

FAQ - RELIGIOUS OPT-OUTS AFTER MAHMOUD v. TAYLOR

In response to the recent U.S. Supreme Court decision in *Mahmoud v. Taylor*, 606 U.S. ____ (2025) (“*Mahmoud*”), AALRR provides this overview and Frequently Asked Questions (“FAQ”) to provide California educational leaders with an update on recent legal developments and address common questions posed in response to *Mahmoud*.¹

SUMMARY OF THE CASE

On June 27, 2025, the U.S. Supreme Court (“Court”) issued its decision in *Mahmoud v. Taylor*, 606 U.S. ____ (2025) (“*Mahmoud*”). In *Mahmoud*, a school district introduced “LGBTQ+ inclusive” books in kindergarten through fifth grade that had story lines focused on sexuality and gender as part of their curriculum.

Parents of elementary school students challenged the Maryland school district’s decision not to allow parents to opt out of LGBTQ+ inclusive instruction and receive reasonable accommodations, asserting the lack of notice and opportunity to opt-out of the instruction substantially burdened their right to direct the religious upbringing of their children.

The Court granted a preliminary injunction in favor of the parents. According to the Court, by requiring elementary school students to participate in the LGBTQ+ storybook curriculum, the District pressured students to reject beliefs that contradicted these messages.

Because the Court found that the LGBTQ+ storybooks represented a normative message on the topics of marriage and gender identity, it found that the curriculum conveyed specific viewpoints that, to the elementary students, posed “a very real threat of undermining the religious beliefs and practices that the parents wish to instill.”

Thus, the Court found that the District’s decision to refuse to provide notice and prohibit parents from opting out of LGBTQ+ storybook curriculum infringed on the parents’ right to the free exercise of their religion and to direct the religious upbringing of their children.

WHAT THIS MEANS FOR YOUR LEA

The decision in *Mahmoud* involved specific instructional materials, a particular age group, and specific opt-out requests under the free exercise clause of the First Amendment. Challenges under the free exercise clause are fact-intensive, and fact-specific. As a result, this decision does not provide specific and actionable directions for compliance. For the same reasons, the *Mahmoud* decision does not require LEAs to fundamentally change its curricula. It does, however, remind LEAs that plaintiffs bringing free exercise challenges enjoy a degree of deference, and LEAs should plan accordingly.

To address the issues presented by *Mahmoud*, LEAs are encouraged to reinforce clear lines of communication between teaching staff and administrators to ensure that parent-facing staff know

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how to seek LEA-level support in responding to religious challenges to curriculum and instruction. Likewise, LEAs should engage with legal counsel early to anticipate challenges, evaluate professional development opportunities, and promptly respond in the event an opt-out request is received.

We note the state of the law in this area is fluid and the contours will likely be defined in subsequent litigation. LEAs are encouraged to consult with legal counsel to address any active matter involving a free exercise challenge or religious opt-out.



LIST OF FREQUENTLY ASKED QUESTIONS

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2. *What constitutes “LGBTQ+ related materials” under this ruling?*
3. *Does this ruling apply to all public schools nationwide or only in specific states or contexts?*
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17. *What are the best practices for engaging with concerned parents and community members?*
18. *How should schools address concerns from families who support inclusive education?*
19. *What happens if a parent opts out, but a student still engages with LGBTQ+ related content in another setting (e.g., a library book, a peer conversation)?*



20. *How should teachers respond if a student brings up LGBTQ+ topics during class discussions?*
21. *Can a teacher refuse to teach certain materials based on their own beliefs, either for or against LGBTQ+ content?*



FREQUENTLY ASKED QUESTIONS

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

1. *What exactly did the Supreme Court’s ruling say, and what are the legal implications for schools?*

The *Mahmoud* decision held, as applied to the specific facts of the case, the school district had to provide parents with notice and the opportunity to opt their elementary-aged students out of the LGBTQ+ storybook curriculum based on a sincerely held religious belief. This case granted an injunction while further litigation occurs. Thus, while litigation continues, it requires the district to notify the parents in advance whenever one of the LGBTQ+ books would be used (or a similar book) in any way and allow a parent to have their child excused from that instruction.

We currently understand the *Mahmoud* decision to apply to the specific facts at issue in the case. Significantly, the *Mahmoud* opinion notes:

[T]he question whether a law “substantially interfer[es] with the religious development” of a child will always be fact-intensive. [citation] It 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. 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”? [citation].

The exact boundaries of this decision and how it impacts the classroom day-to-day are unclear, with clarity likely to come through judicial decisions in the coming years.

