Opt-Outs: Religious and Parental Rights

By:
David S. Shaw, Esq.
Partner at *Shaw Perelson, LLP*

Germine A. Casanova, Esq.
Associate at Jaspan Schlesinger Narendran LLP

Introduction

The U.S. Supreme Court's decision in the case of Mahmoud v. Taylor, 606 U.S.522(2025) brought a fine focus to curricular content regarding LGBTQ+ societal issues which were contrary to the religious believes of families across several religions who asserted protection of their beliefs under the Free Exercise Clause of the First Amendment of the U.S. Constitution.

Not since the case of Wisconsin v. Yoder, 406 U.S. 205(1972) had the Court been called upon to determine how the public schools must accommodate the religious beliefs of children subject to the compulsory education laws

Introduction

In *Yoder* the Supreme Court ruled *that compulsory secular education need only be submitted to through the 8th grade based upon the religious objection of certain Amish families*.

Now, the public education systems across the nation must determine when curricular content could come into conflict with the religious beliefs of residents whose children attend their schools. Opting-out is the solution determined by the court, with the duty of prior notice when such content will be instructed with aa right to alternative instruction.

Wisconsin v. Yoder, 406 U.S. 205 (1972)

- *Wisconsin v. Yoder* is a landmark Supreme Court case that balanced the state's interest in compulsory education against the rights of parents to direct the religious upbringing of their children.
- In this case, groups of Amish parents refused to send their 14- and 15-year-old children to public high school, in violation of a Wisconsin law requiring school attendance until the age of 16. The parents argued that high school curriculum taught values in sharp conflict with their religious community and endangered their salvation.
- The Court held that where a government policy substantially interferes with or burdens a parent's right to guide the religious development of their child the policy must face heightened (strict) constitutional scrutiny. To override the parents' First Amendment Free Exercise rights, the state must prove that it has a compelling interest and that its law is the least restrictive means of achieving that.
- The Court ultimately ruled in favor of the Amish parents, holding that the state's interest in two additional years of compulsory education did not outweigh the fundamental right to free exercise of religion, especially since the Amish provided structured vocational training to prepare children for community life.

Introduction to Opt-Outs

What are “opt-outs” ?

- **“Opt-outs”** allow parents to exempt their children from specific public-school lessons, activities, or curricula that conflict with their sincerely held religious beliefs or values.

- The right to **“opt-out”** relates to:
  - The Free Exercise Clause of the First Amendment; and
  - The fundamental liberty of parents to direct the upbringing, education, and religious development of their children.

How do opt-outs work?

1. Advance Notice

- Schools are required to notify parents ahead of time when sensitive or conflicting topics will be taught.
- The advance notice requirement applies to planned, formal curriculum materials.

- Exceptions: Advance Notice NOT Required

- Organic Student-Led Discussions
- General, Standard-Aligned Material
- Incidental References in Inclusive Libraries
- Direct Guidance Counseling and Crises
- Supplemental Content via Digital Platforms

How do opt-outs work?

2. Alternative Instruction

- When a parent exercises an opt-out, students are typically excused from the specific lesson or reading and provided with alternative assignments.

3. Common Objection Areas

- Historically and currently, religious opt-outs have been requested for topics such as sex educationand gender/sexuality-themed storybooks.

Current Parental “Opt-Out” Rights

What lessons or curricula can parents “opt-out” from in New York Public Schools?

- Under the health education instruction regulations at 8 NYCRR § 135.3 it has long been the case that: No pupil shall be required to receive instruction concerning the methods of prevention of AIDS if the parent or legal guardian of such pupil has filed with the building principal a written request that the pupil not participate in such instruction, with an assurance that the pupil will receive such instruction at home.
- Under 8 NYCRR § 16.2 any study of health and hygiene that conflicts with the student’s/parents’ religion is subject to opt-out as long as the religious conflict is certified by a proper religious representative.

What lessons or curricula can parents “opt-out” of in New York Public Schools?

[Cont’d]

Education Law § 809 provides students with a religious or moral objection to dissection a right to opt out from dissection. This objection must be substantiated in writing by the student’s parent/guardian and requires an alternative teacher-provided assignment.

The Effect of *Mahmoud v. Taylor*

606 U.S. 522 (2025)

Mahmoud v. Taylor, 606 U.S. 522 (2025)

- In *Mahmoud v. Taylor*the United States Supreme Court, a group of religious parents challenged a school Board's introduction of "LGBTQ+-inclusive" storybooks, withholding of notice to parents and refusal to provide "opt-outs."
- The Court followed the rule established in *Yoder* and applied strict scrutiny to determine whether the school Board's policy substantially interfered with or burdened parents' right to direct the religious development of their children. The Court held that the parents were entitled to a preliminary injunction because the Board's policy regarding "LGBTQ+-inclusive" storybooks imposed an unacceptable burden on religious exercise.

Mahmoud v. Taylor, 606 U.S. 522 (2025)

[cont'd]

The Court noted that the question of whether a law "substantially interferes" with the religious development of a child will **always** be fact-intensive and depends on multiple factors, including the specific religious beliefs and practices asserted, as well as the specific nature of the educational requirement or curricular feature at issue.

