needed to reach an equal outcome.
  - Equity is about fairness. It ensures that each person gets what the person needs.
Every child gets what he need in our schools-regardless of where they come from, what they look like, who their parents are, what their temperament is, or what they show up knowing or not knowing. Every child gets what he, she, or they need every day in order to have all the skills and tools to pursue whatever they want after leaving our schools, to live a fulfilling life.
Equity is about outcomes and experiences
For every child, every day.
Potential Scenarios and How to Respond

**Scenario 1**

Ms. Thomas, the high school AP History teacher, is reviewing a lesson related to the civil rights movement of the 1960’s. A student, Latonya, asks Ms. Thomas, “How do we still have so many problems with systemic racism even after the enactment of landmark civil rights legislation?”

Ms. Thomas responds by saying, “That’s a very good question. In fact, I would like the class to study this question and look at why discrimination is still prevalent today in many government institutions, including our educational system and our courts.” Students are provided with a list of suggested resources to assist in their research and given a week.

The next morning, Mr. Barker, the father of AP student Donald, comes to the school and confronts the AP History teacher, Ms. Thomas, as she is walking into the building, asking her why she is “teaching that BS critical race theory” and promises, “I will get you fired over this.” Mr. Barker then sees the principal and demands to know what the principal is going to do about Ms. Thomas.

What should the principal do?
Scenarios (cont’d)

Scenario 2

Two days later, Mr. Barker shows up at a school board meeting, along with 10 other parents. He claims to have a petition signed by more than 100 parents demanding that the district “cease and desist” teaching critical race theory and providing the option for parents to opt out of any assignment that they find “morally offensive.” The petition references the principal and the AP History teacher by name and demands that both be disciplined immediately. The petition notes that the principal's doctoral dissertation, written 5 years earlier and found online, includes a comment in support of “critically examining race” and the impact of systemic racism in the K-12 curriculum. Mr. Barker says this is proof that the principal supports “critical race theory.”

The principal is present in the audience. What should the principal do?
Scenario 3

Annually, New Jersey schools celebrate the “Week of Respect” during the first week of October. Educators plan activities in individual classes as well as schoolwide to build camaraderie and to celebrate the differences of all students with the goal of broadening understanding about others to minimize the disrespect that can arise from lack of exposure to others' unique differences and backgrounds. A group of parents at the elementary level refuse to allow their children to participate, saying that “culturally responsive teaching” is really just a way of indoctrinating students into “critical race theory.” In addition, they worry that this type of instruction will make their children feel badly or uncomfortable, which is unacceptable to them as parents who should be the ones responsible for teaching ethics at home.

What should the principal do?
Scenarios (cont’d)

Scenario 4

Donald Barker, Mr. Barker’s son, and several of his friends, whose parents were also at the Board meeting, come to school wearing t-shirts reading, “Stop the Hate. Reject Critical Race Theory,” “Students against woke school boards and teachers” (with CRT crossed out in the graphic), and “MLK Would Be Disappointed to See Critical Race Theory Undoing His Legacy.” In several classes, there is no response at all, but, in one class, several students make comments about the shirts, and one of them asks to have her seat moved away from Donald. The teacher is able to redirect the students back to the lesson after several minutes of heated commentary between students in the class where terms like white privilege and antiracism, as well as some profanity, are being thrown back and forth between classmates. Immediately after class, the teacher goes to the principal to report the incident.

What should the principal do?
Scenario Takeaways/Best Practices

- Appropriate for teachers to express factual assertions, such as the existence of institutional racism - which is specifically recognized in state law - P.L. 2021, c.32
- Critical for BOE members to understand Code of Ethics, not engage in negative discussion of staff at board meetings
- Appropriate for school leaders to engage in academic research on sensitive topics such as critical race theory
- There is no option to opt out of c.32 curriculum requirement and it is appropriate to guide students through age appropriate conversations that may at times be difficult, even uncomfortable
- Students have First Amendment rights to engage in political speech even if others disagree, as long as not hate speech, lewd or vulgar, does not cause substantial disruption; “heckler’s veto” is frowned upon by courts
- Importance of comprehensive and ongoing professional learning for all stakeholders
- Critical for school administrators to review lesson plans to ensure they are aligned with curriculum and incorporate properly vetted, age-appropriate resources
Scenario Takeaways/Best Practices

- High-quality curriculum requires diverse content reflective of the population and the world
- Open lines of communication and transparency essential at all levels (Students, parents, teachers, school/district leaders, BOE, community)
- Courage (dare to be brave) is needed at all levels (Board, superintendent, central office, building administrators, supervisors and curriculum teams, student representatives)
- Given complexity of addressing issues of race, critical to rely on and partner with experts in the field
- Need to be proactive in seeking out and retaining staff representative of the student population
- Common language and common messaging is vital so that everyone says/hears the same thing, no matter the source
Talking Points

When confronted on an issue without having all information - “Thank you for bringing this issue to my attention. I want to make sure I have all the information necessary to respond to your concern. I will talk to those involved and gather more information and get back to you as soon as possible.”

