

**LAW, EDUCATION, AND MEMORY: THE UNEVEN LANDSCAPE OF BLACK
HISTORY EDUCATION IN U.S. K-12 SCHOOL CURRICULUMS**

“The struggle of men against power is the struggle of memory against forgetting.”

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INTRODUCTION

A society's memory of its own history, particularly of its history of government sanctioned oppression, is fundamental to how that society perceives and responds to contemporary inequities and related exercises of state power. Civil rights activists in the United States have long recognized the importance of public consciousness of histories of oppression in cultivating public support for civil rights movements and racial justice initiatives, the barriers that forgotten histories pose, and the vital role that education plays in sustaining public consciousness. Education serves as a mechanism for shaping society's collective memory through inclusion, or exclusion, of particular histories in curriculums.

Particularly important are histories of oppression that happened on U.S. soil. The oppression of Black people is one of the longest lived and most brutal examples of domestic U.S. oppression. Public consciousness of that history touches all aspects of the modern civil rights movement, even those centered around oppression based on other identities such as gender and class. However, Black history has long been neglected and distorted in the public consciousness and dominant narrative of U.S. history.² Important events, figures, and facts have faded into "forgotten histories," i.e. histories the majority of the public does not know, or are represented by

King, *supra* note 1 at 14 (2017). For a discussion of the limited ability statutes and mandates have to ensure accurate and inclusive narratives in Black history education curriculums, *see infra* Part III.A.

OBERG & KARTCHNER, *supra* note 53 at 27.

See Andrew Sneddon, *Symbolic Value*, 50 J. VALUE INQUIRY 395, 404 (2016); MAURICIO GARCÍA-VILLEGAS, *THE POWERS OF LAW* 19 (2018); *INTERPRETISM AND THE LIMITS OF LAW* 194 (Tomasz Gizbert-Studnicki, Francesca Poggi, & Izabela Skoczén eds., 2022).

See supra-Part III.A.

See, e.g., Nathaniel Cline, *Va. Governor Vetoed Bill to Make Black History Classes Mandatory Towards Graduation. What's Next?*, VA. MERCURY (May 27, 2025), <https://virginiamercury.com/2025/05/27/virginia-governor-vetoed-bill-to-make-black-history-classes-mandatory-towards-graduation-whats-next/>.

² *See* Angela Downes, *Look Away: The Impact of The Lost Cause on Civil Rights, Social Justice and Critical Race Theory, How Storytelling and Mythology Shaped American History*, 3 LSU L. J. SOC. JUST. POL'Y 22, 22 (2023); Richard Hughes, *Collective Memory and Historical Narratives: The African American Civil Rights Movement*, 18 HIST. EDUC. RSCH. J. 167, 167 (2021).

dominant inaccurate dominant historical narratives.³ Historical omissions and inaccurate narratives erode support for policies seeking to rectify long-lived inequities because a public unaware of past oppression is less likely to recognize modern inequities or understand them as products of that oppression.

Black history education in K-12 school curriculums serve as a key avenue for introducing forgotten histories and accurate historical narratives into the public consciousness because of the wide-ranging reach of K-12 education. The vast majority of the U.S. population completes at least some K-12 education.⁴ K-12 education curriculums have long been a battleground for racial justice because of their significant impact on collective memory and the dominant narratives in the U.S.

³ See Danielle Wingfield, *Pathways to Liberty: What Colonial, Antebellum, and Postbellum Education Can Teach Us About Today*, 32 WM. & MARY BILL RTS. J. 377, 405 (2023); Jericka Duncan, Christopher Zawistowski, and Shannon Luibrand, *50 States, 50 Different Ways of Teaching America's Past*, CBS NEWS (Feb. 19, 2020), <https://www.cbsnews.com/news/us-history-how-teaching-americas-past-varies-across-the-country/>. Not all distorted historical narratives are formed with the intent to manipulate the collective public memory, but even well-meaning narratives can turn “complicated histories with multiple layers into simplified stories of the past” that “rarely acknowledge problematic aspects” of that past. Richard Hughes & Sarah Drake Brown, *Collective Memory and Historical Narratives: The African American Civil Rights Movement*, 18 HIST. EDUC. RSCH. J. 166, 167 (2021). This issue of distorted dominant historical narratives is salient to the current moment in the United States legal landscape. The Supreme Court’s increasing preference for rooting doctrine of fundamental rights in history and tradition have made contentious debates over “correct” historical interpretation a central issue in the modern civil rights movement. See Cary Franklin, *History and Tradition’s Equality Problem*, 133 YALE L. J. F. 946, 946-947 (2024).

⁴ According to U.S. Census Bureau data from its Current Population Survey, in 2024, an estimated 91.5% of the civilian noninstitutional U.S. population aged 25 and older completed a K-12 education. See *Educational Attainment in the United States: 2024*, U.S. CENSUS BUREAU (Sept. 3, 2025), <https://www.census.gov/data/tables/2024/demo/educational-attainment/cps-detailed-tables.html> (sharing tables with data from the 2024 survey, including Table 1. Educational Attainment of the Population 18 Years and Over, by Age, Sex, Race, and Hispanic Origin: 2024, used to calculate these figures). Of the remaining 8.5% of the surveyed population, 8.2% completed at least some grades within a K-12 education. *Id.* Only .3% of the population completed no grades within a K-12 education. *Id.* Note that the population sample for the Current Population Survey includes “the civilian noninstitutional population of the United States living in housing units and members of the Armed Forces living off post or living with their families on post, as long as at least one civilian adult lives in the same household.” *Current Population Survey 2024 Annual Social and Economic (ASEC) Supplement*, U.S. CENSUS BUREAU, <https://www2.census.gov/programs-surveys/cps/techdocs/cpsmar24.pdf> (last visited Nov. 21, 2025). The data is not inclusive of several population groups such as incarcerated persons, persons institutionalized in medical facilities, unhoused persons, and undocumented immigrants. *Id.*

public consciousness.⁵ Curriculum design has repeatedly sparked fierce controversies, particularly when it comes to the inclusion of Black history and culture in curriculums.⁶

The most violent curriculum controversy in U.S. history played out in Kanawha County, West Virginia in 1974.⁷ After the Kanawha County Board of Education adopted a new multiethnic language arts curriculum, in June 1973, it appointed a selection committee to choose the materials for implementation of the new curriculum.⁸ Controversy erupted in April 1974 when the Board adopted the committee's recommendations, in part because of the inclusion of books by Black authors such as Eldridge Cleaver and George Jackson.⁹ Tensions ran high as Kanawha County residents advocated fiercely for and against the use of the recommended books.¹⁰ The controversy drew national attention and groups from across the nation entered the fray on both sides, including the National Association for the Advancement of Colored People, the Ku Klux Klan, and the Heritage Foundation.¹¹ Tensions escalated into protests, boycotts, and violence.¹²

Despite fierce controversies and an abundance of social, political, and legal barriers, efforts to bring Black history education to mainstream K-12 school curriculums, correct distorted

⁵ Dustin Hornbeck & Joel R. Malin, *Demobilizing Knowledge in American Schools: Censoring Critical Perspectives*, HUMANS. SOC. SCIS. COMMC'NS, Dec. 2023 at 1, 2, <https://www.nature.com/articles/s41599-023-02161-4.pdf>.

⁶ MICHAEL IMBER & TYLL VAN GEEL, EDUCATION LAW 59 (2d ed. 2000).

⁷ CAROL MASON, READING APPALACHIA FROM LEFT TO RIGHT: CONSERVATIVES AND THE 1974 KANAWHA COUNTY TEXTBOOK CONTROVERSY 23 (2009); *The Great Textbook War* (West Virginia Public Broadcasting radio broadcast, aired Oct. 2009), <https://www.youtube.com/watch?v=sa-WVEz9epM>.

⁸ MASON, *supra* note 7 at 45.

⁹ *Id.* at 19, 22, 24, 46; Christian Meffert, *The Violence of the 1974 Kanawha County Textbook Controversy*, WOWK 13 NEWS (June 17, 2024), <https://www.wowktv.com/news/west-virginia/kanawha-county-wv/the-violence-of-the-1974-kanawha-county-textbook-controversy/>.

¹⁰ MASON, *supra* note 7 at 5-6.

