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August 26, 2021

**Via Facsimile: (916) 322-2549
& U.S. Mail**

The Honorable Tony Thurmond
State Superintendent of Public Instruction
California Department of Education
1430 North Street, Suite 5602
Sacramento, CA 95814-5901

**Via Facsimile: (916) 322-2549
& U.S. Mail**

Keith Yamanaka, General counsel
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California Department of Education
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Sacramento, CA 95814-5901

Re: *Request to Remove Aztec Prayer from Ethnic Studies Model Curriculum*

Dear Hon. Thurmond & Mr. Yamanaka:

We have learned that the State Board of Education (SBE) has approved the Ethnic Studies Model Curriculum (ESMC). Chapter 5 of the curriculum includes a section of “Affirmation, Chants, and Energizers.” Among these is the “In Lak Ech Affirmation,” which invokes five Aztec deities. Although labeled an “affirmation,” it addresses the deities both by name and by their traditional titles, recognizes them as sources of power and knowledge, invokes their assistance, and gives thanks to them. In short, it is a prayer.

Both the California and the U.S. Constitution prohibit public schools from sponsoring or promoting prayer. *School Dist. of Abington Tp., Pa. v. Schempp*, 374 U.S. 203 (1963); *Sands v. Morongo Unified School Dist.*, 53 Cal.3d 863 (1991). This is particularly true where school officials are the drafters of the prayers. *Lee v. Weisman*, 505 U.S. 577 (1992); *Sands*, 53 Cal.3d at 882. Even if students were offered the choice not to join in the class-wide prayer (and it is unlikely they would be, as the curriculum does not include any provision for opting out), “prayer exercises in public schools carry a particular risk of indirect coercion.” *Lee*, 505 U.S. at 592. As such, they are prohibited.

The Hon. Tony Thurmond, California Dept. of Education
Keith Yamanaka, General counsel
Re: *Ethnic Studies Model Curriculum Approval*
August 26, 2021
Page 2

The Aztec deities invoked in the prayer are part of a living religion that continues to be practiced today. *See Sousa v. Wegman*, 2015 WL 3991100, at *5 (E.D. Cal., June 30, 2015) (citing cases) (“Federal courts in California and other circuits have treated traditional Mexican/Aztec/Mayan beliefs as religious.”); *Saldana v. Borem*, 2012 WL 667390 (S.D. Cal. Feb. 29, 2012) (recognizing plaintiff’s Nahuatl/Aztec drawings as religious items and plaintiff as a practitioner of the Nahuatl/Aztec religion).

The fact that the Aztec religion is not formally organized and is non-Western in its origin does not excuse the constitutional violations. The law makes no distinction among religions, and in fact the government (including the SBE) is forbidden to decide which religions are more or less worthy of protection or promotion. *Everson v. Bd. of Educ. of Ewing Tp.*, 330 U.S. 1, 15 (1947) (holding that states cannot prefer one religion over another); *Mandel v. Hodges*, 54 Cal.App.3d 596, 617 (1976) (holding that California’s constitution forbids preference of one religion over another). Neither the SBE nor any branch of California’s government may lawfully seek to promote the Aztec religion specifically or religion generally. *See Sands*, 53 Cal.3d at 820 (holding that the California constitution prohibits “any official involvement that promotes religion”).

Our clients have a religious objection to the Aztec prayer and they do not want their children chanting the Aztec prayer, being asked or pressured to do so, or risking ostracism if they refuse. Under both the California and U.S. constitutions, they have the right to expect all branches of the state government, including the SBE and CDE, to respect this choice. Furthermore, all Californians have the right to expect that tax-supported public schools will not aid or promote this religion.

There are likely many others who share our clients’ view. We believe the state and its people would be best served by withdrawing the Aztec prayer from the ESMC and not asking schoolchildren to participate in Aztec prayer or other aspects of the Aztec religion. We are writing this letter in hopes that you will agree and take action. If not, however, we intend to file suit and seek relief that way including seeking recovery of attorney’s fees and costs incurred therein.

Please contact me no later than **September 2, 2021**, to discuss whether you would like to work out an informal resolution of this issue without litigation. If I do not hear from you by this date, we will proceed with filing litigation. I hope to hear from you soon.

Sincerely,

LIMANDRI & JONNA LLP



Robert E. Weisenburger

REW/mm