2. *What constitutes “LGBTQ+ related materials” under this ruling?*

The *Mahmoud* decision does not define “LGBTQ+ related materials” in the decision.

The Court noted the books at issue were “a variety of ‘LGBTQ+ inclusive’ storybooks” that were “designed to ‘disrupt’ children’s thinking about sexuality and gender.” As discussed in the decision, not all books included direct discussion about sexuality and gender *per se*, but included passive mention of LGBTQ+ characters. For example, in *Uncle Bobby’s Wedding*, there is discussion of two male characters getting married, but the same-sex marriage in-and-of itself is not the main storyline of the book.

While the order in the *Mahmoud* case is that the school district must notify parents in advance when “one of the [LGBTQ+] books in question or any other similar book is to be used in any way and to allow them to have their children excused from that instruction,” the analysis in the *Mahmoud* decision is **not** written in a way that would limit the impact of the decision to LGBTQ+ normative content only. The decision impacts any instructional materials that may “substantially interfer[e] with the religious development” of a student.



3. Does this ruling apply to all public schools nationwide or only in specific states or contexts?

As the highest court in the country, decisions made by the U.S. Supreme Court are binding nationwide, and establish legal precedents applicable to all lower federal and state courts. However, the practical impacts of a decision can vary depending on how it is implemented at the federal, state, and local levels. While this case issued an “order” to one district, the analysis and legal guidance in the case applies to all districts nationwide.

4. What legal obligations do schools have to inform parents about LGBTQ+-related content?

Under the *Mahmoud* decision, LEAs have an affirmative obligation to provide parents/guardians with notice and the opportunity to opt-out of instruction that may “substantially interfer[e] with the religious development” of their student. The *Mahmoud* opinion did not provide clarity beyond the factual circumstances at issue in *Mahmoud* (specifically, LGBTQ+ storybooks in an elementary classroom setting), and did not provide information about the type and timing of notice required, and the degree to which LEAs can scrutinize opt-out requests.

Based on the current understanding of *Mahmoud*, and current practices related to notices regarding upcoming curriculum and religious accommodation analysis, LEAs may provide advance notice of the right to opt-out of instruction in a variety of ways, such as: annual notices, classroom or teacher syllabi, course catalogs, curriculum websites, or a direct notification when staff knows there will be direct instruction on LGBTQ+ topics. This list is intended to provide potential options and is not intended to be exhaustive.

Before returning (or upon return) for the 2025-2026 school year, LEAs should ensure certificated personnel are aware of the *Mahmoud* decision and the requirement to consider requests to opt-out of curriculum based on religion. Staff must be aware that if any lessons will have LGBTQ+ subject matter at the forefront, they should seek guidance from administration because the law now requires advance notice to parents and a right to opt out. This can be accomplished through LEA administration holding a meeting with site certificated administrators to ensure they are all aware of the decision, which may be a good practical starting point since the site administrators would be fielding the majority of inquiries and requests to opt out.

5. How should schools handle conflicts between state laws and this federal ruling?

LEAs must continue to adhere to California’s FAIR (“Fair, Inclusive, and Respectful”) Education Act. The FAIR Education Act requires that instruction in social studies include “study of the role of contributions of people of all genders, Native Americans, African Americans, Latino Americans, Asian Americans, Pacific Islanders, European Americans, LGBTQ+ Americans, persons with disabilities, and members of other ethnic, cultural, religious, and socioeconomic status groups, to the economic, political, and social development of California and the United States of America, with particular emphasis on portraying the role of these groups in contemporary society.” (Ed. Code, § 51204.5.)

The FAIR Education Act also prohibits the inclusion of instructional materials that reflect “adversely upon persons on the basis of race or ethnicity, gender, religion, disability, nationality, or sexual orientation, or because of a characteristic listed in Section 220.” (Ed. Code, § 51501.)



LEAs must ensure its curriculum meets all California required standards for students. However, if a parent/student opts out of mandated curriculum based on a religious objection, the LEA must ensure the religious objection is accommodated and the student receives an alternative activity or instruction that meets the required curriculum or addresses the standard in a compliant method.

6. *Are there penalties for not complying with parental opt-out requests?*

While there are not any direct “penalties” for non-compliance with the *Mahmoud* decision, failure to offer notice and an opt-out to instructional materials that may “substantially interfer[e] with the religious development” of a student would likely create legal liability based on religious discrimination or violation of the Free Exercise Clause of the First Amendment.