¹¹ Carol Mason, *From Textbooks to Tea Parties: An Appalachian Antecedent of Anti-Obama Rebellion*, W. VA. HIST., Fall 2011 at 1, 9.

¹² Meffert, *supra* note 9; *Genealogy of Textbook Controversy*, CHARLESTON DAILY MAIL (Nov. 20, 1974), <https://archive.wvculture.org/history/education/textbook01.jpg>. The controversy ultimately resolved in favor of the Board: the books were kept as part of the curriculum, and the Board prevailed in a legal challenge to the decision to keep the books. See generally *Williams v. Kanawha Bd. Educ.*, 388 F. Supp. 93 (S.D.W. Va. 1975); *Williams v. Kanawha Bd. Educ.*, 530 F.2d 972 (4th Cir. 1975).

dominant historical narratives, and break the cycle of forgetting have persevered for over a century and achieved significant successes.¹³ In 1915, Dr. Carter G. Woodson founded the Association for the Study of African American Life and History (“ASALH”).¹⁴ Dr. Woodson and the ASALH successfully laid a foundation for the inclusion of Black history in K-12 curriculums by “authoring several K-12 Black history textbooks, designing Black history home study courses for school-aged children, establishing a K-12 Black history teacher journal, and promoting Negro History Week (now Black History Month) in schools.”¹⁵

Efforts to expand and improve Black history education gained momentum during the Civil Rights era and continued into the twenty-first century.¹⁶ In 2003, after more than 85 years of legislative advocacy to bring a Black history institution to the National Mall,¹⁷ activists achieved a significant milestone when Congress established the National Museum of African American History & Culture (“NMAAHC”), the first national museum to focus solely on Black history, life, and culture.¹⁸ The NMAAHC opened to the public on September 16, 2016 and currently offers programs that highlight Black achievement, perseverance, and ingenuity and provides learning resources for students and teachers from grades 3-12 across the U.S.¹⁹

¹³ King, *supra* note 1 at 14.

¹⁴ *About Us*, ASSOCIATION FOR THE STUDY OF AFRICAN AMERICAN LIFE AND HISTORY, <https://asalh.org/about-us/> (last visited Oct. 24, 2025).

¹⁵ King, *supra* note 1 at 14. Dr. Woodson provided a thorough exploration of the historical foundations of distorted historical narratives about Black oppression in U.S. education up to 1933 in his book *The Mis-Education of the Negro*. See generally CARTER G. WOODSON, *THE MIS-EDUCATION OF THE NEGRO* (reissued 1969). For more about the work and life of Dr. Woodson, see LaGarrett J. King, Ryan M. Crowley, & Anthony L. Brown, *The Forgotten Legacy of Carter G. Woodson: Contributions to Multicultural Social Studies and African American History*, 101 SOCIAL STUDIES 211 (2010); Wingfield, *supra* note 3 at 407.

¹⁶ King, *supra* note 1 at 14.

¹⁷ See LeRonn P. Brooks, *PAST/PRESENT/FUTURE Memory, Legislation, and the National Museum of African American History and Culture*, 38 CALLALOO 712, 713 (2015). Brooks provides a full accounting of the history of legislative initiatives that began in 1916, along with the activists championing these initiatives such as Congressmen Leonidas C. Dyer, Mickey Leland, and John Lewis. *Id.* at 713, 719, 720.

¹⁸ *About the Museum*, NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY & CULTURE, <https://nmaahc.si.edu/about/about-museum> (last visited Nov. 21, 2025); Brooks, *supra* note 18 at 712.

¹⁹ *Educators*, NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY & CULTURE, <https://nmaahc.si.edu/learn/educators> (last visited Nov. 21, 2025).

Amidst ongoing efforts, Black history took center stage in the U.S. public consciousness during the summer of 2020. A series of police killings of unarmed Black people ignited the “largest mass protest movement in the nation’s history” (“2020 Racial Justice Protests”), which in turn bolstered efforts to improve black history education.²⁰ Today, Black history education is widely recognized as a legitimate subject.²¹ Black history month is celebrated across the U.S., and has received official recognition from the U.S. president every year since 1980.²² Juneteenth is recognized as a national holiday.²³

Despite celebrated successes and the significant progress made, the landscape remains uneven, and new barriers continue to emerge. Black history education in K-12 school curriculums remains inconsistent at the state and local level, historical narratives often downplay, sugarcoat, or deny the nature of past oppression, and many curriculums leave key historical events, figures, and facts to be forgotten.²⁴ The modern civil rights movement and Black history education advocates face continued, reinvigorated resistance in the form of the widespread anti-DEI, anti-woke movement that aims to control the dominant historical narrative and sustain the cycle of forgetting Black history.²⁵

Though the U.S. is in a period of regression with new and continuing barriers to robust, accurate, and inclusive Black history education in K-12 curriculums, it is still possible to work to

²⁰ Vivian E. Hamilton, *Reform, Retrench, Repeat: The Campaign Against Critical Race Theory, Through the Lens of Critical Race Theory*, 28 WM. & MARY J. RACE, GENDER & SOC. JUST. 61, 62-63 (2021).

²¹ See King, *supra* note 1 at 14.

²² *Black History Month: A Commemorative Observances Legal Research Guide*, LIBRARY OF CONGRESS, <https://guides.loc.gov/black-history-month-legal-resources/executive-branch-documents#s-lib-ctab-33786251-2> (last visited Nov. 21, 2025).

²³ *Juneteenth National Independence Day*, NAT’L PARK SERV., <https://www.nps.gov/subjects/npscelebrates/juneteenth.htm> (last visited Dec. 7, 2025).

²⁴ Duncan, Zawistowski, & Luibrand, *supra* note 3.

²⁵ DEI stands for Diversity, Equity, and Inclusion, and the acronym is commonly used as a catchall to refer to a variety of initiatives aimed at addressing historical inequity, including racial inequity.

introduce forgotten histories and accurate narratives into the public consciousness. This paper will first explore the general legal frameworks surrounding K-12 curriculums and other factors influencing curriculums. Next, it will illustrate how those frameworks and influences interact in the real world today, using Virginia as an example. Then it will discuss the current state of the landscape surrounding Black history education in K-12 curriculums, focusing in on how state statutes and standards shape public memory of history and dominant historical narratives in the public consciousness. Finally, it will recommend statutory mandates for inclusion of Black history education in K-12 school curriculums as a key strategy to introduce forgotten histories and accurate narratives into the public consciousness.

PART I: LEGAL FRAMEWORKS AND INFLUENCES SURROUNDING K-12 CURRICULUMS

An understanding of the legal frameworks and influences on K-12 curriculums sheds light on the uneven landscape of Black history education in K-12 curriculums in the U.S. today. These shifting frameworks help explain why the quality and content of Black history education varies so dramatically from state to state.

A. Law and Policy

The U.S. K-12 education system is decentralized.²⁶ A patchwork of constitutional provisions, statutes, regulations, policies, and common law at the federal, state, and local level shape the varying complex legal frameworks that govern K-12 education across the U.S.²⁷ While the U.S. Constitution has been interpreted to allow the federal government to enact some legislation and regulations affecting schools, it does not explicitly mention education, and primary

²⁶ See IMBER & VAN GEEL, *supra* note 6 at 1.

²⁷ *Id.*

authority over education, including K-12 curriculums, rests with state and local governments.²⁸ The U.S. Constitution allows, but does not require, states to create and operate schools.²⁹ However, over time, all fifty states have adopted state constitutional provisions providing for a system of public education.³⁰

The structures of public education systems and the degree of state regulation of private and home schools vary across the fifty states.³¹ Varied combinations of state constitutional provisions and statutes lay the foundation for state public education systems, including where authority over education policy, standards, and curriculum development is vested.³² Different authorities can be vested in different entities such as state legislatures, state officials, local officials, state boards of education (“BOE”), state departments of education (“DOE”), local school boards, and local school districts.³³ Federal authority primarily plays a role through informational resources, research, and the provision of federal funds contingent on state or local entities meeting programmatic requirements.³⁴ The multitude of structures used by different states are a consequence of the decentralized U.S. education system and lead to curricular fragmentation.

