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SUPREME COURT HOLDS THAT SCHOOL DISTRICTS MUST OFFER RELIGIOUS EXEMPTIONS TO INSTRUCTION

Mahmoud v. Taylor, 145 S. Ct. 2332 (2025). The Supreme Court of the United States holds that a school district's introduction of LGBTQ+-inclusive storybooks, along with its decision to withhold opt-outs from such instruction, placed an unconstitutional burden on the parents' rights to the free exercise of their religion.

BACKGROUND

During the 2022-2023 school year, the Montgomery County Board of Education ("Board") introduced a variety of inclusive texts into the public school curriculum. Those texts included five "LGBTQ+-inclusive" storybooks ("Storybooks") approved for students in kindergarten through fifth grade, which have story lines focused on sexuality and gender. When parents sought to have their children excused from instruction involving those books, the Board initially compromised with the parents by notifying them when the Storybooks would be taught and permitting their children to be excused from the instruction. Less than a year after the Board introduced the Storybooks, however, it rescinded the parental opt-out policy.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."

A group of parents filed a lawsuit asserting that that the Board's no-opt-out policy infringed their right to the free exercise of their religion and requested a preliminary injunction prohibiting the Board from forcing their children to read, listen to, or discuss the Storybooks. The district court denied their request and the Fourth Circuit affirmed that denial. The Supreme Court, however, held that the parents were entitled to an injunction.

DISCUSSION

Government schools, like all government institutions, may not place unconstitutional burdens on religious exercise. In *Mahmoud*, the Court explained that, in the public school context, it had previously recognized limits on the government's ability to interfere with a student's religious upbringing. For example, in *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624 (1943), the court held that a state law that required students to say the pledge of allegiance violated the First Amendment rights of certain students. In short, a requirement that students make an affirmation contrary

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to their parents' religious beliefs is not permitted by the First Amendment.

Moreover, the Court explained that in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), it had invalidated laws that imposed more subtle forms of interference with the religious upbringing of children than were present in *Barnette*. In that case, a Wisconsin law required that parents send their children to public or private school until the age of 16. The Court concluded that this violated the rights of certain Amish plaintiffs because the requirement "interposes a serious barrier to the integration of the Amish child into the Amish religious community." In other words, the Court explained, mandating exposure to influences that would substantially interfere with religious beliefs may violate the constitution.

The Court noted that the question as to whether a law "substantially interferes with the religious development of a child" is "fact-intensive" and will depend on: 1) the specific religious beliefs and practices asserted; and 2) the specific nature of the educational requirement or curricular feature at issue. For example, educational requirements targeted toward very young children may be analyzed differently from educational requirements for high school students. In addition, a court must also consider the specific context in which the instruction or materials at issue are presented to determine whether they are presented in a neutral manner or if they are presented in a manner that is "hostile" to religious viewpoints and designed to impose upon students a "pressure to conform."

With that background, in *Mahmoud*, the Court concluded that the Storybooks at issue were clearly designed to present certain values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected. Because these books carried with them "a very real threat of undermining" the religious beliefs the parents wished to instill in their children, the Court concluded that the books, combined with its no-opt-out policy, burdened the parents' rights to the free exercise of their religion.

Normally, schools are permitted to place incidental burdens on religious exercise if they do so pursuant to a neutral policy that is generally applicable. However, pursuant to *Yoder*, the *Mahmoud* Court held that because the policy "substantially interferes with the religious development" of the parents' children and because those polices pose "a very real threat of undermining" the religious beliefs and practices that the parents wish to instill in their children, the Board's policy had to survive strict scrutiny even if it was neutral and generally applicable.

To survive strict scrutiny, a government must demonstrate that its policy "advances 'interests of the highest order' and is narrowly tailored to achieve those interests." Unsurprisingly, the Board could not meet this burden. The Court noted that opt-outs were provided for other forms of instruction and that parallel instruction was provided for multilingual learners and students with individualized educational programs, so this "robust system of exceptions" undermined any argument that religious exemptions could not be granted for the parents in this case.

