

COVER MEMO

TO: District Superintendents and Administrators

FROM: Todd Atwater, General Counsel

RE: *Mahmoud v. Taylor* – Supreme Court Decision on Parental Notice and Opt-Out Rights

Purpose

To inform districts of the U.S. Supreme Court’s June 27, 2025 ruling in *Mahmoud v. Taylor*, 606 U.S. ___, and outline practical steps to ensure compliance with both federal constitutional standards and South Carolina law.

Summary

The Supreme Court ruled that public schools violate parents’ constitutional rights when they require elementary students to participate in instruction on gender and sexuality that conflicts with their parents’ sincerely held religious beliefs—without providing advance notice and an opportunity to opt out.

The decision emphasizes two key duties for schools:

1. **Parental Notice:** Parents must be informed in advance when classroom materials address sensitive topics related to gender, sexuality, or moral belief systems.
2. **Parental Opt-Out:** Parents must have the ability to excuse their children from such instruction or receive an appropriate alternative without penalty.

This ruling aligns with and extends existing South Carolina Regulation 43-170 on parental access to instructional materials.

Action Steps

- Review district policies and practices on classroom transparency, parental notice, and opt-out procedures.
- Ensure parents can easily view or request instructional materials (using tools such as Destiny Classroom Library Manager).
- Update and publish district opt-out procedures prominently on district websites.
- Utilize the **attached model Religious Opt-Out Form** and **Implementation Checklist** to ensure uniform application statewide.

For legal reference and detailed analysis, see **Attachment A: Legal Brief – *Mahmoud v. Taylor* Summary and Implementation Guidance**.

ATTACHMENT A – Legal Brief

Legal Update: *Mahmoud v. Taylor*, 606 U.S. ____ (June 27, 2025)

Purpose: To summarize the Supreme Court’s ruling in *Mahmoud v. Taylor* and provide guidance to districts regarding notice, opt-out, and implementation.

Summary

In *Mahmoud*, the Supreme Court considered whether public schools violate parents’ constitutional rights when they compel elementary school children to participate in instruction on gender and sexuality that is contrary to their parents’ religious convictions without giving the parents advanced notice and an opportunity to opt out. The case was brought by parents of various faith backgrounds, including Muslim, Roman Catholic, and Ukrainian Orthodox, who sued their local school district for forcing kindergarten and elementary-aged children to read or listen to books that promoted a one-sided view of gender identity and sexual orientation and encouraged gender transitioning. The storybooks were used in kindergarten to fifth grade classrooms as part of mandatory instruction.

The books were plainly intended to promote a particular viewpoint to “young, impressionable children” who were “likely to accept without question any moral message conveyed by their teachers’ instruction.” *Mahmoud*, Op. at 22. The texts were “unmistakably normative” and were “clearly designed to present certain values and beliefs”—namely, progressive views of sexuality and gender identity—“as things to be celebrated,” while casting “contrary values and beliefs as things to be rejected.” *Id.*; see also *id.* at 22–23 (noting that the texts were designed to present alternative lifestyles as normal and as “cause for celebration”).

In case the books weren’t persuasive enough, the school district also sought to ensure that teachers, too, would persuade children to adopt a particular view. For example, guidance documents and professional development that the school district provided to teachers instructed them to respond to student questions by saying, among other things, that “when we’re born, people make a guess about our gender and label us ‘boy’ or ‘girl’ based on our body parts. Sometimes they’re right and sometimes they’re wrong.” *Id.* at 7; see also *id.* at 25–26.

The parents who brought the suit had sincerely held religious objections to the content presented in the storybooks and the related instruction. Initially, the school district allowed parents to opt their children out of the objectional content; however, the district later removed this option. The Supreme Court ruled that the district’s use of the books in mandatory classes without notice and the ability for a parent to excuse their child from that portion of instruction imposed an unconstitutional burden on the parents’ constitutional rights. As a result, the school district is now required to provide notice to the parents when one of the books or any similar book is used in any way, and to allow the parents to have their child excused from that instruction.

Ramifications

The parental religious liberty rights reaffirmed in *Mahmoud* have ramifications for every public school in the nation, and educators and administrators would do well to ensure they have intentionally and affirmatively conformed with the expectations set out in the Court’s opinion.