²⁸ The Constitution and its amendments do not delegate authority over education to the federal government or prohibit states from exercising authority over education, and so under the Tenth Amendment, this authority rests with the states. U.S. CONST. amend. X. See also IMBER & VAN GEEL, *supra* note 6 at 2.

²⁹ IMBER & VAN GEEL, *supra* note 6 at 2.

³⁰ *K-12 Governance: State Constitutional Language*, EDUC. COMM’N STATES (Nov. 2020), <https://reports.ecs.org/comparisons/k-12-governance-state-constitutional-language-01>.

³¹ Emily Parker, *50-State Review, Constitutional Obligations for Public Education*, EDUC. COMM’N STATES (Mar. 2016), <https://www.ecs.org/wp-content/uploads/2016-Constitutional-obligations-for-public-education-1.pdf>; *State Regulation of Private and Home Schools*, U.S. DEPT. EDUC. (Nov. 14, 2025), <https://www.ed.gov/birth-grade-12-education/education-choice/state-regulation-of-private-and-home-schools>.

³² *Id.*

³³ *K-12 Governance: State Board of Education*, EDUC. COMM’N STATES (Nov. 2020), <https://reports.ecs.org/comparisons/k-12-governance-state-board-of-education-01>. See IMBER & VAN GEEL, *supra* note 6 at 5-6.

³⁴ See IMBER & VAN GEEL, *supra* note 6 at 60.

When it comes to what subjects K-12 students are required to learn in school and what topics are covered within a subject, the answer varies from state to state, local school district to school district, or even among schools within a local district. Mandatory subjects and topics within subjects are set through shifting interwoven networks of federal funding requirements, state constitutions, state statutes, and state and local regulations and policies.³⁵ State level constitutions, statutes, regulations, and policies often mandate that K-12 schools teach certain subjects and/or topics within subjects and prohibit teaching others.³⁶

State-set graduation, promotion, and testing requirements further determine mandatory curriculums.³⁷ State statutes often set the baseline that informs the development of state-level standards.³⁸ While state entities inform and limit local options, local entities typically retain the greatest authority over mandatory curriculums and have broad leeway to set additional mandates, prohibitions, and requirements so long as they don't conflict with those of the state or federal funding requirements.³⁹ These layers of authority turn power struggles over the narratives incorporated into mandatory curriculums into multi-level political contests.

This tension between state and local control is demonstrated by the interaction between state standards and local curriculum development. State standards, set by either state BOEs, DOEs, or officials, set recommended or required “education learning and achievement goals” for local schools.⁴⁰ Standards can be knowledge based, meaning they require students to retain knowledge

³⁵ *Id.*

³⁶ See *id.* at 60-61; *K-12 Areas of Instruction Required by Statute in the States*, BALLOTPEDIA, https://ballotpedia.org/K-12_areas_of_instruction_required_by_statute_in_the_states (last visited Nov. 3, 2025).

³⁷ IMBER & VAN GEEL, *supra* note 6 at 62.

³⁸ See *id.*

³⁹ *Id.* at 61.

⁴⁰ *K-12 Education Content Standards in the States*, BALLOTPEDIA, https://ballotpedia.org/K-12_education_content_standards_in_the_states#Footnotes (last visited Nov. 23, 2025). For a deeper dive into what state standards look like, see *Criteria for Standards in History/Social Studies/Social Sciences*, AMERICAN HIST. ASS'N (Nov. 2024), <https://www.historians.org/wp-content/uploads/2025/08/Criteria-for->

of particular information to be considered successful in completing a grade or course, skills based, meaning they require students demonstrate particular capabilities to be considered successful in completing a grade or course, or both.

Eleven states recommend standards, while thirty-nine states require compliance with standards.⁴¹ Content standards guide curriculum development.⁴² Here again, states vary on where curriculum development authority rests. In forty-three states, authority rests in local entities; in two states, authority rests in state entities; and in five states, authority is divided between state and local entities.⁴³ These divisions of authority create openings for both civil rights activists and anti-DEI resistance to advocate for inclusion or exclusion of particular histories in standards and curriculums.

Outside of mandatory curriculum requirements, state and local entities have varying degrees of authority to dictate the details of classroom content such as methods of instruction and instructional materials.⁴⁴ Textbook adoption policies demonstrate the wide variety of approaches to authority over classroom content.⁴⁵ As of 2022, twenty-two states vested textbook adoption authority in state-level entities, while twenty-eight vested authority in local-level entities.⁴⁶

State-Standards-2024.pdf.

⁴¹ *Id.*

⁴² *Id.* Curriculum generally refers to “lessons and materials used in a particular course of study,” and outline what topics within a subject area are covered in a class and materials are used to teach that class. *K-12 Curriculum Authority, Requirements, and Statutes in the States*, BALLOTPEDIA, https://ballotpedia.org/K-12_curriculum_authority,_requirements,_and_statutes_in_the_states (last visited Oct. 23, 2025).

⁴³ *Id.*

⁴⁴ *Id.* at 62.

⁴⁵ Erin Whinnery, Lauren Bloomquist, & Gerardo Silva-Padron, *Response to Information Request*, EDUC. COMM’N STATES (Jan. 1, 2022), https://www.ecs.org/wp-content/uploads/State-Information-Request_Textbook-Adoption-Policies.pdf.

⁴⁶ *Id.* Note that Hawaii is counted as vesting authority in a local district, but that in effect, this amounts to state-level authority over classroom content because the entire state of Hawaii makes up one school district. *Id.* In practice, this often looks like a state-level entity producing a list of approved textbooks, then either recommending or requiring local entities to adopt textbooks from the list. *Id.*

Authority over classroom content can extend to control over the narrative framing of particular subjects and topics.⁴⁷ Generally, in both state and local level mandatory curriculum and instructional material design and adoption, decision makers engage the public by providing opportunities for comment and feedback. This participatory process becomes another site of struggle over narrative control.

These complex legal and regulatory structures provide the framework through which other forces push and pull on the content and narratives within K-12 school curriculums.⁴⁸ Two influences hold considerable sway: teachers and politics.

B. Influences

While law and policy play a major role in shaping curriculums in K-12 schools, many other forces also exert influence over what is and is not included in curriculums, what beyond those mandatory curriculums ultimately gets class time, and the narratives surrounding course content. Examples of influences are parents, teachers, companies producing instructional materials,

⁴⁷ Hornbeck & Malin, *supra* note 5 at 1.

⁴⁸ These already complex frameworks are further complicated by the differences between charter schools, private schools, and traditional public schools. Since Minnesota passed the first law in the country allowing for chartered schools in 1991, almost all other states have followed suit. *Charter Schools*, NAT'L Ctr. EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=30> (last visited Nov. 23, 2025). Compare EMBER REICHGOTT JUNGE, *ZERO CHANCE OF PASSAGE: THE PIONEERING CHARTER SCHOOL STORY* (2012), with Tiffany A. Flowers, *Zero Chance of Passage: The Pioneering Charter School Story*, 85 J. NEGRO EDUC. 186 (2016). Charter schools are independently run, publicly funded, tuition-free schools. Arianna Prothero, *What Are Charter Schools?*, EDUC. WEEK (Aug. 9, 2018), <https://www.edweek.org/policy-politics/what-are-charter-schools/2018/08>; IMBER & VAN GEEL, *supra* note 6 at 60. These schools are often not bound by many state and local requirements, and instead enter into charter contracts with the state-designated authorizing authority that provide for the requirements the charter school must follow. Arianna Prothero, *What Are Charter Schools?*, EDUC. WEEK (Aug. 9, 2018), <https://www.edweek.org/policy-politics/what-are-charter-schools/2018/08>; IMBER & VAN GEEL, *supra* note 6 at 60. While traditional public schools are typically bound by state and local requirements, depending on the jurisdiction, private schools are usually subject to fewer requirements and can have far more leeway in choosing what is included in mandatory curriculums. *State Regulation of Private and Home Schools*, U.S. DEPT. EDUC. (Nov. 14, 2025), <https://www.ed.gov/birth-grade-12-education/education-choice/state-regulation-of-private-and-home-schools>. In 2024, 83% of K-12 students in the U.S. attended traditional public schools, 7% attended public charter schools, and 10% attended private schools. Katherine Schaeffer, *U.S. Public, Private, and Charter Schools in 5 Charts*, PEW RESEARCH (June 6, 2024), <https://www.pewresearch.org/short-reads/2024/06/06/us-public-private-and-charter-schools-in-5-charts/>. These alternative school structures create parallel—and often inequitable—memory regimes.

national education organizations,⁴⁹ and politics.⁵⁰ Here, we will focus on two major influences: teachers and politics. Teachers guide students in interpreting history and constructing their understanding of the past, while the political process both determines who gets a seat at the table where curriculum decisions are made and is the stage where clashes over narrative control and public memory play out.

