Sharon W. Montanye
smontanye@sweetstevens.com

RECENT SUPREME COURT DECISION CONCERNING REGLIGIOUS FREEDOM IN SCHOOLS

The United States Supreme Court on June 27, 2025 issued a ruling that has many school officials worried about its impact. The ruling in *Mahmoud, et. al v. Taylor et. al.,* was limited in its scope in that the Supreme Court was only addressing the right of the plaintiffs in that case to have a preliminary injunction. However, the underlying rationale of the Supreme Court is significant and needs to be fully understood.

The facts of the case are that during the 2022–2023 school year, the Montgomery County Maryland, Board of Education introduced a variety of LGBTQ+-inclusive texts into its curriculum. When some parents sought to have their children excused from instruction involving those books, the board initially compromised with the parents by notifying them when the LGBTQ+-inclusive storybooks would be taught and permitting their children to be excused from the instruction. Less than a year after the board introduced the books, however, it rescinded the parental opt-out policy. Among other things, the board said that it "could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom environment." The parents sought an injunction to prevent the district from rescinding the parental opt-out policy. The Supreme Court concluded the parents were entitled to the injunction as the board's introduction of the LGBTQ+-inclusive storybooks, combined with its decision to withhold notice to parents and to forbid opt-outs, substantially interfered with the religious rights of the parents and children and imposed a burden on the parents' free exercise of religion.

The question raised by this decision is what does this mean for schools when facing challenges by parents/guardians to curriculum or instructional materials based on religious freedom? First, chapter 4.4 of the Pennsylvania School Code (22 Pa. Code, Chapter 4, et seq.) states in subsection (c) that access to educational programs shall be provided without discrimination based on various protected categories including religion. Subsection (d) of chapter 4.4 provides that school entities must adopt policies that assure parents or guardians access to information about curriculum, a process for reviewing instructional materials and the right to have children excused from specific instruction that conflict with their religious beliefs. So, the first place to start is to make sure a policy is in place that addresses each of these requirements. Many schools do already have such a policy in place (at policies 105, 105.1 and 105.2.c), however, to protect against the argument that simply having the policy is not sufficient notice of these parental protections, it is suggested that notice of these board policies be provided to students and parents/guardians on an annual basis at the beginning of each school year in, for example, a calendar or student handbook.

The next question to consider is whether parents/guardians have a right to opt their children out of non-curricular materials that may be used or a topic that may be discussed that might implicate religious freedom? This question is at the heart of a case concerning Mt. Lebanon School District. In *Tatel v. Mt. Lebanon School District*, a federal judge in the Pittsburgh area concluded that the district violated the federal civil rights, including the religious freedom, of several parents when a first grade teacher, without providing notice or the right to opt-out, decided to observe Transgender Awareness Day by reading noncurricular books to students. The parents had not been notified that the topic might be presented and the district had no guidelines about when to provide notice and the right to opt-out and only had a "de facto" policy that left those decisions to the teacher's discretion. It is worth noting that the decision is not binding on other federal

courts. However, given the broad scope of religious rights of individuals which the Supreme Court has adopted in recent years, including in *Mahmoud v. Taylor*, its reasoning will certainly be argued in other courts.

Given the various forms of belief associated with religion, how can a school determine whether a particular reading might offend one religious belief or another and thus know that notice must be provided? Also, how can a school be expected to provide parental notice of a "non curricular" topic when there was no knowledge that it was going to be presented in a classroom? In order to address these concerns, it is recommended that all teachers be encouraged to make a best effort to identify "non-curricular" material prior to the start of each school year and include that material in any review requested by a parent under existing policies. To be clear, this is not a recommendation that administration vet the proposed material – the burden will remain on the family to request to inspect the material and determine whether they want to opt their child out of any of it.

This recommended approach is not foolproof as an individual teacher could still "go rogue" and introduce a controversial topic into their classroom without compliance with the procedure, or a seemingly innocuous addition to non-curricular material used in a classroom might unexpectedly offend a family's religious views. However, if that happens and complaints are made, it is recommended that schools consider allowing such a family to opt-out of any future use of said material. In that case, a school would be in a much better position to argue, if there was a civil rights violation, that it was the individual decision that caused the violation and not the district or supervisors as a matter of district policy.

This developing law will no doubt be the subject of further litigation which we will share with you.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.