Tackling racial equity in US schools: A critical policy analysis of enacted state legislation (2020-2022)

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Tackling racial equity in U.S. schools: A critical policy analysis of enacted state legislation (2020-2022)

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Abstract

Over the past few years (2020-present), the United States has experienced a period of racial unrest, which has led to heated debates about school curriculum and policy. Considering the current socio-political context, this critical policy analysis traces the trends in state-level education legislation related to race/ethnicity that was both introduced and enacted between 2020 and 2022. Informed by critical race theory, we analyzed 61 legislative documents spanning 33 states to determine 1) whether the policy promoted or inhibited progress toward racial equity; 2) area(s) of racial equity the policy addressed; and 3) how the policy aimed to address those areas. We observed five key areas of equity the legislation addressed: racial/ethnic knowledge, anti-racism and social justice, disparities, representation, and discrimination. Although the majority of policies (n = 44) promoted progress toward racial/ethnic equity, some of these policies may result in more symbolic action rather than meaningful change. Furthermore, larger structural issues that affect equity – such as segregation - were not addressed. This paper demonstrates the need for education policies to be grounded in research on racial inequity and to intentionally target systemic racism in order to improve educational opportunities. As debates around race and

education are ongoing, we hope the findings can be used by both policymakers and leaders in education to help improve equity in education.

Keywords: *racial equity; critical race theory; critical policy analysis; educational opportunity.*

Introduction

For the past few years (2020-present), the United States has undergone a period of racial unrest. Hate crimes and bigotry toward Asian Americans increased as a result of xenophobia and insecurities caused by Covid-19 (Gover, Harper and Langton, 2020). At the same time, in early 2020 a graphic video emerged showing the brutal police killing of George Floyd, leading to heightened attention directed toward the unwarranted killings of other Black men and women – including Ahmaud Arbery, Breonna Taylor, and Elijah McClain– many of which occurred at the hands of police. Resulting from these deaths is what many are referring to as the summer of "racial reckoning," (Chang, Martin, and Marrapodi, 2020). Although Black Americans for years have been pushing for racial justice and police reform, this was a unique period in history given that many Americans were stuck at home due to Covid-19 restrictions. During this time, people took to social media to show solidarity, participated in Black Lives Matter (BLM) protests calling to defund the police, and read books to better understand the Black American experience. This period of activism against anti-Black racism is illustrated through a surge in public support for BLM (Horowitz, 2021; Civiqs, 2022), along with an increase in references to BLM on social media from members of Congress (Shah and Widjaya 2020). However, the rise in support for BLM was naturally met with resistance through Blue Lives Matter counter-protests in support of the police.

These discussions and debates on racial inequity took a slight turn in September 2020 during a televised interview where conservative activist, Christopher Rufo, claimed that critical race theory (CRT) was infiltrating the government. Rufo called on then President Donald Trump to pass an executive order to stop the "practice of indoctrinating federal employees with left-wing ideas," (Dorman, 2020, p. 1). Soon after, the president's office issued Executive Order 13950[1] entitled "Combatting Race and Sex Stereotyping," which banned federal workplaces from providing racial equity training. Around a month later, a similar executive order[2] was passed, this time targeting schools. In the order, the president's office took issue with a "radicalized view of American history" where America is viewed as systemically racist (p. 2). Consequently, the order sought to establish the 1776 commission to support and promote patriotic education. These two orders were not only a result of the racial unrest during the summer of 2020, but they also tie back to a *New York Times Magazine* project that had been published a year prior, the 1619 Project, which the former president vehemently and publicly opposed.

The 1619 Project, led by Nikole Hannah-Jones, is a set of essays commemorating the 400th anniversary of the beginning of slavery. The purpose of the project was to reframe the way in which American history is told by centering the contributions of Black Americans in shaping the nation, and considering the lasting consequences of slavery. Since its release, along with the passing of the president's executive orders, school board meetings have been places of contention (Kamenetz, 2021). Many parents fear schools are indoctrinating their children with CRT even as school boards are adamant that CRT is not part of the curriculum, nor does it relate to the 1619 project. For example, the New Jersey School Boards Association (2021) produced a resource entitled, "What you need to know about educational equity and critical race theory," where they explain:

> Critical race theory is not required by the New Jersey Student Learning Standards
> … It is important to remember that teaching social studies and history will at
> times require discussion about historic instances of racism. Students should
> understand the historically accurate past of our nation and that includes some
> difficult history around racial issues. (p. 1)

Other school boards have taken similar action, and at least four states - Connecticut[3], Minnesota[4], New York[5], and Vermont[6] - have gone so far as to pass legislation declaring racism a public health crisis.

Given the current political and social tensions, it is important to understand the ways in which the summer of racial reckoning has affected racial equity in schools. Although support for BLM is now back to similar levels as before the summer of 2020 (Horowitz, 2021; Civiqs, 2022), and the two aforementioned executive orders were immediately revoked when the new administration took office[7], things have not completely returned to normal. As will be discussed in this paper, numerous policies have been passed over the past two years that reflect the current unrest, consequently affecting what happens in schools. In this critical policy analysis (CPA), we seek to trace state-level education legislation related to race/ethnicity that has been both introduced and passed over the past two years (2020-2022) to understand how issues of power and extreme political divisions may have led to the development of new educational policies. With that said, the purpose was not to identify which states are doing "better" at improving racial/ethnic equity, as we do not take into consideration laws that were previously enacted; rather, we examine the ways in which these new policies promote or inhibit progress toward racial/ethnic equity in education. Through the framework of CRT, this study anchors the recent legislation in a broader understanding of systemic racism in American society.