“State standards and other policies cannot truly tell what is happening in the classroom.”⁵¹

The narratives taught in classrooms are predominantly shaped by instructional materials and the teachers carrying out instruction. Teachers “balance standards given at the state, country, and local levels, topics that they themselves feel are important, and topics that will be included on standardized testing,” so standards do play a significant role in determining what gets classroom time, but teachers have wide discretion around narratives and including additional content.⁵² This discretion empowers teachers to impart students with a rich understanding of the past, but also creates vulnerability to backlash when narratives become politicized.

⁴⁹ National education organizations have a significant impact. One example is The College Board, a self-funded nonprofit organization, designs and administers Advanced Placement (AP) courses that are then adopted and implemented at local schools. COLLEGEBOARD, <https://www.collegeboard.org/> (last visited Nov. 24, 2025). AP courses are considered by some to be the “closest thing that the United States has to a national curriculum in history.” Hughes, *supra* note 2 at 167. The College Board doesn’t receive federal funding, but does influence education policy and is influenced in turn by politics and state education policy. See Anemona Hartocollis & Eliza Fawcett, *The College Board Strips Down Its A.P. Curriculum for African American Studies*, N.Y. TIMES (Feb. 1, 2023), <https://www.nytimes.com/2023/02/01/us/college-board-advanced-placement-african-american-studies.html>; *South Carolina Cancels Funding, College Credit for AP African American Studies in High Schools*, PEN AMERICA (June 11, 2024), <https://pen.org/press-release/south-carolina-cancels-funding-college-credit-for-ap-african-american-studies-in-hgh-schools/>. Another example are the Council of Chief State School Officers (CCSSO) and the National Governors Association (NGA), two nonpartisan organizations that bring elected official officials together to collaborate on policy initiatives. *About the Standards*, CORESTANDARDS.ORG, <https://www.thecorestandards.org/about-the-standards/> (last visited Nov. 24, 2025). One such initiative so-lead by the CCSSO and the NGA was development of Common Core Standards. *Id.* The initiative aimed to foster more consistent education outcomes across the country by centralizing skills-based education goals in state standards. See *id.* Forty-one states have adopted some or all of Common Core Standards into their state standards. *Id.*

⁵⁰ IMBER & VAN GEEL, *supra* note 6 at 60; LINDA BUTTON, CURRICULUM ESSENTIALS: A JOURNEY (Angela Dodson ed., 2021); THE WILEY INTERNATIONAL HANDBOOK OF HISTORY TEACHING AND LEARNING (Scott A. Metzger & Lauren M. Harris eds., 2018).

⁵¹ CAREN S. OBERG & HEIDI KARTCHNER, RESEARCH INTO STATE OF AFRICAN AMERICAN HISTORY AND CULTURE IN K-12 PUBLIC SCHOOLS 3 (2016).

⁵² *Id.* at 56.

As teachers curate classroom content with an eye towards state standards, teachers and teacher associations often play a role in shaping standards by getting involved in the participatory standard development process.⁵³ In some states, teachers have a direct line to decision-makers through teacher-dedicated BOE seats or teacher advisory councils that work with state policy makers, though many states do not proactively engage teachers in the standard development process and teachers' influence varies widely depending on political climate and teacher-union strength.⁵⁴

The state and local entities with authority over K-12 curriculums are subject to the political machine, and so curriculum decisions are often influenced by political ideology.⁵⁵ State and local BOE and school board officials often run for office or are appointed by elected officials.⁵⁶ In practice, this interaction between legal frameworks and political influence yield mixed results, particularly when it comes to curriculum development. Shifts in political power often result in changes to curriculums, leading to inconsistency over time. Recent curriculum controversies in Virginia highlight the outsize influence that flip-flops in political power have on efforts of civil rights activists to introduce accurate narratives and robust coverage of Black history into state standards.⁵⁷

⁵³ See, e.g., Kerri Hirsch, Comment on Governor's African American History Education Commission (2020), <https://www.doe.virginia.gov/home/showpublisheddocument/37193/638060298656100000> (expressing support for state level standards and learning recommendations on behalf of teachers in a local school district).

⁵⁴ Medeline Will, *How Many Seats Do Teachers Get on the State Board of Ed.? In Most Places, None*, EDUCATIONWEEK (July 20, 2018), <https://www.edweek.org/leadership/how-many-seats-do-teachers-get-on-the-state-board-of-ed-in-most-places-none/2018/07>.

⁵⁵ See Hornbeck & Malin, *supra* note 5 at 2-3.

⁵⁶ See *School Board*, BALLOTPEDIA, https://ballotpedia.org/School_board (last visited Dec. 15, 2025); *About State Boards of Education*, NAT'L ASS'N STATE BDS. EDUC., <https://www.nasbe.org/about-state-boards-of-education/> (last visited Dec. 15, 2025).

⁵⁷ See discussion *infra* Part II.A.

Political power translates directly to power over curriculums, and as a result, curriculum content has frequently played a central role in the platforms of political candidates at all levels of government.⁵⁸ This has thrust “emotion-laden” debates over curriculum, particularly history curriculum, into public forums and the public consciousness.⁵⁹ The dispute over the historical narratives in classrooms, at a high level, is a disagreement over the “correct” framing of U.S. history. One side argues for “teaching history in a way that would evoke an image of the U.S. as a work in progress, requiring continued efforts to perfect the union.”⁶⁰ The other argues for “exceptionalist, patriotic accounts of U.S. history.”⁶¹

This political-structural interplay and fundamentally opposing ideological positions on the right way to teach U.S. history help explain why Black history is uniquely vulnerable to erasure or distortion: accurate and inclusive narratives of Black history necessarily require collective remembrance of the exceptionally dark stains on U.S. history.

PART II: FRAMEWORKS AND INFLUENCES IN ACTION

Throughout history and today, one of the greatest barriers to overcome in advocacy for robust, accurate, and inclusive Black history education in K-12 curriculums has been social and political resistance to laws and policies aimed at introducing forgotten histories and accurate narratives of Black history into the public consciousness. Today, that resistance takes the form of the modern anti-DEI, anti-woke movement (“anti-DEI movement”).

⁵⁸ See Hornbeck & Malin, *supra* note 5 at 2-3.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

The anti-DEI movement finds its roots in battles over K-12 curriculums.⁶² Many point to the 1974 Kanawha Textbook Controversy as a “first skirmish in the culture wars, the beginnings of the religious Right, and one of several origins of New Right organizing” that prefaced the modern anti-DEI movement.⁶³ The anti-DEI movement has proponents within and influences all levels of the U.S. government, and has prioritized controlling the narrative taught in Black history curriculums.⁶⁴ Despite this resistance, civil rights activists continue to persevere and work for progress in Black history education. As a result, the complex K-12 curriculum legal frameworks and influences often serve as a battleground between civil rights and anti-DEI activists. Backlash against Black history education operates through law, politics, and narrative control simultaneously. Virginia provides a case study of these dynamics.

A. State Standards and Curriculum Development in Virginia

Recent efforts to improve Black history education in Virginia illustrate the nature of modern social and political resistance, its focus on narrative control, and how it interacts with the legal and political structures surrounding K-12 curriculums.

On August 24, 2019, Democratic Virginia governor Ralph Northam issued Executive Order Thirty-Nine to establish the Virginia Commission on African American History Education in the Commonwealth (“Commission”) with the goal of ensuring “robust understanding” of Black history, an “essential component of the knowledge gained by every Virginia student.”⁶⁵ Northam

⁶² MASON, *supra* note 7 at 26.

