

LEGAL FAQ:  
**Supporting Inclusive Education in California**  
**After *Mahmoud v. Taylor***

*The following resource is intended to support California public school leaders in continuing to provide inclusive education in light of the U.S. Supreme Court's Mahmoud v. Taylor decision. Please note, this resource was created for educational purposes only and is not legal advice. Please consult with an attorney regarding your school's particular policies and practices.*

**Case Background:**

In *Mahmoud v. Taylor*, parents sued a Maryland school district after it ceased accommodating parents' requests to opt their children out of class when inclusive storybooks were being used in elementary school, alleging that such actions violated their free speech, free exercise of religion, and substantive due process rights under the U.S. Constitution and state law. A previous opt-out policy was rescinded because opt-out requests had become unmanageable and undermined the schools' educational objectives of teaching inclusion, equity, and respect. The specific storybooks at issue featured LGBTQ+ characters and/or themes.

The parent-plaintiffs sought a **preliminary injunction**, which both the Maryland district court and Fourth Circuit denied. The Supreme Court agreed to hear the case, focusing on this question:

- *Do public schools burden parents' religious exercise when they compel elementary school children to participate in instruction on gender and sexuality against their parents' religious convictions and without notice or opportunity to opt out?*

**In June 2025, the Supreme Court overturned the lower courts' decisions and granted the preliminary injunction, thereby requiring the school district to provide the plaintiffs with advance notice of and the option to excuse their children from the challenged instruction. Citing *Wisconsin v. Yoder*, the Court held that plaintiffs are likely to succeed on their claims that denial of an opportunity to opt out impermissibly burdened their right to religious exercise, stating:**

- **"A government burdens the religious exercise of parents when it requires them to submit their children to instruction that poses 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill."**

The Court also held that **when this type of burden is imposed**—i.e., a burden of "the same character as that in *Yoder*," where a school policy **"substantially interferes with the religious development of the parents' children"**—**strict scrutiny applies** (even if the policy is otherwise neutral and generally applicable). When strict scrutiny applies, that means the challenged policy is unconstitutional unless school officials can show that it serves a "compelling" government interest and is "narrowly tailored" to achieve that goal.

The Court did not create a clear rule for how the free exercise right of parents applies to public school instruction. The Court held that the question of whether instruction substantially interferes with the religious development of a child “will depend on the specific religious beliefs and practices asserted, as well as the specific nature of the educational requirement or curricular feature at issue. Educational requirements targeted toward very young children, for example, may be analyzed differently from educational requirements for high school students.”

### **Legal FAQ:**

#### **1. How does this case impact existing state law?**

Public schools in California must still provide a welcoming and inclusive education for all students.<sup>1</sup> This includes, but is not limited to, compliance with affirmative inclusive education requirements such as the FAIR Education Act,<sup>2</sup> the California Healthy Youth Act,<sup>3</sup> and Ethnic Studies requirements.<sup>4</sup> California law mandates that instructional materials “accurately portray the cultural and racial diversity of our society” including the role and contributions of LGBTQ+ people,<sup>5</sup> and ensures the continued use of adopted curriculum even when containing inclusive and diverse perspectives.<sup>6</sup>

California's antidiscrimination laws, including protections on the basis of gender, gender identity, gender expression, and sexual orientation, also remain in effect.

#### **2. Are schools required to provide religious opt-outs? If so, how should that process work?**

Schools must now allow parents to opt out of instruction that poses a “very real threat of undermining” their sincerely-held religious beliefs and practices and that substantially interferes with the religious development of their children.

Any notices informing parents of their right to religious opt-outs or associated forms must be content-neutral, and should not single out LGBTQ+-related content or otherwise stigmatize LGBTQ+ identities.<sup>7</sup> If schools elect to notify parents about their general practices of providing inclusive curriculum, they should do so holistically and not single out LGBTQ+-related content.

Appropriate opt-out processes will require parents to take affirmative steps to exercise their right to religious opt-outs, such as notifying the school of their religious objection in writing. School districts should train their staff on how to handle such requests and ensure that parent requests are promptly considered.

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<sup>1</sup> See, e.g., Educ. Code §§ 200-202, 220.

<sup>2</sup> Educ. Code § 51204.5; see also Educ. Code § 60040.

<sup>3</sup> Educ. Code §§ 51930-39.

<sup>4</sup> Educ. Code § 51225.3(a)(1)(G).

<sup>5</sup> Educ. Code § 60040.

<sup>6</sup> Educ. Code § 51501.