Examining educational inequity through CRT and CPA

CRT was first introduced to educational scholarship in the 1990s by Gloria Ladson-Billings and William Tate, drawing from the earlier work of legal scholars such as Derrick bell, Richard Delgado, Kimberlé Crenshaw (Ladson-Billings and Tate, 1995). CRT scholars adhere to several main tenets, one of which is that race is socially rather than scientifically real. Unfortunately, arbitrary categories, such as race, help maintain power and privilege, though this may manifest differently among people depending on how race intersects with other social constructs/identities (e.g., gender, class, and ethnicity; Ladson-Billings, 2013).

CRT scholars also agree that racism is more than individual prejudice, but it is deeply ingrained in the functioning of U.S. society. (Ladson-Billings, 2013). Racial inequality is maintained and reproduced through institutions, and as a result, racism - through gaps in opportunities - still affects the experiences of students of color (SOC; Bonilla-Silva, 2021; Heafner and Fitchett, 2015). For instance, despite the benefits of school diversity for all students, within- and between-school segregation still exists, leading to racial differences in access to a well-resourced, quality education (EdBuild 2019; Francies and Kelley 2021). In 2019, EdBuild reported a $23 billion dollar gap in funding between predominantly White school districts and districts with majority SOC. Though monetary resources contribute to quality education, the people working within schools may be the most significant determinant of student success (Flaxman *et al.*, 2013; Authors, 2021). Research shows that high-quality teachers can greatly affect students' long-term outcomes (Chetty, Friedman, and Rockoff, 2014; Orfield and Jarvie, 2020), but compared to their White counterparts, SOC are more likely to have inexperienced, unqualified teachers, and teacher turnover is higher in majority SOC schools (Flaxman *et al.*, 2013; Owens, 2020).

At the same time, racial representation in teachers is important for SOC achievement and well-being, but the teacher workforce is mostly White and does not reflect the racial diversity in the student population (Carver-Thomas, 2018; Carter Andrews *et al.*, 2019). Granted that, on average, the percentage of teachers of color is growing, the number of Native American and Black teachers is actually declining (Carver-Thomas, 2018). Just as representation among teachers is lacking, the curriculum and school environment typically represent White norms, perspectives, and history (Moore and Bell, 2017; Picower, 2021). Therefore, scholars have pointed out the importance of culturally relevant, responsive, and sustaining pedagogy, where classrooms are places all students feel validated and empowered to critically engage with the curriculum, and content is presented from multiple perspectives, reflecting the diverse knowledges, histories, and experiences of the student body (Howard, 2021; Ladson-Billings, 2021).

Given the influence of race and racism over access to opportunities, CRT rejects race neutrality, color-blindness, and meritocracy, ideas that are often used to defend and rationalize positions of privilege (Ladson-Billings and Tate, 1995). As Gillborn explains (2014), "CRT views policy not as a mechanism that delivers progressively greater degrees of equity, but a process that is shaped by the interests of the dominant white population" despite being framed as objective or neutral (p. 28). This is explained through interest convergence – another CRT tenet – which is the idea that progress in social justice and racial equality is only made in so much as it aligns with the interests of Whites (Ladson-Billings, 2013). For example, Bell (1980) argued that the *Brown v. Board of Education* (1954)[8] decision to end public school segregation did not merely serve to benefit SOC, but the decision was also valuable to Whites, offering both economic and political advances internationally. Furthermore, the law forbids explicit segregation, yet de facto segregation still occurs due to

white flight, residential segregation, and other forms of resistance, allowing racial inequity to be maintained and reproduced (Francies and Kelley, 2021; Gillborn, 2014; Ladson-Billings and Tate, 1995).

CPA aligns with CRT in that it problematizes education and how it serves to reproduce inequities, observing the role policies play in the unequal distribution of resources, knowledge, and power (Diem, Young, and Sampson, 2019). Through CPA, policies must be interpreted within the context (political, social, temporal, geographical, etc.) in which they were enacted (Bradbury, 2020; Molla, 2021). Stephen Ball (2017), an eminent education policy scholar, notes that race is often omitted from education policy, only arising during times of "'race crisis,'" (p. 182) and resulting in symbolic actions, rather than real change. Instead, blame is placed on teachers and schools for failing racially minoritized students, and policies remain color-blind (Ball, 2017). However, through an understanding of interest-convergence and the role of values in policymaking, it is evident that policies are not in fact neutral but subtly serve to benefit the dominant group (Diem, Young and Sampson, 2019; Molla, 2021). Thus, not only is it important to examine what is included in policy, but researchers using CRT and CPA must also examine what and who is omitted (Bradbury, 2020).

Methodology

In this paper, we examine state-level legislation that was both introduced and passed between 2020 and 2022. To identify relevant policies, the first author used state legislature websites, news sources, and larger online databases that cover legislation in all 50 states, including Openstates, National Conference of State Legislatures, and Legiscan. Each state website varied in how legislation was presented, meaning the search process did not look the same for every state and the length of time spent searching depended on how accessible the

information was. The first author developed a list of terms related to race, racism, ethnicity, and marginalization, and used these to systematically search for relevant education-related legislation when the website allowed. The first author spent between 20 minutes and one hour searching for legislation for each state, stopping once it appeared all sources were exhausted.