⁶³ *Id.*

⁶⁴ Erin M. Carr & Nabil Yousfi, “Anti-Wokeism” & Authoritarianism: A Renewed Call for Constitutional Protections for Education, 74 SYRACUSE L. REV. 971 (2024); Rob Kahn, *The Moral Panic Over CRT Bans: A Semiotic Play in Three Acts*, 37 INT’L J. SEMIOTICS OF L. 1097 (2023); Chad Davis, *How Teaching Black History in Schools Became a National Controversy*, NPR (Feb. 29, 2024), <https://www.npr.org/2024/02/29/1234998846/how-teaching-black-history-in-schools-became-a-national-controversy>; Ken Paulson, *The Woke Movement and Backlash*, FREE SPEECH CTR. (May 23, 2024), <https://firstamendment.mtsu.edu/article/the-woke-movement-and-backlash/>.

⁶⁵ Executive Order Number Thirty-Nine, 36 Va. Reg. Regs. 188 (Sept. 16, 2019).

directed the Commission to “examine the current ways that African American history is described in the standards of learning and curriculum framework, and how that content is taught in classrooms,” then “issue a report with its findings and recommendations.”⁶⁶

The Commission issued and presented its final report in fall 2020 with “recommendations to ensure that content in Virginia schools is accurate, inclusive, and relatable,” which included technical edits to Virginia and U.S history course curriculum frameworks,⁶⁷ revising the review process for state education standards to include more diverse perspectives, including key Black history concepts in history and social studies standards, and making history part of the mandatory curriculum at all grade levels.⁶⁸ Before outlining recommendations for changes to standards, the report acknowledged that:

Even though Virginia led the nation in developing high quality content standards more than 25 years ago, the standards were tainted with a master narrative that marginalized or erased the presence of non-Europeans from the American landscape. These historical silences skew our perspective of the past, erasing people of color, and supplanting them with false narratives that ignore the diverse cultural underpinnings in American society. While revised regularly by historians and experts, Virginia’s History and Social Studies Standards of Learning continue to be incomplete with regards to incorporating African American history into the larger narrative.⁶⁹

Against the backdrop of the national controversy over the 2020 Racial Justice Protests, the Commission’s recommendations sparked social and political resistance across Virginia. One public

⁶⁶ *Id.* The executive order originally imposed a July 1, 2020 deadline, but COVID-19 related delays resulted in an extended deadline of September 1, 2020. *African American History Education Commission*, Va. Sec’y of Educ., <https://www.education.virginia.gov/initiatives/aahec/> (last visited Nov. 22, 2025).

⁶⁷ One such technical edit recommended revising a standard that read, “[c]ultural, economic, and constitutional differences between the North and the South eventually resulted in the Civil War” to “[c]ultural, economic, and constitutional differences between the North and the South, all of them based in slavery, eventually resulted in the Civil War.” VA. BD. OF EDUC., FINAL REPORT OF THE VIRGINIA COMMISSION ON AFRICAN AMERICAN HISTORY EDUCATION IN THE COMMONWEALTH (2020), https://www.education.virginia.gov/media/governorvirginiagov/secretary-of-education/pdf/AAHEC-Report-Final_version2.pdf.

⁶⁸ *Id.*

⁶⁹ *Id.*

comment submitted in advance of the September 2020 Virginia BOE meeting where the Commission’s final report was presented, after linking a news story decrying that “Virginia kindergarten students will learn about institutional racism alongside the alphabet,”⁷⁰ asked, “Why did someone think that the subject of slavery is so important to be taught to these kids ABOVE ALL OTHER POSSIBLE PRIORITIES?”⁷¹ Even commentators who supported the overall goal of the Commission’s work took issue with its effort to change the narrative surrounding Virginia and U.S. history.

For example, one commenter said that while they “wholeheartedly support the goal,” they feared “the report reflects a political correctness that has been influenced by the passions of the day.”⁷² Conversely, many Virginians supported the initiative.⁷³ Despite the resistance, the BOE approved the recommendations in October 2020.⁷⁴ Backlash to the recommendations intensified

⁷⁰ Chrissy Clark, *Virginia Urges Slavery Lessons for Kindergarteners*, WASH. FREE BEACON (July 19, 2020), <https://freebeacon.com/campus/virginia-mandates-slavery-lessons-for-kindergarteners/>.

⁷¹ Unknown, Comment (July 23, 2020), <https://www.doe.virginia.gov/home/showpublisheddocument/37195/638060298660970000>. Another commentator expressing opposition and warning that some of the authors cited in the Commission’s report “give harmful advice,” Hans Bader, worked for the Competitive Enterprise Institute (CEI). *Hans Bader*, COMPETITIVE ENTERPRISE INSTITUTE, <https://cei.org/experts/hans-bader/> (last visited Nov. 23, 2025); Hans Bader, Comment on Governor’s African American History Education Commission (2020), <https://www.doe.virginia.gov/home/showpublisheddocument/37193/638060298656100000>. CEI has ties to the Heritage Foundation, most notably an employee who contributed to the drafting of Project 2025. *See Daren Bakst*, COMPETITIVE ENTERPRISE INSTITUTE, <https://cei.org/experts/daren-bakst/> (last visited Nov. 23, 2025); *Mandate for Leadership, the Conservative Promise, Project 2025*, HERITAGE FOUNDATION (2023), https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf; Marlo Lewis, Jr., *CEI Comments Explain Why FERC’s Greenhouse Gas Regulatory Policy Cannot Pass a Cost-Benefit Test*, COMPETITIVE ENTERPRISE INSTITUTE (Apr. 25, 2022), <https://cei.org/blog/cei-comments-explain-why-fercs-greenhouse-gas-regulatory-policy-cannot-pass-a-cost-benefit-test/>.

⁷² Bill O’Keefe, Comment on Governor’s African American History Education Commission (2020), <https://www.doe.virginia.gov/home/showpublisheddocument/37193/638060298656100000>.

⁷³ Educators across Virginia overwhelmingly supported the recommendations, and seemingly coordinated an organized effort to ensure their support was voiced in the public comment process, as many educator comments share some identical or similar language. *See, e.g., August/September 2020 Written Public Comment Received by the Board*, VA. DEPT. EDUC. (2020), <https://www.doe.virginia.gov/home/showpublisheddocument/37193/638060298656100000>. Of the XX comments submitted by educators, XX expressed support, and only one expressed opposition. *See id.*

⁷⁴ Anna Gawel, *Virginia Board of Education Approves Expansion of African American History in Classrooms*, WTOPNEWS (Oct. 16, 2020), <https://wtop.com/virginia/2020/10/virginia-board-of-education-approves-expansion-of-african-american-history-in-classrooms/>.

throughout 2021. Resistance to the Commission’s work was “loudest and most organized in Virginia Beach and Loudon County,” where” in June of 2021, hundreds of Virginia residents flocked to school board meetings in both counties to voice their opposition.⁷⁵ As a result of the controversy, the issue of Black history education played a pivotal role in Virginia’s 2021 gubernatorial election.

Republican candidate Glenn Youngkin seized on the social resistance to the race-conscious changes to Virginia K-12 curriculums and made opposition to critical race theory (CRT)⁷⁶ a “huge part” of his campaign—and won.⁷⁷ Youngkin’s political campaign was bolstered by social resistance, and in turn, his campaign increased social resistance through narrative control. Youngkin’s rhetoric on the campaign trail echoed the rhetoric used on the national stage by equating the race and racism conscious curriculum changes to teaching CRT to children, thereby reinforcing a distorted narrative of CRT and introducing a distorted narrative about the

⁷⁵ Sara Gregory, *What is Critical Race Theory? And Why has it Received so Much Attention in Virginia?*, VA. PILOT (July 9, 2021), <https://www.pilotonline.com/2021/07/09/what-is-critical-race-theory-and-why-has-it-received-so-much-attention-in-virginia/>.