The Limits of *Mahmoud v. Taylor*

- *Mahmoud* does not give parents a right to object to either the curriculum itself or what is taught to other children. The remedy is strictly limited to requiring **advance notice and the opportunity to withdraw (opt-out)** a parent's own child from specific instruction.
- The majority's reasoning heavily focused on the fact that the curriculum targeted **"impressionable young children"** in elementary school (grades K–5).

The Limits of *Mahmoud v. Taylor*

[cont'd]

The Court emphasized that the school district's teacher guidebooks went beyond merely introducing diverse concepts; they presented **"normative" messages** regarding marriage and gender identity paired with structural classroom pressure to conform. This suggests that the rule might not apply as seamlessly to older students (middle or high school) or to purely passive mentions of secular topics.

The Effect of *Mahmoud v. Taylor*

- The Supreme Court's ruling in *Mahmoud* strengthened parents' rights to opt-out of instruction that burdens sincerely held religious beliefs, even if the policy appears "neutral."
  - Educational requirements targeted toward very young children, for example, may be analyzed differently from educational requirements for high school students.
  - A court must also consider the specific context in which the instruction or materials at issue are presented—Are they presented in a neutral manner, or are they presented in a manner that is "hostile" to religious viewpoints and designed to impose upon students a "pressure to conform"?

Do The NYS Learning Standards Require Content Which may give rise to legal challenges?

- Social Studies K-12 Learing Standards contain quite specific curriculum requirements regarding LGBTQ+ content.
- Health and ELA Learning Standards are not explicit in requiring such content.

Repeal of the Religious Exemption for Immunizations

Repeal of the Religious Exemption for Immunizations

- On June 13, 2019, New York repealed its religious exemption for school immunizations during a major measles outbreak.
- Public Health Law § 2164 now allows **only medical exemptions**, eliminating religious opt-outs.
- This change applies to all K–12 public, private, and parochial schools, plus preschools and daycare centers.

Effects of Repealing the Religious Exemption

- Children with prior religious exemptions had to begin vaccination immediately in 2019.
- Schools now face civil penalties for admitting noncompliant students.
- **Medical exemptions are the only remaining opt-out.**
  - Must be issued by a New York-licensed physician using a state-approved form.
  - Must cite a specific contraindication consistent with ACIP guidelines.
  - A simple doctor's note is **not** sufficient.

Executive Order 14420: “Delivering Gold Standard Childhood Vaccine Recommendations for Americans”

- Signed by President Donald Trump on August 10, 2026.
- Reduces the list of universally recommended childhood immunizations from 18 diseases down to 11.
- “Gold Standard Childhood Vaccine Recommendations” are informed by the three distinct categories:

  (i) Immunizations Recommended for all Children: measles, mumps, rubella, diphtheria, tetanus, pertussis, polio, Haemophilus influenzae type B, pneumococcal disease, human papillomavirus, and varicella;

  (ii) Immunizations Recommended for Certain High-Risk Groups or Populations: respiratory syncytial virus monoclonal antibodies, hepatitis A, hepatitis B, meningococcal B, meningococcal ACWY, and dengue; and

  (iii) Immunizations Based on Shared Clinical Decision-Making: hepatitis A, hepatitis B, rotavirus, meningococcal disease, influenza, and COVID– 19.

- The Order also calls for splitting the combined measles, mumps, and rubella (MMR) vaccine into three separate single-disease shots once they are domestically available.

Executive Order 14420: “Delivering Gold Standard Childhood Vaccine Recommendations for Americans”

- States are advised to review the new childhood vaccine recommendations and consider updating relevant laws and regulations.
- The Attorney General is directed to “take appropriate measures to further meritorious legal actions challenging State laws that conflict with constitutional and federal obligations related to parental authority, religious freedom, disability accommodations, and equal protection under the law. …”
- The Departments of Justice, Education and HHS are similarly directed to take action to ensure that contractors and grantees comply with those same obligations.
- These directives highlight the tension between the federal, liberal interpretation of parental and religious rights, and New York’s much narrower interpretation.

Challenges to the Repeal

- In another recent case, *Miller v. McDonald (2026)*, Amish parents and schools claimed that New York's immunization law, without a religious exemption, violated their 1st and 14th Amendment rights.
- The District Court and Second Circuit dismissed. The Supreme Court then directed reconsideration in light of its decision in *Mahmoud*. The Second Circuit ultimately reaffirmed its previous decision.
- This means that the religious exemption was **not restored**.

Current State of the Religious Exemption

- Religious exemptions for vaccines are no longer available, but enforcement is under **continued scrutiny**.
- There are two active 2025–2026 companion bills (Senate Bill S266 and Assembly Bill A1358) which propose restoring religious exemptions for school immunizations.
- Additionally, at the federal level, the proposed GRACE Act (H.R. 5075) introduces similar parameters nationally by withholding federal funds from schools that do not accommodate undocumented religious objections.
- None of these proposals have passed—they remain pending in their respective committees.

The End

Questions?