

WILL: To ACLU of Wisconsin - schools not required to teach critical race theory

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The News: Wisconsin Institute for Law & Liberty (WILL) President and General Counsel, Rick Esenberg, issued an [open letter](#) in response to the American Civil Liberties Union (ACLU) of Wisconsin after the organization recently [warned](#) Wisconsin school districts that they cannot restrict the teaching of concepts like Critical Race Theory (CRT). Esenberg's letter explains why the ACLU is not only wrong in its interpretation of state law but explains exactly why the advocacy of Critical Race Theory concepts and ideologies in K-12 education can and should be restricted if they create a hostile environment based on race.

Critical Race Theory: Esenberg's letter defines Critical Race Theory as "a focus on racial essentialism (the idea that persons are substantially defined by their race), an exaggerated standpoint epistemology (the idea that one's perspective is substantially formed by his or her race), an emphasis on something called white privilege (the idea that all white persons benefit from a generally undefined "systemic racism") and the assumption of black oppression (the contention that all black persons are substantially burdened by this systemic racism). They often include concepts of collective guilt or responsibility on the one hand and collective victimhood and entitlement on the other. They are generally combined with a series of contested claims about American history."

WILL's Letter: The [open letter](#) to Wisconsin school boards, administrators, and concerned parents reads in part:

Whether or not one agrees with them, "Critical Race Theory" and related concepts at issue here, as a legal matter, are not equivalent to or even necessary for an "understanding of human relations, particularly with regard to American Indians, Black Americans and Hispanics." (Wis. Stat. § 118.01(2)(c)(8)) It is not equivalent to or necessary for "teaching about 'racial issues.'" Nor is it equivalent to or necessary

for “reflecting the cultural or pluralistic nature of American society.” (Wis. Stat. § 121.02(1)(h)) To the contrary, these concepts are a particular political and ideological view of these matters. Nothing in state law compels that they be taught and there is no evidence that they enhance student performance. (Indeed, to the extent that they mischaracterize certain values and attributes as “white,” they harm student performance.) To the extent that the ACLU letter implies otherwise, it is bad and unsupported legal “advice.”

One final matter. The ACLU letter observes that school districts are prohibited from creating a racially hostile climate. That’s true. But, to the extent that the letter implies that teaching these concepts derived from Critical Race Theory or similar ideologies is necessary to avoid such an environment or that restricting them creates one, the ACLU letter is not only wrong, it is dangerously wrong. It is dangerously wrong because it gets the matter exactly backward. While not all “CRT-based” training necessarily creates a hostile environment, much of it does. This is particularly so when a school advocates for, presents as “truth” or requires students to affirm the concepts outlined above. Teaching children that they are complicit in “systems of oppression” or have certain qualities or faults based on their color of their skin can create a hostile environment, as can pedagogical techniques that require students to act on or affirm these contentions. Lawsuits have begun. See, e.g., *Deemar v. Board of Education of Evanston/Skokie*, 1:21-cv-3466 (N.D. Ill. June 29, 2021). They will continue as long as such pedagogical practices continue to be used.

School districts should teach all of American history and they can certainly teach about race. But they need not teach a highly politicized and contested view of that history and of race. And they may not create a hostile environment based on race – even in the guise of a misguided (and misnamed) “anti-racism.”

Learn more about the Equality Under the Law Project at WILL by visiting DefendEquality.org

Read More:

- [WILL’s Letter to Wisconsin School Board and Administrators](#), July 13, 2021