The Supreme Court’s analysis and ruling centered on two key issues: parental **notice** and parental **opt-out**. See, e.g., *id.* at 21–22. The two are integrally linked, as parents are unable to opt out of material that they are unaware is available to their children. Each issue is discussed below.

Parental Notice

The Justices in *Mahmoud* noted that one of the main failings of the district was its refusal to provide parents with notice of when the materials would be placed in front of students. That analysis, like the Court’s ruling, which requires the district to give the parents advance notice whenever one of the challenged books or any similar book is used, *id.* at 41, harmonizes with the provisions of South Carolina Regulation 43-170, which requires that parents be informed, upon request, of the materials made available to students in classrooms and libraries.

Indeed, *Mahmoud* is not only consistent with the requirement of Regulation 43-170, but it also extends that requirement. Regulation 43-170 requires schools to provide parents with a list of all library and classroom materials made available to students in their classroom upon a “reasonable request” by a parent. S.C. Code Regs. 43-170(II(D)). *Mahmoud* goes a step further and suggests that schools should affirmatively provide notice *prior* to parental request—at least in contexts like Montgomery County, Maryland, and the state of South Carolina where a school is aware that its students, families, and communities include members whose religious beliefs are at odds with the normative viewpoints being promoted in mandatory classroom instructional time. See *id.* at 39 (“The Board is doubtless aware of the presence in Montgomery County of substantial religious communities whose members hold traditional views on marriage, sex, and gender.”); *id.* at 41 (holding that “the Board should be ordered to notify them in advance whenever one of the books in question or any other similar book is to be used in any way”).

To help districts comply both with the Supreme Court’s ruling and state regulation, the Department of Education has provided Destiny Classroom Library Manager (DCLM) free of charge. Destiny is providing an asynchronous training option for districts to onboard at their own pace. DCLM allows educators to send a link to parents that contains a digital version of their classroom library, which gives the parents notice of all materials contained in their child’s classroom library. While DCLM does not necessarily list all materials handed to children in the classroom, it is a helpful tool to categorize and organize a large amount of books available to students in their individual classroom, which was the Court’s focus in *Mahmoud*.

In addition, districts would be well advised to ensure that parents are given advance notice—either through class syllabi distributed at the beginning of the semester or through regular, periodic, forward-looking classroom updates—of the curricula, materials, topics, and instruction that their children will engage with in classroom instruction. See *id.*; see also *Tatel v. Mt. Lebanon Sch. Dist.*, 752 F. Supp. 3d 512 (W.D. Pa. 2024).

Parental Opt-Out

In *Mahmoud*, the school district had initially allowed parents to opt their child out of specific books and instruction based on the families’ deeply held religious beliefs. The district later reversed this policy for these specific materials, although district officials retained other opt-out abilities in other contexts for other types of materials and objections. This flip-flopping and unequal treatment of religious objectors troubled the *Mahmoud* Court, which held that religiously objecting parents have a constitutional right to opt their child out of mandatory instruction contrary to their beliefs.

Accordingly, districts should consider reviewing their opt-out policies for instruction and should prominently publish their opt-out process on their website so that a parent could easily find it. A sample opt-out form is attached to this memo that can serve as a guide as you create your own form.

In *Mahmoud*, the district had also offered parents another unpalatable “solution,” telling them that they could always keep their children home when the texts were read but as an unexcused absence. It is clear from the court’s opinion that this half-solution is no solution at all, and that districts should make it clear that an opt-out is not to be treated as an unexcused absence.

Implementation

Assumption of Transparency

Implementation assumes district transparency and good-faith cooperation in providing consistent, timely access to instructional materials and information for review, in accordance with state regulation and the expectations outlined in this memo.