7. *How should schools develop opt-out policies and forms?*

CSBA reviewed its model policies and regulations to align with the *Mahmoud* decision and guide LEAs in revising their own policies. CSBA published revised model policies for the following Board Policies and Administrative Regulations: BP/AR 6141.2 (Recognition Of Religious Beliefs And Customs); BP/AR 6142.1 (Sexual Health And HIV/AIDS Prevention Instruction), and BP/AR 6142.8 (Comprehensive Health Education). We recommend California LEAs review the proposed model policies from CSBA in consultation with legal counsel. Forms should be developed and procedures modified depending on the specific opt-out policy adopted by the LEA.

8. *At what grade levels does this ruling apply, and are there differences for elementary, middle, and high schools?*

The *Mahmoud* decision specifically involved elementary school students; however, the impact of the decision reaches all K-12 students. The fact-intensive question of whether instructional material “substantially interfer[es] with the religious development” of a student will vary depending on the specific grade level(s) at issue. (See FAQ #1.)

9. *What types of instructional content or events must be eligible for opt-out? (e.g., books, films, guest speakers, health classes)*

At this time, the *Mahmoud* decision is understood to apply to curriculum and instructional materials. However, the limits of this decision and how it impacts the classroom day-to-day are unclear, with clarity likely coming through judicial decisions in the coming years. (See FAQ #1.) It is likely any activity that is part of compulsory school attendance would be affected.

10. *How should schools document and track opt-out requests?*

The *Mahmoud* decision does not provide clarity on how LEAs should facilitate the notice and opt-out requirement or whether documentation must be tracked and maintained. The Court noted that the district in *Mahmoud* already allowed opt-outs for other aspects of the curriculum, such as sexual health education, and already had students miss portions of general instruction such as when receiving special education or English learner services. Thus, how LEAs document and track opt-out requests should be an LEA-specific decision.



Potential options include creating an LEA-wide digital opt-out form available on the District’s website submitted to a single District department, submission to school site administration with a decision tree for responses, or delegating a review committee for responding to opt-out requests. This list is intended to provide potential options and is not intended to be exhaustive. Schools may look at following existing methods of receiving and tracking opt-outs for other matters such as CHYA curriculum.

11. *Can opt-outs apply to entire courses, or only to specific lessons or materials?*

Under the *Mahmoud* decision, LEAs are obligated to provide parents/guardians with advance notice and the option to opt-out of instruction that “substantially interfer[es] with the religious development” of their student. This will be a fact-intensive inquiry based on the specific instructional content, the specific religious beliefs and/or customs, and how the specific instructional content substantially interferes with the specific religious beliefs and/or customs.

Because of this fact-intensive inquiry into specific instructional content, broad opt-out requests from instructional content (i.e., “I request my student be opted-out out all LGBTQ+ instructional material based on our religious beliefs.”) would likely be inappropriate. Rather, LEAs should ask parents/guardians to identify specific instructional content for which they are asking to opt out their student. If an LEA receives a broad opt-out request for a student to be opted-out of an entire course, particularly if it is a required course, we recommend the LEA consult with legal counsel to evaluate the situation and develop an appropriate response.

12. *How should teachers plan lessons to accommodate students who opt out?*

If a student is opted out of instructional material or content based on a sincerely held religious belief, LEAs should provide the student with an alternative educational activity accommodating their religious objection. Be aware, this may create bargainable impacts and effects as teachers could be required to create separate lesson plans or assignments for students who have been opted out of instructional content. LEAs might also consider creating alternative assignments for content that foreseeably would result in opt-out requests.

13. *Can LGBTQ+ topics still be discussed in response to student questions or current events?*

As stated above, the *Mahmoud* decision is understood to only apply to curriculum and instructional materials. However, the exact bounds of this decision and how it impacts the classroom day-to-day are unclear, with clarity likely coming through judicial decisions in the coming years. (See FAQ #1.) Likely, a student-initiated question that is relevant to the instruction, for which prior notice could not have been provided, would be governed by an LEA’s controversial topics policy that generally contains language about presenting the information in a viewpoint-neutral manner. Staff should ensure that they are not presenting information in a manner that compels student acceptance of a particular viewpoint.

14. *How does the opt-out policy impact the rights and inclusion of LGBTQ+ students?*

LGBTQ+ students remain protected from discrimination and harassment under both federal and California law. Under federal law, Title IX of the Education Amendments of 1972 prohibits sex-based discrimination, which may include sexual orientation or gender identity, in schools that



receive federal funding. California law offers broad protections for LGBTQ+ students under the Education Code. (Ed. Code, § 200 *et. seq.*) Complaints regarding harassment or discrimination on the basis of a student’s sexual orientation or gender identity should continue to be processed under the appropriate LEA procedures (e.g., the Uniform Complaint Procedures). Students and families may also file complaints with the California Department of Education or the U.S. Department of Education’s Office for Civil Rights.