⁷⁶ CRT gained national attention in July 2020 and quickly became a catchall for the anti-DEI movement to “refer to all manner of progressive and antiracist ideas” and “annex the entire range of cultural constructions that are unpopular with Americans.” Hamilton, *supra* note 20 at 74. CRT was recast as an ideology claiming “America is an irredeemably racist and sexist country” or “[a]n individual’s moral character is determined by the individual’s race or sex.” *Id.* at 64, 76. This narrative distorted the true nature of CRT and was quickly used to describe any race and racism conscious historical narrative. FRANCESCA LÓPEZ ET AL., *Understanding the Attacks on Critical Race Theory*, NAT’L EDUC. POL’Y CTR. 3 (Sept. 2021), <https://files.eric.ed.gov/fulltext/ED616105.pdf>. “[A]ttacks on CRT can be understood as part of a larger ideological effort to delegitimize historically accurate presentations of race and racism in American history; to thwart attempts by members of marginalized groups to participate fully in civic life; and to retain political power.” *Id.* CRT is best defined as an academic legal theory that provides a framework for examining how “race and racism have shaped American institutions, culture, politics, economics, and education and to examine how racism produces and sustains inequality.” *Id.* at 3-4. While some conclusions formed through application of the CRT framework overlap with race and racism conscious historical narratives in K-12 schools, CRT itself is a theoretical framework used by adult scholars, is not taught in K-12 schools, and does not claim America is irredeemable or that moral characters are determined by race or sex. *Id.*

⁷⁷ See Jesse Hughes, *Critical Race Theory in Virginia: Will the Ban Be Effective? Or Not?*, LIBERTY CHAMPION (Feb. 21, 2022), <https://www.liberty.edu/champion/2022/02/21/critical-race-theory-in-virginia-will-the-ban-be-effective-or-not/>; Sonia Rao, *Virginia Was Primed to Teach Black History. Then the Nation’s First Anti-Critical Race Theory Governor Took Office*, SCALAWAG (June 14, 2022), <https://scalawagmagazine.org/2022/06/critical-race-theory-virginia/>.

Commission's recommendations.⁷⁸ This example demonstrates how political actors influence collective memory.

The change in political power in Virginia⁷⁹ shifted the balance of control over state standards away from activists working to improve Black history education. In the years following, battles between civil rights and anti-DEI activists over Virginia's state education standards have carried on.⁸⁰

Though the proliferation of the anti-DEI movement and the role it plays in K-12 curriculums can be explained in part as backlash to the 2020 Racial Justice Protests and CRT, its roots run deep, and the motives of its participants are varied. For at least some, resistance to historical narratives that acknowledge race and racism is rooted in misconceptions of how much time has passed since overtly discriminatory government policies existed or the magnitude of the continued effects and existence of racial disparity and discrimination.⁸¹ Forgotten histories and distorted narratives created fertile ground in the public consciousness for the anti-DEI movement to take root. Even as the anti-DEI movement works against efforts to improve Black history

⁷⁸ See Jackie DeFusco, *Critical Race Theory Causing Drama in Virginia Governor's Race: Here's Where the Candidates Stand*, WRIC (June 15, 2021), <https://www.wric.com/news/critical-race-theory-causing-drama-in-virginia-governors-race-heres-where-the-candidates-stand/>; Hamilton, *supra* note 20 at 72.

⁷⁹ In addition to the governor's seat flipping from Democrat to Republican, the House of Representatives shifted from a Democratic to a Republican majority. *Party Control of Virginia State Government*, BALLOTPEDIA https://ballotpedia.org/Party_control_of_Virginia_state_government (last visited Nov. 25, 2025). The Senate maintained a Democratic majority.

⁸⁰ After Governor Youngkin took office and control of the House of Representatives shifted to Republicans in 2022, Virginia was one of many states to pass legislation limiting how Black history could be taught in classrooms. *Infra* Part III.B. Efforts to control the narrative of Black history education went beyond legislation – one of Governor Youngkin's first acts upon taking office was to set up a tip line for “concerned parents” to report their children learning “divisive topics” in school. *Virginia Governor Glenn Youngkin's Anti-Critical Race Theory Tip Line*, AMERICAN OVERSIGHT (Sept. 26, 2023), <https://americanoversight.org/investigation/virginia-governor-glenn-youngkins-anti-critical-race-theory-tip-line/>.

⁸¹ See Lawrence D. Bobo, *Somewhere Between Jim Crow & Post-Racialism: Reflections on the Racial Divide in America Today*, DÆDALUS, Spring 2011, at 13 (discussing “the rise of a potent narrative of post-racialism” in the U.S.); COLLINS, *supra* note 3 at 69 (noting the commonality of “race fatigue” and “postracial” views among the author's white friends); Ibram X. Kendi, *Our New Postracial Myth*, ATLANTIC (June 22, 2021), <https://www.theatlantic.com/ideas/archive/2021/06/our-new-postracial-myth/619261/>.

education, education remains an important strategy to overcome resistance. Next, we will explore what the landscape of Black history education looks like today.

PART III: CURRENT LANDSCAPE OF BLACK HISTORY EDUCATION IN K-12 CURRICULUMS

Together, law, politics, instructional materials, and other influences on K-12 curriculums have created an uneven landscape of Black history education in U.S. K-12 school curriculums. In many ways, the uneven landscape of Black history education mirrors the uneven legal landscape of the U.S. education system.

A. State Statutes, State Standards, and the Classroom

State statutes and standards are interconnected elements of the legal framework setting mandatory K-12 education curriculums, and are illustrative of the tensions of the current moment between the historical narratives fighting for dominance in the public consciousness. All fifty states have statutes on the books that, at minimum, require public schools in the state to include particular areas of instruction in the K-12 education curriculum.⁸² As of 2022, only twelve states included Black history in the statutorily required areas of instruction.⁸³ In contrast, in the past five years, twenty-nine states have enacted state-level limits on how Black history can be taught in K-12 schools.⁸⁴

Meanwhile, a 2016 review of the state-level social studies standards for all 50 states and the District of Columbia found that “state standards are as idiosyncratic as the states they

⁸² *K-12 Areas of Instruction Required by Statute in the States*, BALLOTPEDIA, https://ballotpedia.org/K-12_areas_of_instruction_required_by_statute_in_the_states (last visited Nov. 3, 2025).

⁸³ Ileana Najarro, *Map: Where Is Black History Instruction Required*, EDUCATIONWEEK (Apr. 26, 2023), <https://www.edweek.org/teaching-learning/map-where-is-black-history-instruction-is-required/2023/04>.

⁸⁴ CRTFORWARD, <https://crtforward.law.ucla.edu/map/> (last visited Nov. 24, 2025); Terry Gross, *From Slavery to Socialism, New Legislation Restricts What Teachers Can Discuss*, NPR (Feb. 3, 2022), <https://www.npr.org/2022/02/03/1077878538/legislation-restricts-what-teachers-can-discuss>.

represent” and at times dictate that a particular historical narrative be taught.⁸⁵ For example, the Lost Cause narrative, the distorted narrative that the primary cause of the Civil War was states rights rather than slavery, is an example of an intentionally distorted narrative that “confederate states and segregationists” introduced to K-12 history curriculums to dominate the public consciousness.⁸⁶ As of 2020, sixteen state standards still listed states rights as a cause of the Civil War.⁸⁷ In contrast, many states correctly list slavery as the primary cause.⁸⁸ State standards directly shape collective memory.

Recent laws that impose new legal limits on classroom narratives have created a dilemma for history teachers, particularly those who teach accurate historical narratives acknowledging race and racism, as the limiting measures tend to be vague about what content is acceptable.⁸⁹ These limits go beyond state standards that dictate a particular historical narrative be taught, which leave room for teachers to fill in gaps and present alternative narratives alongside required narratives. The full impact of the limits on Black history curriculums and historical narratives in the classroom is unclear, but studies report that a majority of teachers believe the limits have a negative impact on the classroom, and that 1 in 4 teachers report basing choices in instructional materials on the new limits.⁹⁰ Regardless, many teachers still continue to teach robust, accurate, and inclusive Black history in their classrooms.⁹¹

⁸⁵ OBERG & KARTCHNER, *supra* note 53 at 21.

⁸⁶ See Downes, *supra* note 2; Duncan, Zawistowski, & Luibrand, *supra* note 3.

⁸⁷ Duncan, Zawistowski, & Luibrand, *supra* note 3.

⁸⁸ *Id.* See *infra* Part III.B.

⁸⁹ Downes, *supra* note 2 at 28.

⁹⁰ Uma Mazyck Jayakumar & Rita Kohli, *Silenced and Pushed Out: The Harms of CRT-bans on K-12 Teachers*, 46 THRESHOLDS 96, (2023); Ashley Woo et al., *Walking on Eggshells—Teachers’ Responses to Classroom Limitations on Race- or Gender- Related Topics*, RAND (Jan. 25, 2023), https://www.rand.org/pubs/research_reports/RRA134-16.html.

