

Authority to Set Curriculum: Board Responsibilities in the Face of Community Pressure

BY: CARLOS PADILLA, SCOTT BECKMAN, CHEYENNE TRUJILLO

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CUDDY & McCARTHY, LLP

Attorneys at Law

Who is initially responsible for approving curricula?

At the first level, it is the state Constitution:

NM Constitution. ARTICLE XII

- Education
 - Section 1. [Free public schools.]
 - A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.

At the Second Level, it is the legislature:

NM Constitution. ARTICLE XII

- Section 6.
- A. There is hereby created a “public education department” and a “public education commission” that shall have such powers and duties as provided by law.
- D. The secretary of public education shall have administrative and regulatory powers and duties, including all functions relating to the distribution of school funds and financial accounting for the public schools to be performed as provided by law.

Since 2003, it has been the express goal of the legislature to approve and promote a multicultural system that acknowledges and fosters all the diverse cultures of New Mexico.

22-1-1.2. Legislative findings and purpose.

A. The legislature finds that no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed and that the system must meet the needs of all children by recognizing that student success for every child is the fundamental goal.

B. The legislature finds further that the key to student success in New Mexico is to have a multicultural education system that:

- (1) attracts and retains quality and diverse teachers to teach New Mexico's multicultural student population;
- (2) holds teachers, students, schools, school districts and the state accountable;
- (3) integrates the cultural strengths of its diverse student population into the curriculum with high expectations for all students;
- (4) recognizes that cultural diversity in the state presents special challenges for policymakers, administrators, teachers and students;
- (5) provides students with a rigorous and relevant high school curriculum that prepares them to succeed in college and the workplace; and
- (6) elevates the importance of public education in the state by clarifying the governance structure at different levels.

The legislature has charged the PED with the following statewide responsibilities:

- **22-2-2. Department; general duties.**
- The department shall:
 - A. properly and uniformly enforce the provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978];
 - B. determine policy for the operation of all public schools and vocational education programs in the state,...
 - C. supervise all schools and school officials coming under its jurisdiction, including taking over the control and management of a public school or school district that has failed to meet requirements of law or department rules or standards,...
 - D. prescribe courses of instruction to be taught in all public schools in the state, requirements for graduation and standards for all public schools,....

And Also...

- **22-2-8. School standards.**
- The state board [department] shall prescribe standards for all public schools in the state. A copy of these standards shall be furnished by the department to each local school board, local superintendent and school principal. The standards shall include standards for the following areas:
 - A. curriculum, including academic content and performance standards;
 - B. organization and administration of education;
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- **22-13-1. Subject areas; minimum instructional areas required; accreditation.**
- A. The department shall require public schools to address department-approved academic content and performance standards when instructing in specific department-required subject areas as provided in this section. A public school or school district failing to meet these minimum requirements shall not be accredited by the department.

The first listed power of a Board is stated in Section 22-5-4A of the Public School Code:

A local school board shall have the following powers or duties:

A. subject to the rules of the department, develop educational policies for the school district;

In Section 22-13-1.6 of the Code the legislature has declared that a local school district:

shall align its curricula to meet the state standards for each grade level and subject area so that students who transfer between public schools within the school district receive the same educational opportunity within the same grade or subject area.

Takeaways

1. History, literature and social science curricula therefore must meet statewide standards, and not be limited to topics or viewpoints that a local board desires to promote.
2. Statutes enacted by the Legislature address the goal of providing relevant curricula that acknowledges the diverse ethnic and cultural students in New Mexico and provides guidance and processes for school districts.
3. The Board is given the responsibility of developing appropriate policies and establishing lines of communication so that different cultural and ethnic groups have meaningful participation in the development and delivery of education.