Accordingly, the Court concluded that the Board's introduction of the Storybooks, along with its decision to withhold opt-outs, placed an unconstitutional burden on the parents' rights to the free exercise of their religion. It also directed the lower court to order the Board to notify plaintiffs in advance whenever one of the Storybooks or any other similar book is to be used in any way and to allow them to have their children excused from that instruction.

PRACTICAL ADVICE

The *Mahmoud* decision strengthens and solidifies parental rights to direct the religious upbringing of their children in public schools. However, its direct impact on Pennsylvania schools will be minimal because the central holding, that schools must allow opt-outs from instruction that offends parents' religious

beliefs, is consistent with existing Pennsylvania law. Specifically, 22 Pa. Code §4.4(d) provides that parents and guardians have the right to have their children excused from specific instruction that conflicts with their religious beliefs. In fact, the Court noted that many states, including Pennsylvania, permit broad opt-outs from discrete aspects of the public school curriculum.

The interesting question for Pennsylvania schools will be what type of notice is required about materials used in the classroom. As noted above, the Court required that the *Mahmoud* plaintiffs receive prior notice of the Storybooks so that they would have an opportunity to remove their children from instruction. Similarly, 22 Pa. Code §4.4 provides that parents and guardians have the right to access information about a school's curriculum, including instructional materials. Pennsylvania school districts should work with their solicitors to determine what type of notice is provided to parents so that they can effectively exercise their rights under *Mahmoud* and 22 Pa. Code §4.4(d).

SPECIAL EDUCATION TEACHER'S CONTINUOUS ABUSE RESULTS IN FEDERAL COURT CLAIMS

D.H. v. Scranton School District, 2025 U.S. Dist. LEXIS 59585 (M.D. Pa. 2025, March 31, 2025)

ADA and Section 504 claims upheld arising from teacher's continuous conduct towards an identified student.

BACKGROUND

Parents Matthew Hartzell and Courtny Roberts ("Parents") enrolled their son ("Child") in the Scranton School District ("District") beginning in the 2021-2022 school year. The Child's placement was in a special education class at the District intermediate school, as he was diagnosed with several disabilities, including autism and ADHD, among others. Erica Stolan ("Teacher") was the class instructor. It was alleged that various District employees and outside agency personnel witnessed Teacher's abusive conduct toward the Child and other special education students in the class. Child's mother spoke repeatedly to the school principal and vice principal about the Teacher's behavior, and the mother had begged them and the special education director ("Officials") at an IEP meeting to move her Child because of the Teacher's behavior. No transfer occurred until early 2023 when Teacher allegedly sprayed a liquid substance in the Child's face. The following day Teacher shoved Child out of his chair, causing him to fall to the floor; she also directed and allowed other students to strike the student as he was dragged feet-first out of the classroom. She also used abusive language toward Child. A report of suspected child abuse was made to law enforcement, and local police conducted an investigation. After these incidents, the principal was removed from the school, but the other Officials remained in their positions.

DISCUSSION

Parents, individually and as parents of their Child subsequently filed suit in federal court raising a number of claims including civil rights charges for violation of the Individuals with Disabilities Education ("IDEA"), violation of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and various state law tort claims against the District and

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Officials. Upon Defendants' motion to dismiss, the District Court dismissed the IDEA claims because, before being able to sue under that statute, a party must generally exhaust their administrative remedies: here by going through IDEA due process. Parents contended that they were not required to such exhaustion because the basis of their complaint did not relate to the Child's FAPE (Free Appropriate Public Education) and because the complaint sought damages. The Court disagreed as it concluded the claims were based on FAPE; accordingly, such claims would be dismissed for failure of exhaustion.

In contrast, for the ADA and the Section 504 claims, the Court found that the Parents properly set forth their claims as they alleged the District failed to provide Child with the same protection and opportunities that other students were provided, resulting in discrimination due to Child's disabilities. Further, the Court stated the Parents properly alleged under the ADA claim that the District was aware that the Child had disabilities, but despite that knowledge, the District failed to ensure that improper abuse would not be perpetuated upon the Child by the District. In addition, because the Child's mother complained repeatedly to the District about the Teacher's cruel and abusive treatment, such abuse continued. All of these allegations were sufficient to provide that the Defendants' denial of benefits was directly related to the Child's disability, and the Court denied the motion to dismiss the Section 504 charges.