Suggested Implementation Process

The implementation of the preceding analysis and requirements should follow a consistent, uniform process that trusts teachers to provide the appropriate information and accommodations but allows for a parent’s objection to be escalated to school or district administration when necessary. That process should, in general, mirror the following sequence:

- A parent inquires or complains about upcoming instruction or material that is contrary to their religious beliefs.
- The teacher or school provides the requested information and the Religious Opt-Out Form (attached).
- The parent submits the Religious Opt-Out Form.
- The teacher or school reviews the form to ensure the objection is clearly identified and religious in nature, deferring to the parent’s good-faith assertion.
- If possible, an alternative assignment, text, or material should be substituted and graded in lieu of the objectionable content.
- When substitution is not possible, the student shall be excused from that instruction or assignment without penalty.
- If a teacher declines to provide the requested information or allow an opt-out, the parent may escalate to school and then district administration.
- If objections become so frequent or broad as to make alternative instruction impracticable (defined as $\geq 20\%$ of class content), the case should be referred to the district office for individual review.

Attachments

1. Checklist for Implementation of Mahmoud Requirements
2. Model Religious Opt-Out Form

Attachment 1: Implementation Checklist

Purpose: To help districts confirm alignment with *Mahmoud v. Taylor* (U.S. Supreme Court, June 27, 2025) and South Carolina Regulation 43-170.

1. District-Level Policy Review

- ☐ Confirm district policy explicitly recognizes parents' right to advance notice and opt-out from instruction conflicting with sincerely held religious beliefs.
- ☐ Ensure the policy differentiates between religious-based opt-outs and general curriculum objections, per the *Mahmoud* ruling.
- ☐ Publish policy language prominently on the district website and in parent handbooks.
- ☐ Identify a district-level contact person (e.g., Director of Instruction or Assistant Superintendent) for parental inquiries.

2. Transparency & Notice

- ☐ Verify procedures for providing parents with timely notice of instructional materials related to gender, sexuality, or other sensitive moral topics.
- ☐ Ensure all classroom materials are cataloged in Destiny Classroom Library Manager (DCLM) or a comparable platform accessible to parents.
- ☐ Distribute class syllabi or periodic classroom updates that preview upcoming sensitive content.
- ☐ Maintain a consistent district process for parents to request clarification or preview materials before use.

3. Opt-Out Process

- ☐ Adopt the district's Religious Opt-Out Form (Attachment 2) or a local equivalent consistent with this model.
- ☐ Train teachers and principals on how to handle parental requests respectfully and efficiently.
- ☐ Establish an escalation protocol for unresolved requests (teacher → school administrator → district office).
- ☐ Ensure alternative assignments or excusals are not graded punitively and do not affect attendance.

4. Training & Documentation

- ☐ Provide annual staff development on parental rights under *Mahmoud* and Regulation 43-170.

☐ Keep written documentation of parental notices, forms received, and any alternative assignments offered.

☐ Review data quarterly to ensure consistent districtwide application.

5. Continuous Improvement

☐ Monitor feedback from schools and parents to identify recurring issues.

☐ Update district guidance annually based on legal developments or new SC Department of Education advisories.

Attachment 2: Model Religious Opt-Out Form¹

Purpose: This form allows parents or legal guardians to request that their child be excused from participation in specific mandatory instruction that conflicts with the family’s sincerely held religious beliefs, in accordance with *Mahmoud v. Taylor* (U.S. Supreme Court, 2025) and applicable South Carolina law.

Section 1: Parent/Guardian Statement

As the parent or legal guardian of _____, I have identified the following mandatory instruction as contrary to our sincerely held religious beliefs and a burden on our family’s religious exercise and beliefs. Accordingly, I request that the student(s) named herein be excused from participation in such instruction.

Parent/Guardian Signature: _____
Parent/Guardian Name (Print): _____
Grade/Class: _____
School: _____
Residential Address: _____
Email Address: _____ **Phone Number:** _____

Section 2: Description of Instruction or Material

Please list the specific instructional activity, book, video, or materials that conflict with your family’s sincerely held religious beliefs. Include book titles, page numbers, lessons, etc. For portions of material, please indicate page numbers or sections of the material, if known. Please identify the class in which the material(s) are available, and the name of the teacher in whose class the materials are available. If specific information about the lesson, materials, or portions thereof is not known, please contact your student’s teacher for additional information that may assist you in determining and specifying your objection.

District Use Only

Received by (Signature): _____
Received by (Print Name): _____
Title: _____
Date Received: _____

Notes / Action Taken:

¹ This opt-out is different from and does not alter or diminish the opt-out right described in South Carolina Code section 59-32-50 (relating to certain aspects of comprehensive health education program classes) or in other statutory or regulatory sections.