When accused of promoting a political agenda or ideology - “Please know that I am committed to making sure we implement the state instructional requirements without any political ideology. I am happy to review any specific questions you may have with our curriculum or how it is being implemented.”

When challenged about the existence of institutional racism - “Our curriculum is consistent with state law and includes well vetted and factual information that acknowledges the existence of institutional racism. If you have questions about any specific aspects of this curriculum, I am happy to review those and get back to you.”
Talking Points

When parents indicate it is their job to teach child about moral and ethical issues - “New Jersey law recognizes certain universal principles that should be taught in all schools, including ensuring a safe and supportive learning environment for all children, celebrating our diversity and promoting a deeper understanding of the root causes and impact of implicit bias and institutional discrimination.”

When parents express concern that children are being taught to be ashamed of, or feel guilty about their race - “We are committed to ensuring the social and emotional well being of all students and nothing in our curriculum is intended to shame students or make them feel guilty. If you believe that there is something specific in the curriculum that does this, I am happy to review that and get back to you.”
Resources

- Resources for Incorporating Instruction on Diversity and Inclusion in K-12 Curricula
- http://www.racialequitytools.org
- The Common Ground on Race and Education that’s Hiding in Plain Sight
- The ABCs of Equity
- Gen Z on Race and Teaching
- AFT Tweet regarding #CriticalRaceTheory
HOW CAN FEA SUPPORT YOUR DISTRICT’S DIVERSITY & EQUITY GOALS?
Equity in Action Leadership Academy

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**Cohort 2**
Session 1: Dec. 13, 2021
Session 2: Jan. 18, 2022
Session 3: Feb. 8, 2022
Session 4: Mar. 30, 2022

**Cohort 3**
Session 1: Jan. 28, 2022
Session 2: Feb. 13, 2022
Session 3: Mar. 14, 2022
Session 4: May 20, 2022

*All sessions are virtual and run from 9:00 a.m. to 12:00 p.m.*
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Coaching
EXAMPLES OF FEA WORKSHOPS TO SUPPORT YOUR DIVERSITY & EQUITY GOALS

10/5/21  Creative Strategies for Addressing Racial Inequities in the Classroom

10/7/21  NJ Leadership Academy - Courage and Conviction: In Pursuit of Equitable Learning Environments for All (3-Day Series) **Day 1: 11/2, 12/8, 1/10, 1/12, 2/10, 3/8, 3/15**

10/25/21 Confronting Implicit Bias

11/3/21  Enabling the Success of Students from Poverty

11/18/21 Culturally Responsive Arts Education: Fostering Student Identity, Belonging, and Agency Through the Arts (4-Day Series) **1/13, 3/17, 5/19**

1/7/22  Culturally Responsive Strategies for Hiring and Retaining Diversity Candidates

1/24/22  ERACISM: Confronting & Eradicating Racist Imagery
LEGAL ONE Professional Learning on Equity

- New Jersey’s Anti-Bullying Bill of Rights
- New Jersey’s Online Anti-Bullying Specialist Certificate Program
- Anti-Bullying Professional Advanced Certificate of Mastery
- School Law Essentials for Every Teacher and School Employee
- Module 2: Student Rights and Responsibilities
- Module 3: Staff Rights and Responsibilities
- Module 4: Special Education
- Addressing HIB and Discrimination Claims for Students with Disabilities
- Coming Soon - Establishing Student Mental Health Protocols
- Coming Soon - Affirmative Action Officer Online Certificate Program
- The LEGAL ONE Podcast - http://njpsa.org/the-legal-one-podcast/
- Workshops/In-district professional learning addressing HIB, Employment Discrimination, Title IX, Affirmative Action, Progressive Supervision
Conclusion

- If you have any questions about this presentation or suggestions for future seminars, please send an email to David Nash, Esq., LEGAL ONE Director at dnash@njpsa.org or Donna McInerney, Ed.D., FEA Chief Executive Officer at dmcinerney@njpsa.org.