Similarly, the Court allowed the civil rights claims to stand. While finding that no District policy or custom existed to cause Child's injuries, the allegations reflected that Teacher's continued poor behavior in the class reflected a failure to train, thereby imposing civil rights liability. As to the Parents' state law claims, the Court explained that under the Pennsylvania Political Subdivision Tort Claims Act ("PSTCA"), a local agency (such as a school district) is liable for damages caused by any act of a local agency or employee unless it falls under certain exceptions as the Act. But the PSTCA did not provide an exception for willful misconduct by an agency. As to similar state law claims against the Officials, individuals can be liable for intentional misconduct. No allegations of such misconduct were levied against the Officials except for the Teacher, as it was alleged her actions were in part, extreme and outrageous. Accordingly, such state law charges would not be dismissed against the Teacher. The Court held off ruling on the qualified immunity of Defendants to a remaining civil rights charge and allowed the Parents' punitive damage claim to continue. Overall, the bulk of the Parents' claims remained intact.

PRACTICAL ADVICE

As the D.H. case suggests, intentional misbehavior by school personnel toward special education students can impose liability to personnel and the school itself under a number of civil rights and related theories. Failure to address earlier instances of such behavior can be seen as "deliberate indifference" on the part of the school district, which could add to the liability of the school under federal civil rights laws; if the facts are egregious enough, such actions could lead to actionable Pennsylvania state law claims as well.

PAROCHIAL STUDENT PARTICIPATION IN SCHOOL DISTRICTS' INTERSCHOLASTIC ATHLETICS

Religious Rights Foundation of PA, et al. v. State College Area School District, et al., Case No. 4:23-cv-01144 (M.D. Pa, June 10, 2025) (A federal court's conclusion that the exclusion of parochial school students from participation in school districts' interscholastic athletics violates the Free Exercise Clause of the 1st Amendment and the Equal Protection Clause of the 14th Amendment results in consent order to permit such participation).

Religious Rights Foundation of PA, et al. v. Pennsylvania Interscholastic Athletic Association, Case No. 4:25-cv-01406 (M.D. Pa., July 29, 2025).

SUMMARY

Several parents of parochial school students who resided within the State College Area School District (School District) requested that their children be permitted to engage in extracurricular and co-curricular activities in the School District. The School District denied the requests, stating that to do so would go contravene a "longstanding practice of not having private school students participate," and that "if we allow private school students to take part, we could be taking away opportunities from [State College] students." In July 2023, the parents and the Religious Rights Foundation of Pennsylvania filed a federal suit against the School District in the United States District Court for the Middle District of Pennsylvania. The premise of the suit was that, because the School District permitted home-schooled students and charter school students to participate in extracurricular activities (as required by the Public School Code and the Charter School Law), the plaintiffs alleged that parochial students were excluded from similar participation on the basis of their religious exercise.

In December 2023, the federal court denied the School District's motion to dismiss the complaint. The court held that the School District's practice of excluding parochial students presented cognizable claims of violations of the Free Exercise Clause of the First Amendment to the U.S. Constitution and the Equal Protection Clause of the Fourteenth Amendment. Regarding the claim that State College and its Board violated the First Amendment to the U.S. Constitution, the court concluded that the complaint sufficiently alleged that the plaintiffs would have to choose between their religious beliefs and extracurricular participation. The court said: "denying access to the public benefit of participation in extracurricular activities because of a child's religiously motivated enrollment in parochial school offends the Free Exercise Clause if that denial is discriminatory." Noting that the School District permitted homeschooled and charter-schooled students' participation in activities, the court reasoned that the practice impermissibly burdened the plaintiff-parents' religious exercise. For the same reason, the court concluded that the allegations presented a violation of the 14th Amendment's Equal Protection Clause also survived the motion to dismiss for the same reasons.