The documents selected for inclusion had to be related to race/ethnicity and directly target Kindergarten through 12th-grade public education. Therefore, several policies were excluded because education was only mentioned as one aspect of a larger policy targeting the state as a whole, and other legislation was excluded for targeting higher education, preschool, and charter schools. We also excluded documents specifically related to funding, as this would require a deeper understanding of each state's budget in order to evaluate the effect the legislation could have on equity. However, we included several budget documents that did not merely discuss funding but also new programs that were being implemented. The selection process resulted in the inclusion of 61 bills and resolutions (excluding companion bills) across 33 of the 50 states.

Analyzing legislation

The analysis was conducted in several steps involving both qualitative and quantitative methods. First, we conducted a content analysis (see Bengtsson, 2016) on all policies, coding for whether the policy promoted or inhibited progress toward racial equity, area(s) of racial equity the policy addressed (categorized as *what*), and how the policy aimed to address those areas (categorized as *how*). After reviewing five policy documents together and discussing a coding scheme, the first author conducted an initial analysis of the documents. This was an iterative process, where categories were reviewed and revised as the first author progressed and discovered new information, and by referring back to the tenets of CRT. When categorizing for the direction of

progress, we asked ourselves whether the policies were color blind (inhibiting), whether they directly or indirectly addressed systemic and/or individual racism (promoting), whether they helped maintain the status quo (inhibiting), and whether they would improve the educational experiences and/or outcomes of students of color (promoting). Coding the *how* and *what* categories was more straightforward as it relied on manifest content.

To establish credibility, the second author independently reviewed the coding, after which we met to discuss areas of disagreement (Bengtsson, 2016). We then quantified the data, counting the frequency of each category, and the number of times each *what* and *how* category intersected. At the final stage, we critically evaluated the coded policies, critiquing policies that were clearly identified as inhibiting progress, as well as considering how policies that are aimed at promoting progress may or may not result in meaningful change.

Given our own clear alignment with progressive policies, we engaged in reflexivity throughout the analysis, allowing us to examine our own biases and remain open to being surprised by data (Molla, 2021). Only the first author is from the United States and directly affected by these policies; therefore, the second author was able to provide an outsider perspective that was less influenced by current U.S. politics. With that said, CPA acknowledges the fact that social science research is not neutral, just as policy is not neutral; rather, it reflects our own values and assumptions meaning "we can only aim for 'positioned objectivity,'" (Molla, 2021, p. 6). By framing our research through CRT, we make apparent where our values lie and the impact our values have on our interpretive lens.

Results

Through a content analysis, we established five categories that address *what* states are doing for racial/ethnic equity in schools, and eight categories for *how*

they are enacting change. The frequency for the number of policies coded for each *what, how, and promoting/inhibiting* intersection is presented in Table 1. For instance, the table shows that for *anti-racism and social justice* (*what*), nine policies were inhibiting progress through the curriculum (*how*), whereas eight

Table 1. *What* U.S. states are doing to promote/inhibit racial/ethnic equity in schools and *how* they are enacting change

Progress	WHAT Category	Sub-categories	Protection	Tracking	Planning & Evaluation	Curriculum	Training	Implementing program	Resources	Recruiting/Appointing: Teachers	Recruiting/Appointing: Commission/Board
Inhibiting progress	Anti-racism and social justice					9	3		2		
	Disparities	Discipline		1							
Promoting progress	Anti-racism and social justice				5	8	9	1	2		5
	Disparities	Access		2	2			1		1	1
		Discipline	1	3	2				1	1	
		Outcomes		3	2						1
		General		2	2						1
	Racial/ Ethnic Knowledge	Black/African American				4	5	3	3		2
		Native American				1			1		
		Latino				1	1				
		Holocaust/genocide	1	3	4	3		3		2	1
		Asian American				1		1			
		Hawaiian		1		1	1	1			
		General		1		3		2			
	Discrimination		10	1					1		
	Representation		1	2	3					3	7
Other	Anti-racism and social justice							1			
	Disparities	Access			1	1		1			
		General			2						
	Racial/Ethnic Knowledge	Black/African American					1				
		Holocaust/genocide				1	1				
	Representation				1						

were promoting progress in the same manner. Many of the policies sought to address several issues at once and in multiple ways, meaning the frequencies for the total codes do not match the total number of legislation. We also used the

same *what* and *how* categories regardless of whether the policy was promoting or inhibiting progress. Therefore, if a legislative document is categorized as *inhibiting*, *disparities*, and *tracking*, it means that the tracking of disparities inhibits progress toward racial equity.

Of the 61 legislative documents, we found the majority (*n* = 44) were promoting progress toward racial equity, whereas 10 were inhibiting progress and 7 were categorized as *other*. We categorized policies as *other* if the potential outcomes or general intentions were too vague or neutral to classify. For example, Arkansas made a minor amendment, adding John W. Walker to the African-American History curriculum[9,10]. Though representation in the curriculum is important, it was not clear how the addition of a single Arkansas civil rights figure would lead to racial progress. Other legislative documents were placed in this category because they had a single line requiring the disaggregation of data for race/ethnicity, but this was clearly not the focus. We will not describe further the policies categorized as *other* because

Policies inhibiting progress

Of the 10 policies inhibiting progress, nine policies from nine different states target anti-racism and social justice *training* and *curriculum*. Given the strong reactions nationwide stemming from Christopher Rufo's interview, and the executive orders that followed, the effect on policy comes as no surprise.

