

July 24, 2024



Mr. Steintrager, Chair  
Mr. Cheung, Vice Chair  
Academic Council  
University of California

*Sent via email*

*Re: Senate Regulation 424 and Ethnic Studies Course Criteria*

Dear Chair Steintrager and Vice Chair Cheung:

The Foundation Against Intolerance & Racism (FAIR) is a nonpartisan, nonprofit organization dedicated to advancing civil rights and liberties and promoting a common culture based on fairness, understanding, and humanity. We have grassroots chapters and tens of thousands of members nationwide, including throughout California. Our website, [fairforall.org](https://fairforall.org), can give you a fuller sense of our identity and activities.

We write to offer our comments on the proposal forwarded to the Academic Council by the Board of Admissions and Relations with Schools (the "BOARS") to add a particular type of Ethnic Studies course as a prerequisite for admission to the University of California school system. The Ethnic Studies discipline is represented by a spectrum of potential content that can teach students a wide variety of principles ranging from positive and universal lessons in empathy and compassion across multiple ethnicities to divisive and radical ideas that pressure students to become activists to foment a political revolution.<sup>1</sup> The latter version of Ethnic Studies is popularly known as "liberated" or "liberatory" ethnic studies (hereinafter "Liberated Ethnic Studies"). The proposed Ethnic Studies criteria that BOARS forwarded to the Academic Council for informational purposes only will result in the creation and requirement of Liberated Ethnic Studies courses in all California public, and likely private high schools.

We write to urge the Academic Council to **not pass** this proposal, or any other proposal promoting Liberated Ethnic Studies, because it amounts to an unfunded mandate<sup>2</sup> that promotes

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<sup>1</sup> See James Banks "Handbook on Research of Multicultural Education" (2004) and Gary Okihiro "Third World Studies: Theorizing Liberation" (2016) (Ethnic Studies "remains largely undefined. There are no agreed upon methodologies and theories particular to and definitive of the field" and "the field of 'critical' ethnic studies...never existed...has yet to emerge...[is] a work of imagination.").

<sup>2</sup> The California Attorney General's Office and Governor Newsom administration's alerts informed school districts that an Ethnic Studies high school graduation requirement is "*anticipated*" rather than required. The CA Legislature and Governor Newsom's enacted 2024-25 Budget did not appropriate funds for AB 101. <https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Alert%20Re%20Inclusive%20Curricula.1.9.24.1157CLEAN.pdf> (January 9, 2024, "Education Code anticipates that all public school students will complete a mandatory one-semester ethnic studies course in order to graduate") and <https://www.gov.ca.gov/wp-content/uploads/2023/08/8.23.23-Ethnic-Studies-Letter.pdf> (August 23, 2023, "anticipates that a one-semester course in ethnic studies will be required for graduation") (emphasis added). This is consistent with AB 101, as enacted, which requires subsequent legislation authorizing funding for it; none has been enacted. See CA Education Code Section 51225.3(d). In 2021, the State of California Department of Finance formally opposed

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a specific political ideology – decolonization and liberation theory employed by political revolutionary groups – in violation of the California Constitution and California Education Code.

### **Details of the Proposed Amendment**

University of California Senate Regulation Section 424.A.3.a-g, which is the foundation of this proposal, provides the following list of "subject requirements [that] must be satisfied through the completion of approved courses of study" in order to gain admission to the University of California system: history and social sciences, English, math, science, non-English language, visual or performing arts, and college preparatory courses. The BOARS proposal would add subsection (h) to 424.A.3, providing that "[a]t least one of the courses used to satisfy the specific requirements of Paragraph A.3.a-g of this Regulation must be an approved course of study (one-half unit) in Ethnic Studies." The BOARS proposal includes Course Criteria and Guidance<sup>3</sup> that will govern the Ethnic Studies course that is called for (individually, the "Course Criteria" and collectively, the "Proposed Amendment").

