

ACLU suit seeks to end testing ‘gag rule’

Written by By Matthew Reichbach NM Political Report
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A lawsuit challenges a ban on “disparaging” school tests by public education students that has been called a “gag rule” in the past.

The American Civil Liberties Union of New Mexico filed the lawsuit in First Judicial District Court Wednesday morning on behalf of six public schools teachers and one parent of a student in public schools.

A regulation from the state Public Education Department (PED) says that public education employees cannot “disparage or diminish the significance, importance or use of standardized tests.” Penalties for violating the provision include “suspension or revocation of a person’s educator or administrator licensure or other PED license.”

The ACLU of New Mexico says that this runs counter to the rights of teachers and students under the New Mexico Constitution. The suit seeks an injunction to stop the enforcement of the rule.

“The Public Education Department can’t enact sweeping restrictions intended to intimidate teachers and silence viewpoints that they don’t like,” ACLU of New Mexico Staff Attorney Maria Sanchez said in a statement. “Beyond the illegality of this restriction, there is something

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unsettling and fundamentally un-American about the government compelling praise for its policies. Our society is in the midst of an important conversation about what role standardized testing should play in education, and the government shouldn't be trying to forcibly elbow teachers' voices out of the public square.”

The lawsuit claims that “parents and students suffer” because teachers cannot give parents “honest and accurate information about the impact these tests have on their children.”

NM Political Report left a message and email with the Public Information Officer for PED seeking comment on the lawsuit, including the reason why the non-disparagement regulation exists.

In 2014, a teachers union called it a “gag rule” against teachers.

Then-PED spokesman Larry Behrens told the *Albuquerque Journal* the issue was a “red herring” and said that the regulation was in place since the Richardson administration.

“Since then, no doubt teachers have voiced opposition to assessments in general, and the number of teachers who have lost their license over it is exactly zero,” Behrens told the newspaper at the time. “No teacher will face disciplinary action from PED for speaking their opinion.”

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