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LEGAL ALERT

To: Neola Clients

From: Renning, Lewis & Lacy, S.C.

Re: U.S. Supreme Court Decision on LGBTQ+ Curriculum Materials

Date: November 2025

On June 27, 2025, the United States Supreme Court issued its decision in *Mahmoud v. Taylor*, which expands the rights of parents to opt their children out of public school curriculum that conflicts with their sincerely held religious beliefs. In *Mahmoud*, the Court held that the plaintiff parents had a constitutional right under the U.S. Constitution's First Amendment Free Exercise Clause to be notified of and to opt their children out of certain school instruction which included books with LGBTQ+ themes. The Court emphasized that the school board's introduction of LGBTQ+ inclusive storybooks as part of its English Language Arts curriculum, along with its decision to withhold parental opt-out options, placed an impermissible burden on the parents' free exercise of their religion.

The Court was careful to clarify that its ruling does not prohibit public schools from adopting inclusive curriculum which covers LGBTQ+ issues or various other topics which can raise differing viewpoints, nor does it disturb the equal protection principle requiring public schools to treat all students equally. Rather, the case addresses parental rights to withdraw children from lessons that conflict with religious beliefs, and is specific to school board adopted curriculum materials that present a particular viewpoint relative to LGBTQ+ topics.

Scope of the Court's Decision

Mahmoud came before the Court on a request for temporary injunction. The Court granted the injunction stating "until all appellate review in this case is completed, the Board should be ordered to notify [parents] in advance whenever one of the books in question or any other similar book is to be used in any way and to allow them to have their children excused from that instruction." The Court then remanded the case to the lower court to fashion an injunction consistent with the Court's holding.

From this, there are a few critical points: (a) the case involved Board approved curriculum materials, as opposed to materials selected by individual teachers in furtherance of the curriculum; (b) the decision is specific to the LGBTQ+ materials that furthered a particular position regarding inclusion and acceptance of LGBTQ+ concepts; (c) the school board in this case had opted to prohibit opting out, which the Court found problematic; and (d) the Court's order refers only to the specific types of materials involved in the case.

At this juncture, it is not clear that an advance notice requirement and subsequent opt-out right will be broader than just the types of LGBTQ+ materials selected by the Board and for which parents were prohibited from opting out. Further proceedings may illuminate circumstances requiring advance notice and opt-out rights, but that remains to be seen.

Policy Implications

At this juncture, existing Neola policy templates afford sufficient tools to enable boards to honor the First Amendment concerns addressed in the decision. Specifically:

- Policy 2414 - Human Growth and Development. This policy implements Wis. Stat. § 118.019 to require each school district that offers human growth and development instruction to allow parents to opt their children out of such instruction. Parents must be provided with an opportunity to review the instructional materials and may excuse their child by submitting a written request. When providing notice relative to the HGD curriculum, districts should identify any

curriculum-related materials that cover LGBTQ+ concepts specifically.

- Policy 2270 – Religion in the Curriculum. This policy implements Wis. Stat. § 118.15(3)(c) to allow a parent to withdraw a child from any class or program if the instruction conflicts with the parent’s religious beliefs, provided the school is notified. When providing parental notification regarding their right to review the curriculum, and the process for opting out of instruction that conflicts with one’s religious beliefs. Districts should identify any curriculum-related materials that cover LGBTQ+ topics.
- Policy 2240 – Controversial Issues in the Classroom. This policy covers the obligations of instructional staff to avoid controversial issues, except in a specific set of parameters. This policy and communicating its contents to staff members is an important of facilitating compliance with parental notification and opt-out rights relative to instruction conflicting with the parents’ religious beliefs.

Additional Considerations

As noted, there are no current recommended policy revisions. Rather, it will be important to remind staff of the above-referenced policies, and their role in assisting the schools’ efforts to provide parental notification where required. In addition, districts should consider the following proactive measures:

- Conduct an internal audit of curriculum and instructional materials involving potentially controversial topics, particularly any curriculum or materials that address LGBTQ+ topics. Evaluate whether those materials are appropriate
 - Is the content a part of required reading material, a classroom library, or part of the daily lesson plan?
 - Is the content neutral or potentially hostile to specific religious beliefs or practices?
 - What are the ages of the children receiving the instructional materials and are they age-appropriate?
- Review opt-out notification procedures to assure that opt-out information and curriculum review information are provided to parents, and that the school is equipped to receive and honor valid requests.
- Review alternative instruction options so that if parents opt students out of instruction more regularly, there is a plan to provide replacement instruction.

Neola will continue to monitor this case and other cases involving similar concepts that are working their way through the judicial review process. When any policy revisions become necessary, we will communicate that to Neola clients and propose any such revisions.

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