<sup>7</sup> *Id.*, supra note 1.

### **3. What types of “instruction” does this decision impact?**

*Mahmoud* focused specifically on the use of books for “instruction.” The decision does not require any censorship of books on the shelf in the classroom or in the library, including LGBTQ+-inclusive books or books containing potentially religiously objectionable topics.<sup>8</sup> Censorship of materials in school libraries and classrooms based on LGBTQ+ content is still prohibited by California law.<sup>9</sup>

Additionally, nothing about this decision impacts students’ long-standing rights to be themselves at school, to talk about LGBTQ+-related issues, or to form LGBTQ+- themed student clubs on the same terms as other extracurricular student clubs.<sup>10</sup>

### **4. Is the decision providing the right to religious opt-out accommodations in public schools only applicable to LGBTQ+-related content?**

While *Mahmoud* involved LGBTQ+-inclusive storybooks, the Court’s decision is not limited to LGBTQ+-inclusive content. Therefore, school leaders should aim to craft general religious accommodation opt-out processes that do not focus on LGBTQ+ content, nor should they “silo” LGBTQ+ content within the curriculum.

### **5. Should schools segregate LGBTQ+-related content and then just provide opt-out for that unit?**

Schools should not segregate LGBTQ+-related content in an effort to make opt-outs administratively easier. Studies show that inclusive education not only boosts academic outcomes but also helps to build empathy and greater connection amongst all students. Silo-ing this information so it is no longer part of ongoing discussion across the whole curriculum (in history, reading, literature, art, etc.) detracts from the benefits of inclusive education, and does not necessarily serve the intended goal of accommodating religious objections, since the logic of *Mahmoud* also would permit opting out of other content that parents believe “substantially interferes with the religious development” of their children.

### **Additional Resources:**

*Below is a non-exhaustive list of California’s related laws:*

- Under California law, the FAIR Education Act guarantees students the right and opportunity to learn about history in an inclusive manner—including the contributions of people of various racial and ethnic backgrounds, LGBTQ+ people, and people with disabilities to the development of our state and country. (Educ. Code § 51204.5.)

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<sup>8</sup> *Mahmoud v. Taylor*, 600 U.S. \_\_\_, 145 S. Ct. 2332, 2397 n.11 (2025) (Sotomayor, J., dissenting).

<sup>9</sup> Educ. Code § 202(e).

<sup>10</sup> See, e.g., CA School Success and Opportunity Act (Educ. Code § 221.5); Equal Access Act (20 U.S.C. § 4071); Cal. Const. Art. I, § 2(a); U.S. Const. Amend. I.

- The California Healthy Youth Act (“CHYA”), California’s inclusive sexual health and HIV prevention education law, also requires all instruction to be age-appropriate, medically accurate, and appropriate for students with disabilities, students who are English language learners, and for students of all races, ethnic and cultural backgrounds, genders, and sexual orientations. (Educ. Code § 51933(d)(3).)
- The federal Equal Access Act and the First Amendment protect ALL students’ right to express their identities respectfully at school, to talk about LGBTQ+-related issues, and to form LGBTQ+-themed extracurricular clubs that meet and advertise on the same terms as other extracurricular clubs.

*On existing opt-out provisions (which remain in effect, although Mahmoud indicates parents also have a broader faith-based right to opt out of instruction in any subject area):*

- CHYA already specifically requires advance notice to parents and guardians of sexual health and HIV prevention education and an opportunity to opt their child out of all or part of that instruction via a written request. (Educ. Code § 51938.)
- Parents and guardians may also opt their child out of participating in any portion of health education if they believe it conflicts with their religious training and beliefs, including moral convictions, by submitting a written request to the school district. (Educ. Code § 51240(a).)
- Some school districts may already have policies requiring notification and opt out procedures for specified instruction which may need to be amended to permit opt-outs based on religious beliefs.

### **More resources**

- National ACLU and ACLU of Maryland Statement (which filed an amicus brief in the case): <https://www.aclu.org/press-releases/supreme-court-requires-religious-opt-outs-from-secular-lessons-in-public-schools>
- Lambda Legal, PFLAG, National Women’s Law Center, and the Leadership Conference on Civil and Human Rights Statement (which filed another amicus brief in the case): <https://pflag.org/press/pflag-national-civil-rights-organizations-react-to-supreme-court-ruling-in-mahmoud-v-taylor/>
- CA Attorney General Statement: <https://oag.ca.gov/news/press-releases/following-scotus-ruling-mahmoud-v-taylor-attorney-general-bonta-reaffirms>