The Black Education Act

The Black Education Act, Sections, 22-23C-1 to 22-23C-7 NMSA 1978, establish a Black Education Advisory Council to the PED Secretary which includes school personnel, parents, students, post-secondary and higher education representatives as well as representatives of Black cultural, community business organizations and creates a Black education liaison in PED to advise the Secretary and assist the Council in the development and implementation of public policy on education of Black students. The liaison also serves as a resource to districts and charter schools to enable them to “provide equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for Black students enrolled in public schools”.

The Indian Education Act,

The Indian Education Act, Sections 22-23A-1, et seq., NMSA 1978 was passed in 2003. It also establishes an advisory council and an Indian Education Division within PED. Among the Division's responsibilities is assistance to school districts and New Mexico tribes in the planning, development, implementation and evaluation of curricula in native languages, culture and history designed for tribal and nontribal students as approved by New Mexico tribes....

The Hispanic Education Act

The Hispanic Education Act, Sections 22-23B-1, et seq. NMSA 1978 was enacted in 2010 and establishes a Hispanic education liaison in PED. Its responsibilities also include providing “...equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for Hispanic students enrolled in public schools”. Section 22-23B-4B(4).

Third Level - PED Educational Standards Address Multi-Cultural History Instruction

PED Regulations include a number of specific curriculum standards the effect the intent of the statutory requirement.

For example NMAC 6.29.11.8; 6.29.11.9; 6.29.11.10 include identical content standards with benchmarks and performance standards for social studies for grades k-12:

Content standard 1: Students are able to identify important people and events in order to analyze significant patterns, relationships, themes, ideas, beliefs and turning points in New Mexico,, United States and world history, in order to understand the complexity of the human experience.

What about the rights of parents?

Historical Developments:

- Parental rights are not mentioned in the U.S. Constitution
- No public schools at the beginning of the republic
- Responsibility for a child's education was entirely up to the parents and, if provided, was through private or religious schools.
- If you couldn't afford an education, you might not get one.
- Civil War/14th Amendment changed the relationship with the States and U.S. Constitution.
- States got into the business of public education and made it compulsory.
- Courts stepped in to balance the interests of the States and Families

Meyer v. Nebraska (USSC; 1923)

Meyer taught at parochial school. DA observed 4th grade student reading from Bible in German. Meyer charged and convicted of violating the act. Conviction upheld by Nebraska Supreme Court. Appealed to USSC.

Held: That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution – a desirable end cannot be promoted by prohibited means."

Pierce v. Society of Sisters (USSC; 1925)

Dealt with another post WWI law enacted out of concern about the influence of immigrants and foreign values. Oregon passed a law requiring all children between ages 8-16 to attend public school, and aimed at eliminating parochial schools, including primarily catholic schools.

USSC unanimously held the law unconstitutional. “Under the doctrine of *Meyer v. Nebraska*, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control: as often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Wisconsin v. Yoder (USSC; 1971)

Amish parents convicted of violating Wisconsin's compulsory school attendance law by declining to send children to public or private school after 8th grade. Evidence showed that defendants had sincerely held religious belief that high school attendance was contrary to the Amish religion and endangered the student's salvation.

Held: The state's interest in universal education is not totally free from a balancing process when it infringes on other fundamental interests, like the free exercise clause of the 1st Amendment.

Swanson v. Guthrie Indep. Sch. Dist. No. I-L (10th Cir.1998)

Annie Swanson was a 7th grade home-schooled student. Parents chose home-school to teach Christian principles excluded from public school curriculum but they wanted her to take some classes at public school. They wanted her to be able to take the classes part-time.

Because OK State Dept. of Ed. did not count part-time students as students for state aid purposes, Board policy required all students to attend full-time. The policy applied to everyone, not just those who home-schooled for religious purposes.

Annie and her parents sued stating that the policy violated their right to free exercise of religion and the parents right to direct the education of their children.

