

# When Parents Say No

Navigating opt-out requests in public education  
post-*Mahmoud v. Taylor*



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**W**e've seen an increase in parents advocating for their education rights—those explicit, and those not so explicit. It is important to have a clear understanding, or at least a working knowledge, of parents' rights in your state and under federal law, and how to navigate balancing their rights with schools' rights. These rights at times conflict, particularly with LGBTQ+ issues such as student

gender notification and LGBTQ+ curriculum.

Recently, the U.S. Supreme Court's decision in *Mahmoud v. Taylor* addressed parents' right to opt out from such curriculum (at least at the preliminary injunction stage). In June, the Court ruled in favor of a diverse group of parents from various religious backgrounds seeking to opt out of LGBTQ+ instruction, which included detailed storybooks in grades K-5.

The Court overturned the appellate court's denial of a preliminary injunction because the Court found the parents had met their initial burden that their children's exposure to the curriculum undermined their right to direct the religious upbringing of their children. The Court held that compelling exposure to the specific content—especially as it applied to elementary-aged children—impermissibly burdened the parents' freedom of religion under the First Amendment of the U.S. Constitution.

The case involved Montgomery County Public Schools in Maryland, which had adopted a curriculum that included content about gender identity and sexuality, including books about transgender individuals and same-sex marriages. The school board had initially allowed parents to opt out of lessons involving these materials on religious grounds. However, the board subsequently changed its policy, no longer allowing parents to opt their children out of content that did not align with their religious beliefs. It argued that the change of policy was due, on the one hand, to the difficulty in administering opt-outs and, on the other hand, to the district's interest in teaching students about diversity.

The Court held that forced exposure to the content likely violated the First Amendment as it threatened to undermine a family's ability to teach and monitor adherence to "sincerely held religious beliefs." The Court found that the LGBTQ+ inclusive content and lesson plans promoted acceptance of LGBTQ+ lifestyles—especially gender and sexual choice—which the Court found especially problematic when applied to young children. Due to compul-

sory education laws in Maryland, the plaintiffs were impermissibly forced to make a choice between a public education and private religious education if not provided the opportunity to opt out of lessons that conflicted with religious beliefs and teachings in the home.

The Court's analysis in *Mahmoud* is potentially far-reaching and provides little guidance on what type of curriculum may be subject to opt-outs or how school districts are to determine where and how curriculum might impinge on "sincerely held religious beliefs." At the least, school districts should draft and create policies that provide parents with notice of when LGBTQ+ inclusive curricula—including storybooks and other materials—will be used and allow parents time to excuse their students from that instruction. It is unclear how broad the Court's definition of how LGBTQ+ inclusive "instruction" threatens free exercise of religion. The Court does imply that there might be viewpoint-neutral presentations of LGBTQ+ content that would not impinge on religious freedoms and that the threat may be reduced for older students. Thus, agencies should be mindful of not overreacting to this decision and consider any anti-discrimination or other requirements in their states before considering eliminating LGBTQ+ inclusive content in response to this decision (for example, California Education Code 51204.5). But, as the language in the decision is broad, schools should be prepared that parents could raise objections to other curriculum and books based on religious grounds—including sexual health and even science lessons. The decision does not limit itself to issues

of gender or sexuality, but rather focuses on the potential that instruction, especially to young children, could interfere with those children's separate instruction in religious belief systems.

The Court's decision paid close attention to that district's religious accommodation policy. Your agency should ensure that its policies related to religious accommodations, controversial topics, parent rights, and related topics are updated. Be sure to check with your statewide education agencies, as some state guidance may no longer apply. Updated policies could include the process for issuing notifications to, and processing opt-outs from, parents. Your agency may consider an opt-in or opt-out approach for specific content and lessons. Will related lessons and materials, such as social-emotional learning and gender and sexuality, generally, be an area that will require opt-out, too?

In sum, the *Mahmoud* decision will directly affect lessons and content that contradict certain religious teachings, such as sex, sexuality, and gender, and with direct application to K-5 curriculum. But the decision could have broader implications when it comes to parents' rights versus schools' rights and authority. Your school board should be prepared to navigate the waters delicately with clear policies and consistent practices.

(This article is for informational purposes and is not legal advice.)

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