



School Law FYI

In Limited Situations, Parents Can Opt Out of Curriculum Due to Religious Beliefs

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The U.S. Supreme Court recently sided with parents who sought to opt their elementary school-aged children out of classroom lessons and books that focused on gender identity and sexual orientation. Based on the Free Exercise Clause of the U.S. Constitution, the Court held that if school curriculum expressly includes topics that directly conflict with parents' religious beliefs, specifically LGBTQ+ subjects in this case, parents are entitled to notice when the topic will be taught and have the right to opt their children out from that instruction so that schools do not interfere with the parents' "religious development of the child."

BACKGROUND

The Montgomery County Board of Education (Board) updated its curriculum to include several "LGBTQ+-inclusive" texts during the 2022 – 2023 school year. Five of the texts were designed for students in kindergarten through fifth grade and included specific themes of gender identity and sexual orientation. Initially, the Board informed parents when books with LGBTQ+ topics would be taught and allowed parents to opt their children out of the lessons that utilized those books. The Board's policy was based on its "Guidelines for Respecting Religious Diversity," which allowed "reasonable accommodations" for students' religious beliefs and practices. However, less than a year later, the Board rescinded the ability for parents to opt their children out of the instruction that addressed gender and sexuality. The Board stated the reason for changing the policy was because it was too difficult to honor the quantity of opt-out requests "without causing significant disruptions to the classroom environment."

A group of parents filed suit against the Board, arguing that restricting their ability to opt their children out of instruction that was contrary to their religious beliefs infringed on the parents' right to the free exercise of their religion. The parents appealed all the way up to the U.S. Supreme Court.

SCOTUS OPINION

The U.S. Supreme Court, in *Mahmoud v. Taylor*, held that the Board violated parents' rights to instruct their children in accordance with their religious beliefs by introducing LGBTQ+-focused storybooks into the curriculum, and then denying parents notice and the ability to opt-out from the instruction. The Court found that the Board's policy burdened the parents' right to the free exercise of religion. While the Court stated that it is admirable for the Board to want to create a classroom that is "welcoming to all students," it cannot be done "through hostility toward the religious beliefs of students and their parents." The Court ordered that parents be given notice when the LGBTQ+ focused books would be taught and ordered the Board to allow parents to opt their children out of the instruction.

TAKEAWAYS

This important U.S. Supreme Court decision gives parents a constitutional right to have notice of and the right to exempt their children from specific curriculum that is inherently counter to their religious beliefs. However, the opinion was narrow in scope, as it focused on specific curricular materials designed to facilitate discussion of LGBTQ+ topics by elementary school children. The decision might have come out differently if the curricular materials merely depicted the LGBTQ+ community, or were directed toward older students. The decision does not mean that parents can pick and choose which aspects of the public-school curriculum they want their children to learn. Instead, the decision established one situation where notice and a right to opt out was required.

Commentary on this decision within the education community suggests that some individuals and advocacy groups might use this decision to try and opt their children out of a variety of topics they find incompatible with their faith. Examples might include curriculum that covers topics such as evolution, climate change, and vaccinations. However, the Court specifically confined its decisions to the facts presented, which involved LGBTQ+ focused curricular material designed to foster discussions of LGBTQ+ topics in elementary school classrooms.

Districts will need to navigate the inherent tension between their obligations to provide a rigorous curriculum to students with the need to honor parents' right to

direct the religious upbringing of their children. For now, districts should take a cautious approach. Districts don't need to create an opt-out form for all district parents. Instead, districts should listen to concerned parents, consider reviewing their curriculum to anticipate potential concerns, and review applicable board policies on curriculum and classroom materials.

Districts might also consider processes they might adopt if they receive requests to opt out of certain aspects of the curriculum. This might include requiring parents to make such requests in writing, to state the specific aspects of the adopted curriculum they wish to opt out of, to state the religious beliefs they hold that conflict with the curriculum, and to briefly explain the nature of that conflict. Districts might also want to consider what alternative assignments and locations are available to students whose parents have opted their students out of certain aspects of the curriculum.

Districts concerned about these requests or that receive these requests should reach out to a member of the Boardman Clark [School Law Practice Group](#).

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