Anti-racism and social justice

The primary actions taken by states to inhibit progress in anti-racism and social justice were through *curriculum*, *resources*, and *training*. Quite possibly the most extensive policy on the topic came from Texas: H.B. 3979[11]. Though aspects of the bill are positive for improving *Racial/Ethnic knowledge*, these more progressive movements act as a blanket, concealing what the bill –

referred to by senators as "the critical race theory bill"[12] - really aims to accomplish. For instance, the bill begins by requiring the State Board of Education to adopt certain knowledge and skills to support the development of students' civic knowledge, including the history of White supremacy and contributions of marginalized populations, specifically identifying significant historical figures. On the surface, this appears to promote progress toward racial equity, however, upon further reading, it is evident that this bill is functioning to maintain significant control over what and how history is taught. For instance, it states, "a teacher may not be compelled to discuss a particular current event or widely debated and currently controversial issue of public policy or social affairs," (p. 4). This statement appears quite neutral, but considering the socio-political climate when enacted it is likely functioning to prevent schools and students from engaging in critical discussions that draw connections between BLM, police brutality, racial disparities, and America's history of slavery, segregation, and oppression.

It is also important to note that simply including POC in history lessons does not connote progress; far too often, notable POC are used to advance a color-blind, post-racial ideology: Martin Luther King Jr.'s "I have a dream," speech and the election of President Barack Obama are prime examples. This unfortunate interpretation of events – past and present – reinforces the belief in a meritocracy, which inevitably places blame on individuals for disparities rather than on the system.

The latter part of H.B. 3979 further supports the color-blind approach by directly rejecting the 1619 project and asserting that neither teachers nor students should be subject to race-related training or instruction. The following are several examples of banned instructional concepts: one race or sex is inherently superior; one should feel discomfort or guilt because of their race or sex; and meritocracy is racist or created by members of one race to oppress

members of another race or sex. Though purported to be an anti-CRT bill, it generally misses the mark by centering individual prejudice, whereas a main tenet of CRT is that racism is systemic, not isolated incidences of bigotry (Ladson-Billings, 2013).

Furthermore, H.B. 3979 posits that schools should not promote activities such as political activism, whilst at the same time requiring the State Board of Education to adopt instruction related to civic knowledge (e.g., histories and traditions of civic engagement). However, providing students an accurate civic education cannot occur without acknowledging how the exclusionary practices related to civic engagement are far from over. Specifically, opportunities for civic engagement are still obstructed through racially discriminatory voter suppression: restrictive legislation, long lines, and closed polling places are just some of the barriers that disproportionately affect voters of color (Wilder, 2021). Instead, this bill enables schools to take a color-blind approach to aspects of education as they relate to modern times. Unfortunately, exposing students to a color-blind mindset can reduce their ability to detect instances of discrimination, or describe racially discriminatory situations in such a way that would evoke intervention (Apfelbaum *et al.*, 2010).

In general, the language in H.B. 3979 mirrors that of the 2020 executive orders. Without knowing the current socio-political context, this legislation appears to be well-intentioned and promotes anti-discrimination. However, the subtext is clear: through color-blind language the law enables schools to whitewash history, maintain the belief in a meritocracy, and prevent authentic discussions about the influence of race, racism, power, and privilege on society today. In the past, classrooms have been places where students can process what is happening in the world, including upsetting race-related incidences, but through this legislation, teachers are free to ignore current events. As a result, H.B. 3979 serves to benefit White Americans who have not had to experience racism or

feelings of discomfort due to race, whilst silencing the experiences of students who have.

The other legislation coded as inhibiting progress related to anti-racism and social justice was written in a similar manner as the Texas Bill (all of which were enacted after Trump's executive orders), though generally not to the same degree. For instance, Idaho passed a very similar bill preventing certain concepts from being taught, but the conclusion of the bill[13] presents an interesting contradiction. H.B. 377 states that the banning of certain race-related ideas should not be "construed to prohibit the required collection or reporting of demographic data," (p. 2). The conclusion is inconsistent with the concepts the bill rejects; if inequality did not exist and education was meritocratic, there would be no need for public schools to collect demographic data. In essence, these obstructive documents promote equality (treat everyone the same) at the cost of equity, which ultimately serves the interests of Whites by maintaining – rather than disrupting – the status quo. Another bill of note was passed in Arizona[14]. What makes H.B. 2898 stand out, however, is its punitive nature. As with the other bills, it prevents the discussion of certain concepts, but what makes H.B 2898 stand out is its punitive nature: it states that violations to adhere would result in a fine for the school district or agency where the violation occurs, and teachers in violation would face disciplinary measures. The legal silencing that this bill establishes appears to go beyond simply inhibiting progress toward anti-racism and social justice; rather, it endangers the ability of schools to promote free and critical thinking.

