



Celina Moreno, J.D.
President & CEO

August 11, 2021

Dr. Penny Schwinn, Commissioner
Tennessee Department of Education
710 James Robertson Parkway
Nashville, Tenn. 37243

RE: Draft Rule, Prohibited Concepts in Public Instruction - Tenn. Code Ann. §49-6-1019

Dear Commissioner Schwinn,

I write to submit public comment to draft rule "Prohibited Concepts in Public Instruction" on behalf of the Intercultural Development Research Association (IDRA). IDRA is an independent, non-profit organization whose mission is to achieve educational opportunity for every child through strong public schools that prepare all students to access and succeed in college. Based in San Antonio, Texas, IDRA works to promote equity in education across the U.S. South.

Toward that end, IDRA is opposed to both the spirit and letter of Section 51 of Tennessee Public Chapter 493 (2021) because of the harm to all students, particularly students of color, students from marginalized backgrounds and students with limited economic resources. The operation of this classroom censorship rule will limit students' critical thinking skills and their ability to understand how racism, sexism, and socioeconomic discrimination currently marginalize people in today's society. Nevertheless, the following recommendations may limit the negative impact of the rule.

This rule will lead to governmental overreach and confusion among schools.

Specifically, *Section 02 DEFINITIONS* does not define the subjective *included or promoted*. This phrase sets the lowest limit at which unnecessary state intervention occurs, opening the door for governmental overreach into the classroom to censor a potentially wide range of curriculum and teachers' instruction. A strict reading of the term *include* along with the prohibited concepts would not allow for any coverage of the history of the United States or the world. Similarly, the term *promote* is particularly subjective and inherently open to abuse without clear definitions. Both of these terms could easily lead to confusion about permissible teaching topics and methods.

The exceptions enumerated to the prohibited concepts are extremely limited and would compromise curriculum in social studies, including in ethnic studies.

The language of *Section 03 PROHIBITED CONCEPTS* will leave students ill prepared to meet challenges in the present and future by being denied the chance to learn how power, race, oppression, and resistance played out in the past. The exceptions in Section 3 (2) are limited and do not specifically exclude courses in ethnic and cultural studies where these prohibited concepts are central to course success. These courses have been shown to boost attendance and academic performance while reducing risk of students dropping out (Dee 2017). Without specific enumeration in this list of exceptions, these courses may be at risk based on the implementation of the rule. Similarly, the exceptions allow discussions of historical instances of oppression, but do not allow for discussions of the current instances and experiences of racial,

socioeconomic, and gender-based oppression that continue to influence society. Without these additions to the enumerated exceptions, students' ability to draw connections between historical and current events and issues will continue to be compromised, further diminishing their critical thinking and analytical skills.

Penalizing districts by withholding school funding will exacerbate school funding inadequacies in Tennessee.

As outlined in *Section 07 APPEALS TO THE DEPARTMENT (14)*, the rule outlines that the state will withhold state funds scheduled to be disbursed to LEAs or public charters based on knowing violations of the rule. This provision has the potential to significantly impact school funding for school districts in Tennessee. According to 2019 data, Tennessee ranks 10th in lowest per-pupil spending compared to other states in the country (U.S. Census 2019). Additionally, Shelby County, Metropolitan Nashville Public Schools and several other school districts across the state are involved in litigation alleging the state has inadequately funded schools. Given this context, withholding funds from schools could easily exacerbate school funding inequities that currently exist. Students should not suffer financial consequences to their schools because of curricular complaints. This leaves them with even fewer resources for instructional materials, staff, and programming. No financial penalty should be included in curricular rules.

Conclusion and Recommendations

Based on the damaging learning and financial consequences outlined, we recommend that you rescind this rule. If the rule cannot be rescinded, we recommend that at the very least, the rule should:

1. Specifically define terms, such as *include and promote*, and outline the actions that may lead to disciplinary actions.
2. Add to the exceptions to prohibited concepts to allow ethnic and cultural studies and discussions of current events.
3. Remove financial penalties for violation of this rule.
4. Include guidance aimed at developing culturally sustaining curricula and pedagogical approaches that help all students develop the critical thinking and analytical skills necessary to meet modern day challenges.

Sincerely,
Terrence Wilson, J.D.
IDRA Regional Policy and Community Engagement Director

Citations

Dee, T.S., & Penner E.K. (2017). The Causal Effects of Cultural Relevance: Evidence from an Ethnic Studies Curriculum. *American Educational Research Journal*, 54(1), 127-166.
U.S. Department of Commerce. (2021). 2019 Annual Survey of School System Finances. U.S. Census Bureau.

IDRA is an independent, non-profit organization led by Celina Moreno, J.D. Our mission is to achieve equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college. IDRA strengthens and transforms public education by providing dynamic training; useful research, evaluation, and frameworks for action; timely policy analyses; and innovative materials and programs.