Held: “[N]o colorable claim of infringement on the constitutional right to direct a child’s education”)

“The claimed constitutional right Plaintiffs wish to establish in this case is the right of parents to send their children to public school on a part-time basis, and to pick and choose which courses their children will take from the public school. Plaintiffs would have this right override the local school board’s explicit decision to disallow such part-time attendance . However, decisions as to how to allocate scarce resources, as well as what curriculum to offer or require, are uniquely committed to the discretion of local school authorities.”

BROWN v. hot, sexy, and safer productions, inc. (1st Cir. 1995)

Mandatory high school AIDS awareness assembly with very explicit 90 minutes of skits, monologues, and student participation.

Parents alleged the defendants violated their privacy right to direct the upbringing of their children and educate them in accord with their own views.

The First Circuit assumed for the purpose of its analysis that “the right to rear one’s children is fundamental.”

Held: “The *Meyer* and *Pierce* cases, we think, evince the principle that the state cannot prevent parents from choosing a specific educational program-whether it be religious instruction at a private school or instruction in a foreign language. That is, the state does not have the power to standardize its children or foster a homogenous people by completely foreclosing the opportunity of individuals and groups to choose a different path of education.

We do not think, however, that this freedom encompasses a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children.

BROWN v. hot, sexy, and safer productions, inc. (1st Cir. 1995)

“We think it is fundamentally different for the state to say to a parent, ‘You can’t teach your child German or send him to a parochial school,’ than for the parent to say to the state, “You can’t teach my child subjects that are morally offensive to me.” The first instance involves the state proscribing parents from educating their children, while the second involves parents prescribing what the state shall teach their children. If all parents had a fundamental constitutional right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school’s choice of subject matter. We cannot see that the Constitution imposes such a burden on state educational systems, and accordingly find that the rights of parents as described by *Meyer* and *Pierce* do not encompass a broad-based right to restrict the flow of information in the public schools.”

PARKER V. HURLEY (D. Mass. 2007)

Massachusetts law prohibits discrimination in public schools based on sex or sexual orientation. It also requires that public school curricula encourage respect for all individuals regardless of, among other things, sexual orientation. Massachusetts Department of Education issued standards which encourage instruction for pre-kindergarten through fifth grade students concerning different types of people and families.

Kindergarten and 1st grade students. One given book that depicted various forms of families including same gender parents. Other student read a book about a prince who married another prince. Their parents had sincerely held religious beliefs that homosexuality is immoral and marriage is between a man and a woman. They wanted prior notice and an opportunity to opt-out but school denied request as not practical.

Parents sued alleging a violation of their free exercise of religion rights and for a violation of their right to direct the moral upbringing of their children and the rights of the minor children to such upbringing.”

PARKER V. HURLEY (D. Mass. 2007), cont.

“under the Constitution public schools are entitled to teach anything that is reasonably related to the goals of preparing students to become engaged and productive citizens in our democracy. Diversity is a hallmark of our nation. It is increasingly evident that our diversity includes differences in sexual orientation.”

“It is reasonable for public educators to teach elementary school students about individuals with different sexual orientations and about various forms of families, including those with same-sex parents, in an effort to eradicate the effects of past discrimination, to reduce the risk of future discrimination and, in the process, to reaffirm our nation’s constitutional commitment to promoting mutual respect among members of our diverse society. In addition, it is reasonable for those educators to find that teaching young children to understand and respect differences in sexual orientation will contribute to an academic environment in which students who are gay, lesbian, or the children of same-sex parents will be comfortable and, therefore, better able to learn.

PARKER V. HURLEY (D. Mass. 2007), cont.

“Parents do have a fundamental right to raise their children. They are not required to abandon that responsibility to the state. The [parents] may send their children to a private school that does not seek to foster understandings of homosexuality or same-sex marriage that conflict with their religious beliefs. They may also educate their children at home. In addition, the plaintiffs may attempt to persuade others to join them in electing a Lexington School Committee that will implement a curriculum that is more compatible with their beliefs. However, the [parents] have chosen to send their children to the Lexington public schools with its current curriculum. The Constitution does not permit them to prescribe what those children will be taught... or to permit [parents] to exempt their children from teaching about homosexuality and same-sex marriage.”