Disparities

The only other area of racial equity that was inhibited was through the tracking of disparities in discipline. Although in most cases, collecting data can be useful for identifying disparities, the data that Iowa's S.B. 2360[15] specifies is

concerning. Under section nine, the policy instructs school districts to report all incidents of student violence resulting in injury, property damage, or assault, including demographic information. Although this information could potentially reveal racially motivated violence, collecting data on the race or national origin of the perpetrators does not appear to serve any purpose, and instead could lead to perpetuating racist stereotypes were the numbers significantly higher for one racial/ethnic group.

Policies promoting progress

The 44 legislative documents identified as promoting progress spanned 24 states, with the greatest number of states passing legislation related to *racial/ethnic knowledge* ($n = 14$), followed by *anti-racism and social justice* ($n = 10$), *disparities* and *representation* ($n = 9$), and *discrimination* ($n = 8$).

Anti-racism and social justice

Most of the legislation addresses anti-racism and social justice through *training* for teachers, resource officers, personnel in charge of hiring, etc. However, anti-racism and social justice are also being integrated into the *curriculum* and supported with *resources*, which can have a positive effect on student outcomes, ethnic-racial identity development, and awareness of racism (Byrd, 2016). By allowing discussions of racism, culture, diversity, and inclusion, students are better equipped to address inequity and combat the negative effects of racism (Byrd, 2016). Through trainings that improve teachers' racial literacy, cultural competence and consciousness, and understanding of bias, teachers can be better prepared for creating culturally relevant classrooms where these conversations can occur (Howard, 2021).

In some states, legislation requires immediate integration of certain concepts or discussions into the curriculum, whereas in others commissions or working

groups are formed to plan, evaluate, and advise schools on best practices for developing training related to anti-racism, diversity, inclusion and/or cultural sensitivity. A particularly excellent bill[16] enacted in Washington directs the state to develop cultural competency training programs for a wide range of staff (from para-educators, administrators, school board directors, superintendents, etc.). S.B. 5044 specifies the importance of identifying model standards and recognizes the need to "continue the important work of dismantling institutional racism in public schools and ... the importance of increasing equity, diversity, inclusion, antiracism, and cultural competency training throughout the entire public school system," (pp. 1-2). The excellence in this bill is in the precision and explicit nature of the language. It does not simply require staff to participate in trainings; rather, it ensures these trainings are properly planned in order to be effective; it requires that at least one professional learning day is used to cover these topics; and it provides definitions of terms in order to ensure understanding.

Though other legislation is formulated in similar ways, much of the legislation simply requires some form of anti-racism and social justice training or instruction without clarifying what this entails. Maine passed several different bills aimed at training different educational staff. One of these bills[17] requires school resource officers complete "diversity, equity and inclusion training or implicit bias training at least once during that officer's first year of employment," (p. 1). Training directed at resource officers is an important and necessary step, given the racially disparate disciplinary patterns found in schools (Diamond and Lewis, 2019). However, the brevity and lack of specificity around the training makes it questionable whether it will truly be effective or more of a symbolic gesture.

Disparities

Disparities were addressed most frequently through *tracking* and *planning and evaluating*. Legislation generally targeted disparities between students in discipline, academic outcomes, and access to certain courses or learning opportunities, but one Montana bill (H.B. 403)[18] targeted disparities in access to teachers for Native American students. The bill enacted a "grow your own" program, the purpose being to develop a teacher pipeline to serve rural and reservation schools. Ensuring students have access to teachers is important, but even more important is ensuring equitable access to effective teachers. As presented earlier, teachers in majority SOC schools are more likely to have teachers who are less experienced and unqualified than majority-White schools (Flaxman *et al.*, 2013; Owens, 2020), but this disparity was unfortunately not addressed in the legislation we reviewed.

As for student disparities, there are two pieces of legislation of particular interest. The first comes from Vermont, with the aim of collecting data on school disciplinary practices and creating a racially diverse task force for creating equitable and inclusive school environments. S.B. 16[19] begins with an outline of nationwide disciplinary rates and a presentation of who is disproportionately affected (e.g., Black students, students with disabilities, LGBTQ students, etc.). The task force is required to support schools in ending suspensions and expulsions for the majority of behaviors, and to measure the effectiveness of policies and practices at the state and local level. Similar to other legislation deemed excellent, this bill explicitly names race and the need for more equitable practices, and it includes a detailed explanation of how to address the inequity.

The second bill of note is from Washington[20]. The reason this bill deserves recognition is it touches upon intersectionality, targeting SOC who experience

additional challenges due to their home life. H.B. 2711 notes that SOC are disproportionately represented in both foster care and homeless student populations, and they perform worse academically compared to their White peers. Considering this, the purpose of the bill is to convene a working group to review general disparities (outcomes, school attendance, school mobility, discipline, etc.), engage stakeholders, make recommendations, and ultimately achieve equality in outcomes by eliminating racial and ethnic disparities.

Racial/Ethnic knowledge

Many of the bills sought to expand *curriculum* by including additional forms of racial/ethnic knowledge. Some of the bills targeted a single racial/ethnic group, some targeted a couple specified groups, and a few were more general in their approach. These legislative documents address educational inequities in who is represented in the curriculum and whose stories are told. Stories are a salient component of CRT: through counter-narratives, stories of historically marginalized groups can stand in contrast to the majoritarian (dominant group) stories that are often presented as normative (Zamudio *et al*., 2011). As the majority of teachers in U.S. schools are White, there is a tendency to center whiteness in classroom discussions (Carter Andrews *et al.*, 2021). Thus, enacting legislation that requires diverse knowledge is a necessary step toward creating an understanding of history that is more accurate and representative of all key actors.

