



PRESENTS

POLICY HIGHLIGHTS

September 22, 2025

The Mahmoud Policy Conundrum

Mahmoud v. Taylor

Background

In a legal analysis provided by Pilar Sokol, Director of Legal Services for the New York State Board of Education, she offers insights into “what this case is and is not about.”

Just before the end of this year’s session, a majority of the U.S. Supreme Court issued a decision in Mahmoud v. Taylor that many legal analysts consider consequential for public education, by issuing a preliminary injunction in favor of parents in Montgomery County, Maryland, who are in the process of challenging their school district’s refusal to excuse their children from classroom instruction that involves certain books in grades K-5. Some of the books tell stories about same sex relationships, including same sex marriages, and some involve the topic of gender identity.

The injunction requires the school board to adopt a prior policy that provides parents with advance notice of when the books will be used in the classroom. Importantly, it would also allow parents to excuse their children from that instruction. In noting the court sent the case to a lower court for further proceedings consistent with the high court’s majority opinion, she emphasizes, “Still, the opinion foreshadows the Mahmoud majority disposition regarding resolution of the merits of the case.” Thus, it is essential to understand why the high court’s majority determined a preliminary injunction was warranted in this case.

The Details of the Case

- The district began incorporating the LGBTQ+ texts into the language arts curriculum after determining the current books were not representative of many in their school community, as they did not include LGBTQ+ characters.
- While there were books added across all grade levels, the Mahmoud decision only involves those assigned in grades K-5.
- The board’s expectation was to have teachers include these storybooks in their classroom instruction, consistent with the way the other books are taught.
- The district issued guidance giving teachers suggested responses to potential questions from students and parents.

- In response to initial parent pushback regarding the introduction of the books, the district agreed to give parents **advanced notice** when any of the books in question would be used and allow **opt-out** arrangements.
- Due to the high number of opt-out requests, the district **discontinued both the advanced notice and opt-out requests**, citing **management issues** in processing the requests.

Summary of Majority Decision

- School districts “cannot escape free exercise of religion obligations by crafting a curriculum so cumbersome that a substantial number of parents elect to opt out.
- The Supreme Court majority agreed that the district violated the parents’ right to the free exercise of their religion based on the combination of the introduction of the books and the discontinuance of the notice and opt-out option.
- The Court majority found that the storybooks presented “certain values and beliefs as things to be celebrated and certain contrary ones as things to be rejected,” noting that teachers were encouraged to adopt those specific views. Furthermore, the majority asserted that the district’s actions posed an “objective danger” of undermining the parents’ teachings, given their children’s **susceptibility to the influence of their teachers**.

Legal and Policy Implications

As it currently stands with the Mahmoud v Taylor decision, the specific circumstances of the case matter. Attorney Sokol advises, “At a starting point, school officials should examine whether their current policies or practices resemble any of the circumstances in Montgomery County.” She adds, for example, “While creating an automatic, universal opt-out policy as an option, be sure to discuss practical implications with district administrators and the concept of ‘sincere religious belief’ with your board attorney.”

It's always important to note that your policies should be well-suited to local needs and realities. Based upon the majority decision, other factors for consideration may include the age of the students and other issues that may impact student judgment and susceptibility.

As the title of this piece suggests, from a CAFE policy perspective, I wrestled with changing our current model opt-out policy, entitled [Exemption from Instruction \(6144.1\)](#), or adding greater specificity related to this specific decision. In that spirit, I considered adding the following:

While the Supreme Court decision in Mahmoud v. Taylor didn’t provide clear guidelines or tests to help districts determine clear boundaries for decision-making, the following paragraph is designed to assist boards in including policy language that suggests denying opt-outs when instruction interferes with a student's religious upbringing, imposes a constitutional burden, and triggers strict scrutiny.

In accordance with the U.S. Supreme Court’s decision in Mahmoud v. Taylor (June 27, 2025), the Board recognizes that the denial of parental opt-out rights for instructional content, particularly when such content may substantially interfere with a family's sincerely held religious beliefs, imposes a burden on the free exercise of religion under the First Amendment. As a result, the district shall provide parents or guardians with timely and clear advance notice prior to presenting curricular materials or lessons that may conflict with their religious values. It shall allow students to be excused, without penalty or academic consequence, from participation in such instruction.

The district will provide an alternate educational activity of comparable educational value during the opt-out period.

Additional Rationale for Policy Language in Response to Mahmoud

- 1. The ruling mandates that schools provide notice and allow opt-outs when instructional materials “pose a very real threat of undermining the religious beliefs and practices that the parents wish to instill.”*
- 2. The language strikes a balance between religious accommodation and maintaining educational integrity, ensuring that opt-outs are “without penalty or academic consequence” and accompanied by alternative instruction of similar educational value.*
- 3. Schools in the Mahmoud case initially provided opt-outs. Still, they later withdrew them due to administrative concerns—concerns that the Court found insufficient, especially given that opt-outs had been granted in other contexts.*
- 4. Clarity & Specificity: It explicitly ties the policy to a Supreme Court precedent and states actionable requirements: notice, no penalty, and alternative instruction.*
- 5. Constitutional Compliance: It aligns with the Court’s interpretation of the Free Exercise Clause and mirrors successful policy models.*
- 6. Practicality: It anticipates implementation logistics by specifying “comparable educational value,” helping ensure continuity in students’ learning while honoring religious objections.*

Upon further reflection, however, I am currently inclined to refrain from adding this additional language or making any updates to our current optional model policy. For now, the Mahmoud v. Taylor decision warrants conversations with your board attorney to ensure you are best positioned to defend your practice in our post-Mahmoud world. CABE’s model policy acknowledges that opt-outs are a reasonable practice when conflicts arise between religious practices and curricular requirements. However, where do we draw that line? Storybooks? Scientific Theories? Sincere Beliefs? For now, these will likely be legal judgments and determined by further challenges and judicial decisions.