The revised set of Course Criteria was drafted by a seven-person Implementation Team, at least three-quarters of which publicly endorse decolonization and liberation theory. The University of California Departments of two Implementation Team members, including co-chair University of California Santa Cruz Professor Christine Hong, promote private liberation theory-based high school Ethnic Studies consulting group, Liberated Ethnic Studies Model Curriculum Coalition ("LESMCC"), on their department's website. The other Implementation Team co-chair University of California Riverside Wallace Cleaves presses students for "what we absolutely have to have" them learn -- giving the "land back" to the indigenous people, a key tenet of liberation theory.<sup>4</sup>

The Course Criteria would require that all California high schools offer an Ethnic Studies Course that uses the Implementation Team's definition of Ethnic Studies which differs from the State Board of Education's Ethnic Studies definition recommended in the ESMC. The Implementation Team's Course Criteria's definition includes "the critical... local/national/transnational study of formations of race, ethnicity, and indigeneity, as well as structures of power...grounded in a ...commitment to social transformation...to challenge systemic violence" as it relates to indigenous people and people of color only. These emanate from decolonization and liberation theory as evident in the following Proposed Amendment's Content Guidelines which require teaching "critical analysis" and "enacting resilience," highlighting "structural violence," "racial capitalism," questioning norms of objectivity and neutrality, and call for a "reckoning."

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AB 101 due to (i) its "St Mand" \$100-\$300 million annual estimated cost, and (ii) more pressing education needs for those funds. [https://www.dof.ca.gov/Legislative\\_Analyses/LIS\\_PDF/21/AB-101-20210812070256PM-AB00101.pdf](https://www.dof.ca.gov/Legislative_Analyses/LIS_PDF/21/AB-101-20210812070256PM-AB00101.pdf). See also California Constitution Article XIII B, Section 6 ("Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...").

<sup>3</sup> BOARS' April 7, 2023 minutes state that the Course Criteria and Guidance was modified to add religion. The revised Course Criteria and Guidance was not posted so not reviewed.

<sup>4</sup> "How Can Cities Meaningfully Support Indigenous Communities" presentation at University of Southern California (June 2, 2021) (minutes 25-26).

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In contrast, the State Board of Education's ESMC does not, for example, evoke "structural violence," "racial capitalism," or call for a "reckoning." Instead it calls for "developing a better understanding of others," "inclusivity," and for educating students about antisemitism, Islamophobia and transphobia not mentioned in the Proposed Amendment. It also states that students study ethnic groups' contributions to the arts, medicine, and economics and ethnic groups perceived by some to be white such as Armenians and Jews, neither are mentioned in the Proposed Amendment.

If adopted by the UC Regents, the Proposed Amendment will effectively require high schools to offer a Liberated Ethnic Studies course because California law requires that public schools offer a course of studies that satisfy the prerequisites for admission to California's postsecondary education institutions.<sup>5</sup> This liberated approach to Ethnic Studies cannot legally be mandated for public school K-12 instruction under California law.

### **Political and Sectarian Influence Prohibited**

It is clear that the Proposed Amendment's Liberated Ethnic Studies requirement is "political" and "sectarian" in violation of California law because it is squarely based on narrow ideologies held by only certain political factions. The California Constitution and the UC Regents' Bylaws include identical provisions which require the UC system to be "entirely independent of all political or sectarian influence."<sup>6</sup> Similarly, California Education Code Section 60044 prohibits the adoption of instructional materials that contain "sectarian or denominational doctrine or propaganda contrary to law."<sup>7</sup> The legislature's stated purpose for Section 60044 is to guard against the "threat to the apolitical nature of public school governance and academic content standards in California."<sup>8</sup> The California Supreme Court has expressly recognized the importance of objective, apolitical education as a necessary countermeasure to "the development of sophisticated techniques of political propaganda and mass marketing," saying that "education plays an increasingly critical role in fostering 'those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion.'"<sup>9</sup>

The political and sectarian nature of Liberated Ethnic Studies principles is readily apparent both in the Proposed Amendment contents discussed above, and in the way the organizations and individuals involved in creating the Proposed Amendment openly tout their political objectives.

The Course Criteria implementation group co-chair Christine Hong sees Ethnic Studies as a "radical project" for "liberatory political education" centering on anti-imperialism that opposes

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<sup>5</sup> CA Education Code Section 51228(a).

<sup>6</sup> CA Const. Art. 9, Sec. 9(f); Bylaws of the Regents of the University of California, Section 12. *See also*, CA Constitution Article XVI Section 5 (prohibits school districts from funding religious sects, churches, creeds, and sectarian purposes); CA Constitution Article IX Section 8: (prohibits the teaching of sectarian or denominational doctrine in public schools).