In the reviewed legislation, Hawaiian culture and language, Latino studies, Native American Studies, and Asian American history were each directly addressed once, though they could of course be included in legislation taking a more general approach. For example, Nevada enacted a bill[21] that requires instruction related to the history and contribution of Native Americans and Native American tribes, people from various racial and ethnic backgrounds,

different religious groups, and other groups identified as marginalized. Importantly, the bill also calls for a careful selection of instructional materials and textbooks that "accurately portray the cultural and racial diversity" and the "history and contributions" of the identified groups (p. 2). Though other legislation mentions *resources,* A.B. 261 is careful to ensure the resources that are used are appropriate and accurate. Ensuring resources are culturally and racially affirming enables SOC to feel positively represented in their classrooms.

Delaware and Rhode Island were two of the states that passed bills requiring instruction about specific groups. In Delaware, H.B. 318[22] requires schools to provide instruction on the Holocaust and genocide, including discussions about the consequences of racism and intolerance, and how as citizens they can work to combat discrimination and other social issues. Furthermore, schools must offer in-service training and they must report to the Department of Education on how they have implemented the bill's requirements. H.B. 318 goes further than suggesting schools offer a simple history lesson, but it uses lessons in history to help students understand the ramifications of racial/ethnic hate, and to empower them to be agents of change. Therefore, this bill was categorized as both addressing racial/ethnic knowledge, as well as anti-racism and social justice.

Rhode Island's H.B 5697[23] compels both elementary and secondary schools to provide African American history education. Similar to Vermont's bill addressing disparities, H.B. 5697 begins by providing an extensive description of legislative findings, demonstrating the need for such a bill by outlining Rhode Island's unique history and role in slavery. In H.B. 5697, there is direct reference to BLM and the calls for social justice during the summer of 2020; thus it is contextualized within the current socio-political context. Especially important is the inclusion of a link to the department of education's website where *resources* for the instruction of history are provided. Not only does this

bill provide information in detail, but the values and positions of Rhode Island's General Assembly are clearly presented through the language and structure of the bill. This stands in contrast to many of the legislative documents categorized as inhibiting progress, where the values are often hidden through coded, vague, or color-blind language.

Discrimination

Perceived racial/ethnic discrimination can negatively affect one's sense of well-being and other outcomes (Schmitt *et al.*, 2014); thus, creating an inclusive culture and environment where students feel welcome and a sense of belonging is an important aspect of equity (Authors, 2021). In the reviewed legislation, actions against discrimination were mostly taken through *protection and accountability.* Though discrimination can also be addressed through educating teachers and students in anti-racism and social justice, in this section we focus on policies and practices that directly relate to individual instances of discrimination.

The majority of legislation relates to hair and dress and can be linked to a national movement to end race-based hair discrimination. Since 2019, Dove and the CROWN Coalition have pushed for states to pass the CROWN act, which stands for Creating a Respectful and Open World for Natural Hair *(The Official CROWN Ac*t, 2020). Thus far, the official CROWN Act has been passed in 12 states, though other states have taken similar or related action. Given that in this paper we look solely at legislation directly affecting schools, not all of the enacted CROWN acts were included. With that said, we identified six states that over the last two years have enacted bills related to hair discrimination in schools. For some states, this simply meant changing the definition of race to include hairstyles, but others necessitate additional actions related to bullying or discrimination.

Nevada specifically requires in A.B. 371[24] that discrimination based on race – redefined in a separate bill[25] to include hair - should be tracked and categorized as racially motivated or a hate incident, and restorative practices should be provided to both victims and perpetrators. In Illinois, S.B. 817[26] enrolls the State Board of Education to make materials available with information about protective hairstyles, and it stipulates that the failure of school boards to comply with the anti-discrimination regulations will result in penalty imposed on the school district. The act –the Jett Hawkins Law - is named after a 4-year-old Illinois student who experienced hair discrimination at school in 2021 (*Jett Hawkins Law,* 2022).

Another aspect of dress code that states sought to protect was religious dress or tribal regalia. Both Arizona[27] and Washington[28] enacted legislation permitting students of federally recognize Indian tribes to wear tribal regalia during graduation. Though this is indeed positive, it is a minor gesture and unlikely to create significant change or improvement related to discrimination, given that neither mention any form of accountability measures to ensure these students are protected.

Representation

As has been discussed throughout this paper, U.S. school teachers do not represent the student population in terms of race, despite representation being important for SOC's academic performance and sense of inclusion (Carter Andrews *et al.*, 2019). Therefore, to promote equity, schools must work to hire and retain more teachers of color. At the same time, POC must also be considered for leadership or decision-making positions, as these can also influence students' experiences in school (Carter Andrews *et al.*, 2021).