It is unlikely, however, that a student or parent opting their child out of instruction on an LGBTQ+ topic based on sincerely-held religious beliefs would be found to constitute harassment or discrimination of an LGBTQ+ student. The Court’s decision in *Mahmoud* distinguished between mere “exposure” to LGBTQ+ matters or individuals and making LGBTQ+ matters the subject of instruction to elementary school students. It is unlikely the Court’s decision would allow a student to opt out of a specific course merely because an LGBTQ+ student is present.

15. *What guidance should schools follow to maintain a safe and inclusive environment for all students?*

California law requires schools to provide a nondiscriminatory educational environment for all students. Specifically, Education Code section 200 provides:

It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, equal rights, and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies that will eliminate these discriminatory acts, including discrimination not just because of one protected trait, but also because of the combination of two or more protected bases.

LEAs are also required to have “a policy that prohibits discrimination, harassment, intimidation, and bullying based on ... actual or perceived characteristics” and “a process for receiving complaints or discrimination, harassment, intimidation, and bullying.” (See Ed. Code, § 234.1.) LEAs may also engage in professional development on restorative practices, trauma-informed approaches, and how to recognize and respond to bullying and harassment on the basis of a protected characteristic. (See also FAQ #14.)∞

16. *Can LGBTQ+ student organizations (e.g., GSAs) still operate on campus?*

LGBTQ+ student organizations may still operate on school campuses. As stated above, the *Mahmoud* decision is understood to only apply to curriculum and instructional materials. Student organizations are separate from curriculum and instructional materials, and participation and membership in a student organization is optional for all students. (See Ed. Code, § 48930.)

17. *What are the best practices for engaging with concerned parents and community members?*

As with all communication, LEAs should continue to express a desire to include families as partners in curriculum adoptions and other decisions. Specific communications about *Mahmoud* should be



fairly succinct until there is a better understanding of the practical impacts of the *Mahmoud* decision and full resolution of the remanded decision. (See FAQ #1.) The message should be that the LEA is aware of the decision, and is working to explore the potential impacts of the decision to ensure it is compliant with the law as it does with any new statute, regulation, or court decision.

18. *How should schools address concerns from families who support inclusive education?*

Under the *Mahmoud* decision, a parent/guardian only has the legal right to opt their student out of curriculum and instruction that “substantially interfer[es] with the religious development” of their student. The *Mahmoud* decision does not prohibit such instruction to students whose parents/guardians do not opt them out. Parents and guardians do not have a right to opt out other students.

19. *What happens if a parent opts out, but a student still engages with LGBTQ+ related content in another setting (e.g., a library book, a peer conversation)?*

As stated above, the *Mahmoud* decision is understood to only apply to curriculum and instructional materials in situations where attendance is compulsory. The Court also distinguished between direct instruction versus mere exposure. Discussion or exposure to LGBTQ+ topics in other, non-instructional settings implicate different legal protections than those implicated by the *Mahmoud* decision. If an LEA has a parent/guardian take issue with their student’s exposure to LGBTQ+ topics in a non-instructional setting, the LEA is encouraged to consult with legal counsel and respond pursuant to policies governing that context or speech (e.g., library book challenges, student newspapers).

20. *How should teachers respond if a student brings up LGBTQ+ topics during class discussions?*

The response to this FAQ depends on the specific facts of the situation, as the analysis under *Mahmoud* is a fact-intensive inquiry. The answer would depend on the age of the students, the course of instruction, the current instructional material being discussed and the relevance of the question or topic to the instruction, how the student’s question was phrased, and the specific LGBTQ+ topic asked about. If a teacher is presented with a question on an LGBTQ+ topic they are unsure of how to answer in light of the *Mahmoud* decision, the teacher may kindly ask the student to speak with them further about it after class (or when other students are not present and not during instructional time) or raise the question with their parent/guardian after school.

21. *Can a teacher refuse to teach certain materials based on their own beliefs, either for or against LGBTQ+ content?*

This question was not addressed by the *Mahmoud* decision, as the decision focused solely on the rights of parents to direct the religious upbringing of their children. If a teacher refuses to teach certain materials based on their own beliefs, the LEA is encouraged to consult legal counsel before responding.



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