<sup>7</sup> California Ed. Code. Section 60044(b).

<sup>8</sup> CA SB302, Sec. 1(j) (2011-2012).

<sup>9</sup> Hartzell v. Connell, 35 Cal.3d 899, 908 /679 P.2d 35, 41 (Apr. 20, 1984) (quoting Wieman v. Updegraff, 344 U.S. 183, 196 (Dec. 15, 1952) (conc. opn. of Frankfurter, J.).

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the United States military’s “interventionist violence,” citing sanctions imposed on North Korea as an example.<sup>10</sup>

Needless to say, the ideas expressed by Montano and Gallagher-Geurtsen and political activists responsible for the Proposed Amendment such as Hong, Cleaves, Jolivette and Lee do not represent widely accepted American sentiments and they openly call for transformation of our systems of government – this is the essence of a political effort.

As transformational political or sectarian movements typically go, the push for Liberated Ethnic Studies as represented by the Proposed Amendment, has been underway in California for decades. Since the historic student protests in 1968 at San Francisco State University, supporters of Liberated Ethnic Studies have been an academic faction of significant focus and attention among educators, activists, and policy-makers. The series of their efforts undertaken in California since the mid-2010s have been so divisive and polarizing that little headway has been made by Liberated Ethnic Studies proponents.

What is now presented as the Proposed Amendment has entered the California political landscape in multiple different presentations, only to be struck down, reworked, and re-presented time and time again:

- 2016- California Assembly Bill 2016 was passed (after being proposed multiple times), requiring the California Department of Education (“CDE”) to adopt an ethnic studies model curriculum for public high schools after a veto by Governor Brown.
- 2019- California State Board of Education appointed members to the Ethnic Studies Model Curriculum Advisory Committee.<sup>11</sup>
- 2019- The initial draft of Ethnic Studies Model Curriculum was developed and immediately rejected by Governor Newsom and the California State Board of Education President.
- 2020-2021- New drafts of the ethnic studies model curriculum proposed, received public comment, and amended multiple times.
- September 2020- Governor Newsom vetoed Assembly Bill 331 proposing to make Ethnic Studies a high school graduation requirement,<sup>12</sup> citing inappropriateness of the draft model curriculum,<sup>13</sup> even after the model curriculum had been amended to include several “guardrails.”
- March 2021- CA State Board of Education adopts the ethnic studies model curriculum, which remains optional for California school districts.<sup>14</sup> In total, four drafts of the model curriculum were submitted by the CDE, generating over 100,000 public comments, five times the number of comments the CDE’s next most controversial project (comprehensive sex education) elicited.

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<sup>10</sup> Arab Resource and Organizing Center’s “Arab American Studies, Palestine and the Fight for Ethnic Studies” <https://www.youtube.com/watch?v=WmXGKiek-oI> (August 2022).

<sup>11</sup> See timeline of Advisory Committee efforts <https://www.cde.ca.gov/ci/cr/cf/modelcurriculumprojects.asp>.

<sup>12</sup> See [https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill\\_id=201920200AB331](https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200AB331).

<sup>13</sup> See [https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill\\_id=201920200AB331](https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200AB331).

<sup>14</sup> See <https://www.cde.ca.gov/ci/cr/cf/esmc.asp>.