In the legislation, representation was most often reflected in the *appointment* of members in a commission or school board, followed by the *recruitment* of

teachers. For example, Vermont's aforementioned S.B. 16 focused on reducing disparities specifies who should be appointed to the task force, including people who are racially diverse. Many of the other bills mirror this approach: appointing members who are representative of the target group. In some cases, the group is appointed to developing a curriculum related to racial/ethnic knowledge, and in other cases the group works to implement anti-racism and social justice initiatives. A couple of the bills focus on racial/ethnic diversity in both appointment of members and recruitment of teachers.

Colorado's H.B. 1010[29] fits into the latter group. Similar to some of the excellent bills mentioned previously, H.B. 1010 begins by discussing the current insufficient state of teacher diversity in Colorado schools despite the known benefits of teacher diversity for students. To address this disparity and investigate barriers to teachers of color entering and remaining in the educator workforce, the general assembly declares the need to form a workgroup. Furthermore, the workgroup must be representative of the racial/ethnic diversity of the Colorado student population and comprised of at least 50% of people from historically marginalized group. H.B. 1010 also seeks to address representation in the educator workforce by improving transparency in educator preparation programs. This bill takes into account both the need to reduce barriers for teachers of color to enter the workforce, but also the need to include the perspectives of POC in the *planning and evaluating* process.

Discussion

Through an analysis of 61 legislative documents, we observed five areas of racial equity addressed in state legislation that was introduced and enacted between 2020 and 2022: 1) anti-racism and social justice; 2) disparities; 3) racial/ethnic knowledge; 4) discrimination; and 5) representation. Given the content of the legislation, it is clear that this period of "racial reckoning" in the

United States has had both a direct and indirect effect on enacted legislation. Although this paper did not include initiatives from state or district boards of education, we still believe the analysis provides a comprehensive overview of how states are addressing racial inequity.

Despite the fact that only ten policies were identified as inhibiting progress, the legislation seeking to suppress conversations about racism continues to grow. The emergence of anti-CRT legislation stems from an unfounded fear that CRT is being taught in classrooms, and it generally misses the point: the legislation over-emphasizes individual prejudice rather than the systemic racism that CRT centers on. Bradbury (2020) raised this issue in her paper on developing a framework for CRT education policy analyses: "We should consider how the creation of one 'problem' can operate as a diversionary tactic, drawing attention away from concerns of racial equity and allowing the concerns of marginalized groups to be forgotten" (p. 247). The creation of CRT as a problem has led to regressive and punitive policies that prevent honest lessons and conversations about race in America.

Fortunately, states are pushing against this trend by enacting policy that encourages a wider range of racial/ethnic knowledge, improves awareness of racism and issues related to social justice, examines racial/ethnic disparities, protects students against racial/ethnic discrimination, and pushes for more representation in teachers and other stakeholders. The fact that the majority of legislation promotes progress is undeniably positive, but it potentially could be explained through interest-convergence. Legislators may feel pressured to enact change in order to appease constituents; whether the change is meaningful is another matter. Although in some cases the analysed legislative documents provide detailed, multi-step approaches to combat racial inequity, others present more symbolic action (e.g., one day of implicit bias training) and very few consider intersectionality.

For instance, there is a difference between policies that change the definition of race to prevent hair discrimination (which is still progress) from those that change the definition, take into consideration intersectionality, and include who will enforce the policy and measure its outcomes. In other words, it is one thing to promote progress and another to actuate it. To ensure real progress toward equity, policies must take into account the complex nature of inequity and consider not only what should be done, but also how and by whom the policy should be enforced and assessed. Accountability is key if sustainable progress is to be made.

Policies should orient schools toward creating safe, inclusive learning environments where SOC feel represented, where they are challenged academically, and where they have access to equitable educational opportunities (Carter Andrews *et al.*, 2019; Howard 2021; Authors, 2021). These opportunities should be reflective of the diversity found among students, including their perspectives, histories, and backgrounds (Howard, 2021). Though some of the reviewed legislation seeks to achieve this, it is uncertain whether the application of these policies will bring about real change. Training and curriculum related to anti-racism and social justice must go beyond reductive, superficial understandings of race, and instead enable students and staff to appreciate the complexity of experience and identity (Ladson-Billings, 2013; Howard, 2021). Through the genuine advancement of racial, ethnic, and cultural awareness, teachers and school staff can be better prepared to provide an equitable educational experience for students; one free from racially discriminatory tracking and disciplinary practices (Byrd, 2016). Providing a space to discuss injustice and build students' racial literacy -rather than silence the inequity that many experience - will ensure students have the language and knowledge to work toward creating a more equitable society.

Furthermore, this analysis does not take into account the numerous policies enacted over the past two years where race/ethnicity was completely absent from the discussion. This relates to a second point made by Bradbury (2020): "What is omitted in policy – the 'policy silences' may be as important as what is included; similarly, particular voices may be silenced in the debate." (p. 247). With that said, the legislation fails to address some of the core structural issues that lead to the reproduction of educational inequity, such as within- and between-school segregation. (EdBuild, 2019; Francies and Kelley, 2021; Reardon *et al.*, 2019). Between-school segregation results in SOC attending schools with a harsher disciplinary climate, less experienced teachers, lower rates of teacher retention, and fewer resources (Reardon *et al.*, 2019; Owens, 2020), whereas racially biased tracking within schools often places SOC in less rigorous classes, even when they have demonstrated similar levels of achievement to their White peers (Francies and Kelley, 2021).