Immediate v. Rye Neck School Dist. (2nd Cir. 1996)

District instituted a mandatory community service program as part of the high school curriculum. Under the program, in order to earn their diplomas all students must complete forty hours of community service sometime during their four high-school years. They must also participate in a corresponding classroom discussion about their service. The program has no exceptions or “opt-out” provisions for students who object to performing community service.

Students free to choose what organizations they serve. May work for not-for-profit corporations, charities, political organizations or public agencies.

Lawsuit alleged, among other things, violation of parental rights.

The Supreme Court has indicated that the state has a “compelling” interest in educating its youth, to prepare them both “to participate effectively and intelligently in our open political system,” and “to be self-reliant and self-sufficient participants in society.” The state’s interest in education extends to teaching students the values and habits of good citizenship, and introducing them to their social responsibilities as citizens.

Because the District's mandatory community service program is reasonably related to the state's legitimate function of educating its students, we hold that the program does not violate Daniel's parents' Fourteenth Amendment rights.

see also [Herndon v. Chapel Hill–Carrboro City Board of Education](#), 89 F.3d 174, 176 (4th Cir.1996) (holding that requiring high school students to perform public service does not violate parents’ right to control the education of their children).

Littlefield v. Forney (5th Cir. 2001)

District adopted a mandatory uniform policy applicable to all students. Purpose is to improve learning environment, promote school spirit and school values, promote decorum and respect for authority, decrease socioeconomic tensions, increase attendance, reduce drop-out rates, increase safety by reducing gang and drug related activity. Allowed for an opt-out for religious purposes.

Families objected on variety of grounds including Parental Rights to teach their children to be guided by one's own conscience in making decisions, to understand the importance of appropriate grooming and attire, to understand the importance of one's own individuality, and to respect the individuality of others. The Parents argued that the implementation of mandatory uniforms presumes that parents are either incapable or unwilling to act in the best interests of their children.

District argued that while parents may have a fundamental liberty interest in their children's upbringing, this interest cannot usurp the state's role in determining appropriate behavior at public schools, including the role of determining appropriate dress codes in the district.

Applying the rational-basis test, the Court concluded that the Uniform Policy is rationally related to the state's interest in fostering the education of its children and furthering the legitimate goals of improving student safety, decreasing socioeconomic tensions, increasing attendance, and reducing drop-out rates. Parent rights are not absolute and can be subject to reasonable regulation.

[Blau v. Fort Thomas Public School District, 401 F.3d 381, 395–96 \(6th Cir.2005\)](#) (parent does not have a right to exempt his child from a school dress code);

Murphy v. State of Ark. (8th Cir. 1988)

Arkansas law required that students be educated through age sixteen, which could be at public, private, parochial, or home school. The Home School Act required parents who intended to home school to give notice to the local superintendent each year, including the curriculum, schedule, and qualifications of the teacher. Standardized tests required each year and a minimum performance test at age 14, under the supervision of a state test administrator.

“The Court has repeatedly stressed that while parents have a constitutional right to send their children to private schools and a constitutional right to select private schools that offer specialized instruction, they have no constitutional right to provide their children with private school education unfettered by reasonable government regulation.”

No violation of parental rights

SUMMARY

- States generally cannot restrict what parents teach children or the languages that they teach in.
- States may mandate compulsory education but not compulsory public education.
- Presently, courts have not enshrined a constitutional right for parents to dictate what children are taught in public schools or to opt out of elements of the curriculum.
- States may reasonably regulate private and home schools.