- October 2021- Assembly Bill 101 is signed into law, requiring completion of an ethnic studies course in order to graduate from public high school in California. The choice of which ethnic studies course is expressly left up to the discretion of the local school districts. Assembly Bill 101 specifically states that “it is the intent of the Legislature that local educational agencies not use the portions of the draft model curriculum that were not adopted by the Instructional Quality Commission due to concerns related to bias, bigotry, and discrimination.”<sup>15</sup> Conditioned on legislation funding it, Assembly Bill 101 is not yet operational.
- November 2021- BOARS submits the Proposed Amendment to the UC Academic Council.<sup>16</sup>
- January 2022- LESMCC contracts with Castro Valley Unified School District. Castro Valley Unified School District Trustees’ approval of LESMCC’s \$82,000 Ethnic Studies professional and curriculum development contract, negotiated by LESMCC’s Tricia Gallagher-Geurtsen and Theresa Montano, generates public outcry.<sup>17</sup> Subsequent lucrative private contracts with public school districts and county offices of education are signed.
- March 2022- Research on academic value of ethnic studies is refuted. UCLA and University of Pennsylvania professors’ peer review of liberated ethnic studies advocates’ oft-cited study demonstrating some academic benefits of ethnic studies courses finds major deficiencies in study and concludes that findings are not substantiated.<sup>18</sup>
- March 2022- Academic Council returns Proposed Amendment to BOARS for reconsideration.
- August 23, 2023 - Governor Newsom’s Administration advises all California school districts:
  - (i) that AB 101’s Ethnic Studies high school graduation requirement is anticipated (did not state that it is required), and
  - (ii) to be mindful that some Ethnic Studies vendors may not meet California’s legal requirements, particularly the ban on promoting "bias, bigotry, or discrimination against any person or group of persons based on any category protected by Education Code Section 220."
- September 2023 - Liberated Ethnic Studies proponents organize to press Governor Newsom to “stop the censorship of teaching Palestine, the concepts of settler colonialism, and Critical Race Theory” in primary and secondary school classrooms.
- November 3, 2023 - BOARS member reports that the UC Ethnic Studies admissions proposal “has raised concerns among the Regents due to its association with the recent letter about the war in the Middle East from the UC Ethnic Studies Faculty Council.”
- January 9, 2024 - CA Department of Justice Attorney General’s Office issues a Legal Alert to all California school districts:

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<sup>15</sup> See [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB101](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB101).

<sup>16</sup> See <https://senate.universityofcalifornia.edu/files/underreview/rh-systemwide-senate-review-revision-sr-424.pdf>.

<sup>17</sup> See <https://www.tabletmag.com/sections/news/articles/studies-fail-to-support-claims-new-california-ethnic-studies-requirement>

<sup>18</sup> See <https://www.jns.org/california-school-district-adopts-liberated-ethnic-studies-curriculum-marked-by-anti-extreme-anti-israel-bias/>

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- (i) stating that AB 101's high school Ethnic Studies graduation requirement is anticipated (did not state that it is required),
- (ii) mentioning Ethnic Studies, tells them to not "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion," and "not end up discriminating against other groups or communities."

### **Local Educational Control Guaranteed**

The Academic Council should follow BOARS<sup>19</sup> and reject the Proposed Amendment on the additional basis that it robs local California school districts of their statutory right to govern curricular decisions within their purview. Several California Education Code sections give local governing school boards broad authority to carry on their schools' activities and programs, including autonomy in adopting course content and instructional materials.<sup>20</sup> The Course Criteria are overly prescriptive such that local school governing boards will not have the ability to appropriately determine the course content best suited for their individual communities. We urge the Academic Council to reject the Proposed Amendment and allow local governing boards the autonomy intended for them by the California legislature.

### **Conclusion**

Despite their persistence and zealotry, Liberated Ethnic Studies stakeholders have been unable to secure a consensus among education policymakers and the public in California. The UC Proposal is simply the latest effort by political activists to inject a Liberated Ethnic Studies course requirement into California's public education system.

The Academic Council should reject the Proposed Amendment because it represents illegal political and sectarian influence in the California public education system, thereby placing local California school districts in the untenable position of adhering to UC-imposed requirements, which will in turn expose them to litigation challenging their compliance with California law.

Very truly yours,

The Foundation Against Intolerance & Racism

cc: Members of the Academic Council  
Maximillian Auffhammer  
Ahmet Palazoglu  
Arvind Ragaraman  
Andrea Kasko

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<sup>19</sup> On June 2, 2023, BOARS approved the Proposed Amendment only for the purpose of allowing "the UCOP to gather additional courses articulation information for BOARS' future consideration." On November 3, 2023, BOARS ~~rejected~~ this Proposed Amendment in a 6-5-1 vote; this Proposed Amendment was forwarded to the Academic Council for informational purposes only. See January 11, 2024 letter from Barbara Knowlton to Chair Steintrager.

<sup>20</sup> See California Education Code, Sections 35160.1, 51041, 51053, 51054.

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