⁹¹ Christina Joseph, *Teaching Black History Now*, SCH. LIBR. J. (Jan. 23, 2025), <https://www.slj.com/story/teaching-black-history-now-libraries-education#:~:text=In%20contrast%20to%20the%20bans,Carolina%2C%20Tennessee%2C%20and%20Washington..>

A 2016 study published by the NMAAHC sheds some light on how state statutes and standards translate to teachers’ choices about classroom content.⁹² Participating teachers⁹³ infused Black history in the classroom “well beyond Black History Month” and a majority noted that Black history was integrated into all history lessons.⁹⁴ Many participants reported that while they were bound to state and local standards, they found ways to work within and around those limits and taught more than what was required by the standards. Comparing state standards to teacher practice reveals the limits of formal standards, as illustrated by the chart below:⁹⁵

Topic	Approximate % of State Standards Requiring Topic⁹⁶	Approximate % of Participant Teachers Covering Topic⁹⁷
Slave Trade	43%	70%
Slavery & Framing of Constitution	22%	58%
Life as a Slave	22%	60%
Abolition	71%	62%
Emancipation Proclamation	51%	60%
Reconstruction	75%	48%
Jim Crow	43%	62%
Plessy v. Ferguson	55%	57%
Great Migration	27%	52%
Brown v. Board	55%	74%
1964 Civil Rights Act	45%	72%

⁹² OBERG & KARTCHNER, *supra* note 53 at 8.

⁹³ The self-selecting participating teachers were practiced communicators of Black history, defined by the study as “[t]eachers who discuss their comfort with, passion for, and the importance of topics related to the African American experience in history, based on their confidence in their academic research and worldview, separate from their race or the race of their students.” *Id.* at 20. The study did not include input from novice communicators of Black history, or “[t]eachers who want to discuss African American history more fully, but are not sure how to start.” *Id.*

⁹⁴ *Id.* at 25, 29.

⁹⁵ *Id.* at 25-27.

⁹⁶ *Id.* at 22-25.

⁹⁷ *Id.* at 31-32.

The data is encouraging in that it shows that generally, but not always, teachers covered important topics even when those topics were not included in state standards.⁹⁸ However, it also reveals significant gaps in Black history education when it comes to inclusion of key histories of oppression such as the Three Fifths Compromise and Jim Crow laws.⁹⁹ These omissions matter because they shape which histories remain in public memory and which fall into collective forgetting.

In the time since the study's completion, significant social, political and legal shifts have impacted K-12 Black history curriculums. The 2020 Racial Justice Protests reinvigorated efforts to improve Black history education across the country and teach race and racism inclusive narratives in classrooms.¹⁰⁰ As improvement efforts were reinvigorated, so was resistance, and the landscape teachers face today is complicated by the laws limiting historical narrative discussed above, the social and political resistance of the anti-DEI movement, and federal attempts to further limit Black history education.¹⁰¹ The NMAAHC's 2016 study recommended replication "if any educational, political, or cultural changes have occurred which had the potential to cause changes in the educational ecosystem."¹⁰²

⁹⁸ This data is illustrative, but incomplete. The scope of the study did not include local requirements, testing requirements, federal funding requirements, etc.

⁹⁹ It is telling, too, that practiced communicators who value Black history and are eager to provide robust Black history instruction still fail to include key histories in curriculums, sometimes even when those histories are required by state standards. Coverage of key histories by non-practiced communicators likely does not meet the same levels as practiced communicators. Further, there is possibly a third category of teacher: non-practiced and resistant communicator, whose coverage falls even further below the coverage of practiced communicators.

¹⁰⁰ Marisa Mercer, *Black History Instruction Gets New Emphasis in Many States*, STATELINE (Aug. 20, 2020), <https://stateline.org/2020/08/20/black-history-instruction-gets-new-emphasis-in-many-states/>; Bryan Kelley and Cassidy Francies, *Black History Beyond Black History Month*, EDUC. COMM'N STATES (Mar. 1, 2021), <https://www.ecs.org/black-history-beyond-black-history-month/>.

¹⁰¹ See Rao, *supra* note 81; Exec. Order No. 14,190, 90 Fed. Reg. 8853 (Feb. 3, 2025); John Pascarella, *What Does the "Ending Radical Indoctrination in K-12 Schooling" Executive Order Mean for Equity-Driven Educators?*, USC RACE AND EQUITY (2025), <https://race.usc.edu/wp-content/uploads/2025/03/2025-Practice-Brief-Final.pdf>.

¹⁰² OBERG & KARTCHNER, *supra* note 53 at 55.

These changes have certainly occurred, and federal law makers took notice. In January of 2023 and 2025, proposed legislation called for a new study of Black history education in K-12 schools.¹⁰³ While a new study would provide valuable information on the impacts of these social, legal, and political developments, lawmakers, activists, and potential researchers will need to tread carefully in light of the slew of state laws limiting how Black history can be taught. In-depth information about the current state of Black history in K-12 curriculums could both benefit and harm improvement efforts – data could be weaponized against teachers in states with legal limits on narrative. Next, we will examine how these limits, statutes, and standards compare across states.

B. Comparative Data: State Statutory Black History Mandates, Limits, and Standards

Though state statutes and standards do not paint the full picture of what’s happening in the classroom, they directly impact teacher choices on classroom content.¹⁰⁴ Consequently, the idiosyncratic nature of the quality and content of state statutes and standards play a key role in what histories of Black oppression are forgotten and remembered in the public consciousness.¹⁰⁵ Sometimes, but not always, they further shape historical narratives surrounding those histories that are remembered.

Today, slavery, the Civil War, and the civil rights movement are generally remembered in the public consciousness.¹⁰⁶ While disagreements abound over how these events happened, and

¹⁰³ Black History Matters Act, H.R. 971, 118th Cong. (2023); Black History Matters Act, H.R. 1359, 119th Cong. (2025); *Maggie Rhoads*, Black History Matters Act Reintroduced Amid Debate on Education and DEI Policies, *FULCRUM* (Mar. 17, 2025), <https://thefulcrum.us/inclusion-diversity/black-history-act-dei>.

¹⁰⁴ See *supra* Part III.A.

¹⁰⁵ See *Criteria for Standards in History/Social Studies/Social Sciences*, AMERICAN HIST. ASS’N (Nov. 2024), <https://www.historians.org/wp-content/uploads/2025/08/Criteria-for-State-Standards-2024.pdf>.

¹⁰⁶ Linley Sanders, *How Much Do Americans Think They Know About Black History?*, *YOUGov* (Feb. 17, 2021), <https://today.yougov.com/society/articles/34229-americans-think-they-know-about-black-history>; Diego Ramos-Toro & Elsa Voytas, *Historical Narratives and Political Behavior in the US* (Mar. 22, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4769300.

what represents an accurate historical narrative, a majority agree that slavery caused the Civil War.¹⁰⁷ The distorted Lost Cause narrative is no longer the dominant narrative. However, other important histories of Black oppression like the Three-Fifths Compromise and the Great Migration lurk on the sidelines of public consciousness, but for many are forgotten.¹⁰⁸ Collective forgetting of these histories undermines public understanding of the deep roots of racial inequity in the U.S., leading to its dismissal as irrelevant in present-day policy debates.

What role are state statutes playing in breaking the cycle of remembrance or forgetting Black history? Are state standards continuing to require or recommend teaching slavery, ensuring this important history is not forgotten? How are they shaping narratives? Do they perpetuate distorted narratives like the Lost Cause narrative, accurately reinforce narratives in public consciousness, or introduce silence around key events? Do state standards require or recommend teaching about the Three-Fifths Compromise or the Great Migration, strengthening their foothold in the public consciousness? The chart below helps answer these questions by comparing state-level statutory Black history mandates, limits on how Black history can be taught, standards, and curriculums.

State-by-State Comparison: Statutes, Limits, Standards, and Curriculums								
State	Statutory Black history mandate ? ¹	Limit on how Black history can be taught?	Is the limit statutory?	Current Standards/Curriculum mention:				
				Slavery	Causes of Civil War	Slavery as a Cause	Three-Fifths Compromise	Great Migration
Alabama	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Alaska	No	Yes	No	Yes	Yes	Yes	No	No
Arizona	No	Yes	Yes	Yes	Yes	No	No	No

¹ Najarro, *supra* note 85.

