



New Mexico School Boards Association

POLICY SERVICES POLICY ALERT

To: Superintendents and Board Members

Date: July 22, 2025

From: R. Daniel Castille, Policy Service Director

Re: Mahmoud v. Taylor; new Supreme Court case

The purpose of this Alert is to make school districts aware of the above referenced Supreme Court case and its potential policy/regulation implications, and to invite district input regarding how NMSBA's existing policies/regulations related to parents opting their children out of certain educational programming is working in practice and whether they should be changed. NMSBA is not making changes to its model policy manual based on this ruling at this time.

The Supreme Court long ago determined that the Free Exercise (of religion) Clause of the First Amendment gives parents a right to direct the religious upbringing of their children. That right is violated—i.e., substantially interfered with—when public schools impose rules or practices that pose “a very real threat of undermining” the religious beliefs and practices that the parents wish to instill. See Wisconsin v. Yoder (1972). The Yoder case involved Amish parents who wished to withdraw their children from conventional schooling after the eighth grade, in violation of a Wisconsin law requiring children to attend school until the age of 16. The Yoder court determined that, under those circumstances, the Wisconsin law violated those Amish families' free exercise rights because the compulsory school attendance law posed a real threat of undermining their religious beliefs and practices.

Since Yoder, many lawsuits have been filed by parents seeking a First Amendment right to opt their children out of specific public school lessons or curriculum contrary to their religious beliefs; e.g., readings exposing students to other religions, magic, or

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moral relativism; health and sex education; science curriculum dealing with evolution vs. creationism, etc. The lower courts that have decided those cases have almost universally determined that parents have a constitutional right to send their children to private school, or to home-school them, but not a right to veto or opt their children out of particular lessons taught at a public school. In other words, the lower courts have consistently upheld public schools' authority to design mandatory curricula even if it conflicted with parents' religious views, so long as the schools did not compel students to violate their religious beliefs (e.g., by requiring affirmation or participation in religious practices). Mere exposure to conflicting ideas was not considered a Free Exercise violation.

In Mahmoud v. Taylor, decided on June 27, 2025, the Supreme Court addressed whether parents have a First Amendment right to opt their children out of an educational requirement or curriculum that runs contrary to their religious beliefs. The case arose out of a Maryland school board's requirement to use "LGBTQ+ inclusive" storybooks in elementary school classrooms. Many families objected based on religious beliefs. The particular facts of the case, and the nuances of the Court's decision, are beyond the scope of this Policy Alert but the district first provided notice to dissenting parents of dates when the books would be taught and allowed them to opt their children out of instruction based on those books, but later decided not to provide notice or opt-outs after determining that it was impractical and stigmatizing to certain students. A majority of the court determined that the particular storybooks did not merely mention the existence of LGBTQ+ people but contained value judgments that imposed upon children a set of values and beliefs hostile to their parents' religious beliefs and that exerted on children a psychological pressure to conform to the books' specific viewpoints. Based on the facts of the case, the Court held that the Board's introduction of the "LGBTQ+ inclusive" storybooks in the classrooms of very young children—combined with its decision to withhold notice to parents and to forbid opt-outs—"substantially interfered" with and posed "an objective danger to" the religious development of the plaintiffs' children in violation of the First Amendment free exercise clause.

The case is not limited to LGBTQ+ inclusive curriculum. The same standard used by the Court in Mahmoud will presumably be applied to other instances when families seek to opt-out of certain instruction based on religious beliefs. Though the Court did state that the age of the student was a factor in determining whether there was an objective danger to the religious development of a child, it didn't otherwise provide much guidance useful to school districts in making a determination whether an opt-out request for certain lessons must be honored by a school. The Court also did not address what students should do as an alternative or how they demonstrate competency for grading and promotion purposes if they opt out of large portions of the curriculum.

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Schools may see an increase in opt-out requests as a result of this decision and may need legal advice to navigate issues that may arise. The Policy Service wants to make districts aware of this new case and that, for the first time, families have a constitutional right to opt children out of specific lessons that conflict with their religious beliefs.

With respect to policies, the policy service has determined that no changes to the standard policies will be made at this time because existing policies and regulations already address a parent's right to inspect instructional materials and to request removal of a student from activities, classes, or programs in which the objectionable material is used. Relevant existing policies and regulations regarding parental involvement, notice rights for instructional materials, and opt-outs in the master policy manual include:

- **I-2050 IHAMB Family Life Education/I-2081 Exemption Request form for sexuality performance standards.** This policy and form allow parents to exempt their students from the parts of the health education curriculum that addresses sexuality performance standards as required by NMAC 6.29.6.11.
- **I-5350 IJ Instructional Resources and Materials.** Among other things, this policy directs the Superintendent to establish procedures that permit parents to request access to instructional materials used by, or being considered for use by, the district.
- **I-5261 IJ-R Instructional Resources and Materials.** This Regulation represents the procedures required in Policy I-5350 IJ. It sets out the process for parents to request review of instructional materials and, importantly, creates a process for parents to request removal of a student from activities, classes, or programs in which objected-to material is used. The basis of an objection need not be religious.
- **I-5800 IJJ Textbook/Supplementary Materials Selection and Adoption.** This policy allows parents to be involved in the instructional materials adoption process as required by NMSA 22-15-8.
- **I-6311 IJND-R Technology Resources.** This Regulation requires schools to give advance notice to parents when a movie or video not approved for general audiences of all ages will be shown in class and to allow students to be exempted from the movie or video.
- **I-8000 IMB Teaching About Controversial/Sensitive Issues.** This policy provides guidance to teachers when addressing controversial issues.

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- **K-1500 KEC Public Concerns/Complaints about Instructional Resources.** This policy allows the public to object to instructional material.
- **K-1531 KEC-E Request for Reconsideration of Instructional Material.** This exhibit is a form to request that certain instructional materials, among other things, not be assigned to a parent’s child.
- **L-0531 LC-E Model Notification of Rights under the Protection of Pupil Rights Amendment (PPRA; 20 U.S.C. 1232h).** This form, or other parental notice acceptable under the PPRA, is required to be sent to parents at least annually. Among other things, the Exhibit states parents have a right to review and inspect instructional materials used as part of the educational curriculum before they are used. The PPRA defines “instructional materials” as “instructional content that is provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet” not including academic tests or academic assessments.

In districts that have adopted, and implement, the above-referenced NMSBA policies, regulations, and exhibits, parents will receive notice that they may inspect instructional materials and have an opportunity to request that their children be exempted from such instruction. Mahmoud v. Taylor means that parents now have a constitutional right that those requests be granted if to deny the request would infringe on their right to free exercise of religion.

As mentioned, because NMSBA’s standard documents include those referenced above, NMSBA will not at this time change its standard documents based on Mahmoud v. Taylor. However, we invite your input on the efficacy of those documents in practice, especially the regulation I-5261 IJ-R Instructional Resources and Materials, which provides the means of requesting an opt-out and alternatives/substitutes for receiving credit in the class. The Policy Service may determine later to make changes to these forms.

For those interested, the Supreme Court case is here: https://www.supremecourt.gov/opinions/24pdf/24-297_4f14.pdf.

If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dan Castille, Policy Services Director at [rdcpolicyservices@outlook.com]. This Material is written for information only and is not intended as legal advice. Please consult your attorney if legal explanations are needed.

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