Yazzie/Martinez v. State of New Mexico

- Lawsuit was a consolidation between Martinez v. State of New Mexico and Yazzie v. State of New Mexico.
- The state was sued for failing to provide public school students with a sufficient education as mandated by the state's constitution. The lawsuit challenged the state's arbitrary and inadequate funding of public schools as well as its failure to provide students with the programs and services needed to be college, career and civic ready.
- The 2018 Judgment entered by the Court ordered the State to address constitutional violations in funding and programs for "At Risk" students which includes students who are economically disadvantaged, ESL students, Native American students and students with disabilities. In July 2020, the Court denied the State's motion to dismiss the suit based on the Court's findings that the State had not yet satisfied the Judgment.

Yazzie/Martinez Lawsuit

One of the biggest failures Judge Singleton highlights is that the PED has failed to meet its supervisory and audit functions to assure school districts are spending money provided to them to most efficiently achieve the needs of providing at-risk students with the programs and services needed for them to obtain an adequate education.

Judge Singleton defined “adequate education” as one that prepares school children to be functioning members of the civic, cultural, and economic aspects of society.

Yazzie/Martinez v. State of New Mexico

Holding: NMPED is failing to provide a sufficient public education to students in New Mexico under the State Constitution and federal laws, along with failure to fulfill the Indian Education Act, Hispanic Education Act, Black Education Act and the Bilingual Multicultural Act.

Black Emergency Response Team, et. al. v. Oklahoma State Board of Education, et. al. (Oklahoma) (2021)

- Several organizations representing teachers and students filed suit against the Oklahoma Attorney General, State Board of Education, and several other state defendants asserting that certain legislation enforced by the State Board of Education is unconstitutionally vague and a threat to their 1st and 14th Amendment rights.
- The Legislation at issue, H.B. 1775, restricts discussions about race and gender in K-12 public schools and higher education.
- The intent of the law as stated by the legislature is to prohibit conversations related to “implicit bias,” “systemic racism,” and “intersectionality,” among other concepts.
- As of October 25, 2023, numerous motions have been filed and ruled upon but no substantive rulings have been made by the court as to the constitutionality of the law nor has the court ruled on the plaintiffs’ request for a preliminary injunction.

Brandi Brandl v. West Shore School District, et. al. (Pennsylvania) (2023)

- Parents of student in district sued the district for denying a request to exclude the student from CharacterStrong SEL curriculum as contrary to their religious beliefs;
- The curriculum at issue “intentionally teaches character traits and goes in-depth into what these traits look like and then follows up with practical ways to improve them in their own lives and with those around them.”;
- Curriculum was approved by the district school board;
- Upon receiving the request from Parents, District initially agreed, but, subsequently denied the request and asked that Parents review the curriculum and identify which specific lessons the student should be excluded from;
- Parents reasserted a general right under state regulation that provides parents: “[t]he right to have their children excused from specific instruction that conflicts with their religious beliefs, upon receipt by the school entity of a written request from the parent or guardians.”;
- Upon another denial by the district, parents filed suit which is still pending.

Foldi, et. al. v. Board of Ed. For Montgomery County (Maryland) (2023)

- Parents of some students in the school district filed suit in Federal court seeking an injunction against the school district to allow parents to opt out of library curriculum that includes books on LGBTQ topics;
- Parents argue that state law allows parents to opt out of sex education and that the district's denial of requests to opt out violates state law and the parents' religious rights;
- The district argues that the library curriculum is not a part of the sex education curriculum and that the lessons are intended to teach tolerance;
- The court denied the parents' request for a preliminary injunction but the case is ongoing.

QUESTIONS?

Disclaimer

- This presentation is intended to provide a broad overview and general information about the topics covered, and not legal advice applicable to any particular case. Where laws are summarized, information not necessary for a broad overview may be omitted. Seek additional information or consult your attorney with any issues that arise and do not rely solely on the information presented here.

Thank you for attending

Cuddy & McCarthy, LLP

(505) 888-1335

Carlos J. Padilla

cjpadilla@cuddymccarthy.com

Scott Beckman

sbeckman@cuddymccarthy.com

Cheyenne Trujillo

ctrujillo@cuddymccarthy.com