Though some of these issues can be addressed through policies that promote anti-racism and social justice training, tracking disparities, and establishing teacher recruitment programs (for both quality and diversity), they also necessitate more intentional legislation targeting structures as opposed to individuals (Owens, 2020; Francies and Kelley, 2021). Policies to address between-school segregation include direct integration efforts through economic incentives, redrawing school attendance boundaries, and open-enrollment policies combined with family outreach (Owens, 2020; Francies and Kelley, 2021). Alternatively, policies can demand a redistribution of resources, ensuring schools with higher percentages of SOC have the same caliber of teachers and access to opportunities (Owens, 2020). As for within-school segregation, policies can be written to eliminate or minimize tracking and ability grouping (Francies and Kelley, 2021).

Though important and necessary for sustainable change to occur, the absence of policies addressing these structural issues is not surprising. It is likely that small changes, such as reducing hair discrimination, are more palatable (and align with the view that racism is individual, not systemic), and as a result, they are more likely to get enacted than policies that could lead to substantial progress as these would disrupt the status quo.

Conclusion

In this CPA, we identified the current trends in U.S. education policies related to race/ethnicity in 61 state-level policies. Given the heightened racial tensions, we were not surprised to find a large number of legislation directly targeting race/ethnicity. With that said, Crenshaw (1988) claims, "antidiscrimination discourse is fundamentally ambiguous and can accommodate conservative as well as liberal views of race and equality," (p. 1335). Therefore, through a CRT lens, we highlighted legislation that was written to explicitly promote progress for racial equity, contrasting it with more vague or color-blind documents that could either inhibit progress or merely lead to symbolic action. In the latter set of legislation, there appears to be a disconnect between policymaking and scholarship on teaching and learning. Without a clear understanding of research on inequity and patterns of disparity – as was explicitly referenced in some of the more effective policies - the policies overemphasize individual prejudice, as opposed to structural issues that reproduce inequity.

The *Brown v. Board of Education* decision serves as an example of how an understanding of research can provoke positive structural change through policy. Specifically, the decision to end segregation was informed by psychologists Kenneth and Mamie Clark, whose research demonstrated the detrimental psychological effect exposure to discrimination and segregation had on Black children (American Psychological Association, 2003). Although de

facto segregation still persists, this case demonstrates how research can lead to positive developments in policy and schooling opportunities for SOC when the implications of racism are recognized. In other words, color-blindness in policy and practice enables the reproduction of disparities and inequity; thus, we posit that to reduce barriers to educational opportunities, education policies must be informed by research on race, such as scholarship related to CRT and culturally relevant teaching, and they must specifically target systemic racism.

Endnotes

[1] Exec. Order No. 13950, 85 Fed. Reg. 60683, (2020).
[2] Exec. Order No. 13958, 85 Fed. Reg. 70951, (2020).
[3] S.B. 1, 2021 Gen. Assemb., Reg. Sess. (Conn 2021)
[4] H.R. 1, 91st Leg., 2nd. Spec. Sess. (Minn 202)
[5] S.B. 2987, 2021 Gen. Assemb., Reg. Sess. (N.Y. 2021)
[6] J.R.H. 6, 2021 Gen. Assemb., Reg. Sess. (Vt. 2021)
[7] Exec. Order No. 13985, 86 Fed. Reg. 7009, (2021).
[8] Brown v. Board of Education, 347 U.S. 483 (1954).
[9] We cite the legislation as bills/resolutions rather than statutes in order to observe all actions taken within a single legislative document, and to contextualize them in legislative history.
[10] H.B. 1029, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021).
[11] H.B. 3979, 87th Leg., Reg. Sess. (Tex. 2021).
[12] S. Journal, 87th Cong., Reg. Sess. 2641–2653 (Tex. 2021).
[13] H.B. 377, 66th Leg., 1st Reg. Sess. (Idaho 2021).
[14] H.B. 2898, 55th Leg., Re. Sess. (Ariz 2021)
[15] S.B. 2360, 88th Gen. Assemb., Reg. Sess. (Iowa 2020).
[16] S.B. 5044, 67th Leg., Reg. Sess. (Wash. 2021).
[17] S.B. 1040, 130th Leg., 1st Reg. Sess. (Me. 2021).
[18] H.B. 403, 67th Leg., Reg. Sess. (Mont. 2021).
[19] S.B. 16, 2021 Gen. Assemb., Reg. Sess. (Vt. 2021).
[20] H.B. 2711, 66th Leg., Reg. Sess. (Wash. 2020).
[21] A.B. 261, 81st Leg., Reg. Sess. (Nev. 2021).
[22] H.B. 318, 150th Gen. Assemb., Reg. Sess. (Del. 2020).
[23] H.B. 5697, 2021 Gen. Assemb., Reg. Sess. (R.I. 2021).
[24] A.B. 371, 81st Leg., Reg. Sess. (Nev. 2021).
[25] S.B. 327, 81st Leg., Reg. Sess. (Nev. 2021).
[26] S.B. 817, 102nd Gen. Assemb., Reg. Sess. (Ill. 2021).
[27] H.B. 2705, 55th Leg., 1st Reg. Sess. (Ariz. 2021).
[28] H.B. 2551, 66th Leg., Reg. Sess. (Wash. 2020).
[2929] H.B. 1010, 73rd Gen. Assemb., 1st Reg. Sess. (Colo. 2021).

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