¹⁰⁷ Ramos-Toro & Voytas, *supra* note 104 at 2.

¹⁰⁸ Sanders, *supra* note 104.

State-by-State Comparison: Statutes, Limits, Standards, and Curriculums

State	Statutory Black history mandate?	Limit on how Black history can be taught?	Is the limit statutory?	Current Standards/Curriculum mention:				
				Slavery	Causes of Civil War	Slavery as a Cause	Three-Fifths Compromise	Great Migration
Arkansas	Yes	Yes	Yes					
California	No	No		Yes	Yes	No	No	No
Colorado	Yes	No		Yes	Yes	Yes	Yes	Yes
Connecticut	No	No		Yes	Yes	Yes	Yes	Yes
Delaware	Yes	No						
Florida	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii	No	No		Yes	Yes	Yes	Yes	Yes
Idaho	No	Yes	Yes	Yes	Yes	Yes	No	No
Illinois	Yes	No						
Indiana	No	Yes	Yes	Yes	Yes	Yes	No	No
Iowa	No	Yes	Yes	No	Yes	No	No	No
Kansas	No	Yes	No	Yes	Yes	Yes	No	No
Kentucky	No	Yes	Yes	Yes	Yes	Yes	No	No
Louisiana	No	Yes	No	Yes	Yes	Yes	Yes	Yes
Maine	No	Yes	Yes					
Maryland	No	No		Yes	Yes	Yes	Yes	Yes
Massachusetts	No	No		Yes	Yes	Yes	Yes	Yes
Michigan	No	No		Yes	Yes	Yes	Yes	Yes

State-by-State Comparison: Statutes, Limits, Standards, and Curriculums

State	Statutory Black history mandate?	Limit on how Black history can be taught?	Is the limit statutory?	Current Standards/Curriculum mention:				
				Slavery	Causes of Civil War	Slavery as a Cause	Three-Fifths Compromise	Great Migration
Minnesota	No	No		Yes	Yes	Yes	No	No
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	No	Yes	Yes	Yes	Yes	No	No	No
Montana	No	Yes	No					
Nebraska	No	Yes	No	Yes	No	No	Yes	Yes
Nevada	No	No		Yes	No	No	No	Yes
New Hampshire	No	Yes	Yes	Yes	Yes	No	No	No
New Jersey	Yes	No		Yes	Yes	Yes	No	Yes
New Mexico	No	No		Yes	Yes	No	No	Yes
New York	Yes	No		Yes	Yes	Yes	Yes	Yes
North Carolina	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ohio	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Oklahoma	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Oregon	No	No		Yes	Yes	Yes	Yes	Yes
Pennsylvania	No	No		Yes	No	No	No	No
Rhode Island	Yes	No		Yes	Yes	Yes	Yes	Yes
South Carolina	Yes	Yes	Yes	Yes	Yes	Yes	No	No
South Dakota	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Texas	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes

State-by-State Comparison: Statutes, Limits, Standards, and Curriculums								
State	Statutory Black history mandate?	Limit on how Black history can be taught?	Is the limit statutory?	Current Standards/Curriculum mention:				
				Slavery	Causes of Civil War	Slavery as a Cause	Three-Fifths Compromise	Great Migration
Utah	No	Yes	Yes	Yes	Yes	Yes	No	No
Vermont	No	No						
Virginia	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Washington	Yes	No		Yes	No	No	No	Yes
West Virginia	No	Yes	No	Yes	Yes	Yes	Yes	Yes
Wisconsin	No	No						
Wyoming	No	Yes	No	No	Yes	No	No	Yes

PART IV: MOVING FORWARD

In the face of the pervasive influence of the anti-DEI movement, continuing to work towards robust, accurate, and inclusive Black history education in K-12 curriculums can feel daunting. However, most civil rights victories in U.S. history have been achieved despite significant resistance, and there are many paths forward. One path offers an opportunity for meaningful impact – advocating for state statutes to mandate inclusion of Black history in K-12 history curriculums. Statutory Black history mandates have a positive effect on the accuracy and inclusiveness of curriculums: in every state that has a statutory mandate and state-level guidance on inclusion of specific content, the state-level guidance explicitly lists slavery as a cause of the Civil War.¹⁰⁹

¹⁰⁹ Najarro, *supra* note 85.

A. State Statutory Mandates

State statutes set the baseline for state standards, and so statutory subject mandates translate directly to a subject's inclusion in the standards.¹¹⁰ As noted in Part III.A, only 12 states currently have statutes mandating inclusion of Black history education in K-12 curriculums. This leaves significant room for improvement, and targeted advocacy at the state level to enshrine Black history curriculum mandates in statutes and constitutions would smooth the path towards robust Black history education. Though there are fair critiques of the effectiveness of statutory Black history curriculum mandates, the standards that come out of them, and their ability to ensure accurate narratives in the classroom, mandates ultimately have a positive impact.¹¹¹ Teachers struggle to have adequate class time to spend covering Black history.¹¹² At minimum, mandates can guarantee dedicated class time.

Further, Black history curriculum mandates carry symbolic importance.¹¹³ They recognize and reaffirm the legitimacy of Black history education. Recognition and affirmation are critical in this moment of legal limits and the anti-DEI movement's focus on controlling the narrative of

¹¹⁰ CRTFORWARD, <https://crtforward.law.ucla.edu/map/> (last visited Nov. 24, 2025).

¹¹¹ *Id.*

¹¹² Gray in this column means that there is no state recommended/required curriculum and/or state standards are skills-based only and include no specific content requirements or provide very little in the way of content requirements, such as only listing the periods of U.S. history that must be covered. See Appendix A for state standards citations. Note that a comparison of the current status of state standards to the results of the Oberg study would be illustrative. However, without more information on the method employed by the study's authors during standard review, a 1:1 comparison could be misleading. The authors of that study included counts for state standards that included "primary references" to each particular topic area, and a state was counted as covering an area only if it included primary references in at least two state standards. OBERG & KARTCHNER, *supra* note 53 at 21-22. This was further broken down into number of references within a historical period. *Id.* As a result of this approach, and of lack of more in-depth insight into how the study's authors determined what was and was not a primary reference, true replication is not feasible, and ensuring sound analysis that accurately portrays how standards have changed overtime is impossible.

¹¹³ Oklahoma standards are another example of another politically-driven conflict over state history standards – the 2025 standards mentioned here are the subject of a court challenge that resulted in a court order to rework the standards. Sarah Schwartz, *Oklahoma Must Rework Social Studies Standards After Court Ruling*, EDUCATIONWEEK (Dec. 17, 2025), <https://www.edweek.org/teaching-learning/oklahoma-must-rework-social-studies-standards-after-court-ruling/2025/12>. Interestingly, Black history was not the point of contention; instead, the conflict arose over the inclusion of election fraud allegations in the 2020 election. *Id.*

Black history in classrooms.¹¹⁴ Given that proponents of the anti-DEI movement currently hold political power in many states, and anti-DEI activists are likely to push back against mandates,¹¹⁵ work towards mandates in all 50 states will be a long road. However, there are many state governments where the anti-DEI movement has a smaller footprint and legislative advocacy is viable. Civil rights activists can move progress in Black history education forward one state at a time. As the number of statutory Black history mandates grows, Black history will gain fixity as a subject consistently taught in K-12 schools. This stability, over time, will weave Black history into the permanent fabric of our collective memory.

CONCLUSION

The road to robust, accurate, and inclusive Black history education in all K-12 curriculums across the country remains long and laden with obstacles. The legal frameworks surrounding curriculum development are fragmented and inconsistent across state lines. The push and pull of competing forces within these frameworks creates an uneven, ever-shifting landscape of Black history education. However, where we are now is not where we have always been. Consistent efforts by civil rights activists over time have made significant progress. Ensuring that future generations inherit an honest and inclusive understanding of the nation's past remains both a legal project and a democratic imperative.

Word Count

- **Above the line: 5,698**
- **Below the line: 4,001**

¹¹⁴ See *supra* Part III.B.

¹¹⁵ *Id.*

APPENDIX A

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