In January 2025, the School District agreed to the court's entry of a Consent Order by which the School District agreed to permit parochial students, residing within the School District, to participate in extracurricular and co-curricular activities to the same extent offered to homeschooled and charter school students. The order provides that if the parochial school students have interscholastic athletic sports at their parochial schools, they will not be eligible to participate in those same sports in the school district.

On July 29, 2025, a similar suit was filed in the same federal court by the Religious Rights Foundation of Pennsylvania and several parents of parochial school students against the Pennsylvania Interscholastic Athletic Association (PIAA), presenting the same claims as were the subject of the State College Area School District suit. The complaint asserts that the PIAA does not permit students enrolled in parochial schools to participate in interscholastic athletic activities sponsored by their resident school districts,

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which the plaintiffs contend violates the Free Exercise Clause of the First Amendment and the Equal Protection Clause of the 14th Amendment.

PRACTICAL ADVICE

The federal court's pretrial decision in the State College Area School District suit concluded that the exclusion of parochial school students from participation in the school district's interscholastic sports, while permitting such participation by homeschooled and charter school students, violates the Free Exercise Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. While that decision is not binding in other courts, the decision has persuasive value that could be adopted by other courts in similar challenges. Further, the reasoning of the court's decision likely will yield a similar result in the recent suit filed against the PIAA to challenge the same general rule and have a state-wide impact.

SUPREME COURT OF THE UNITED STATES LOWERS BURDEN OF PROOF FOR "REVERSE DISCRIMINATION" TITLE VII CLAIMS

Marlean A. Ames v. Ohio Department of Youth Services., 2025 WL 1583264 (U.S. Supreme Ct. 2025)

BACKGROUND

Marlean Ames ("Plaintiff"), a heterosexual woman, was an employee of the Ohio Department of Youth Services ("the Department"). Ames was hired by the Department in 2004 for a secretarial position but was later promoted to Program Administrator. While in that position, Plaintiff interviewed for a management position in the Office of Quality and Improvement. The managerial position was given to another candidate who identified as a lesbian. Plaintiff was later demoted from Program Administrator back to a secretarial position. The Department then filled her Program Administrator position with an employee who identified as a gay man.

Plaintiff subsequently filed this suit against the Department alleging that she was discriminated against on the basis of her sexual orientation under Title VII of the Civil Rights Act.

DISCUSSION

By way of brief background, in the seminal Supreme Court case, *McDonnell Douglas Corp. v. Green*, the Supreme Court of the United States created a three-step burden-shifting framework designed to draw out the necessary evidence in employment-discrimination claims ("McDonnell Douglas framework"). 411 U.S. 792 (1973) Under the McDonnell Douglas framework, if a plaintiff can successfully establish a prima facie case by

proving: 1) "he/she belongs to a protected class;" 2) "he/she was subjected to an adverse employment action;" 3) "he/she was qualified to perform the job in question;" and 4) "his/her employer treated 'similarly situated' employees outside her class more favorably," the plaintiff is entitled to a rebuttable presumption of intentional discrimination. The defendant then has the burden of articulating a valid, non-discriminatory reason for the adverse employment action. Once the defendant provides a valid, non-discriminatory reason, the presumption is rebutted, and the plaintiff must show not only that the employer's justification was pretextual but that the real reason for the adverse employment action was discrimination.

Here, when reviewing Plaintiff's discrimination claim, the District Court and the Sixth Circuit Court of Appeals assessed Plaintiff's claim under the McDonnell Douglas framework but went on to impose an additional requirement on Plaintiff, in that the employee must prove "background circumstances" to support the suspicion that the Employer "is the unusual employer who discriminates against members of the majority group." This evidence could include evidence that a member of the relevant minority group made the employment decision at-issue or with statistical evidence showing a pattern of discrimination against members of the majority. Due to the nature of this additional requirement, it only applies to members of the majority group. The District Court of the Southern District of Ohio and the Sixth Circuit Court of Appeals both granted summary judgment to the Department on the basis that Plaintiff had failed to make a prima facie case of discrimination, as she did not present evidence of background circumstances to support the suspicion that the Employer "is the unusual employer who discriminates against members of the majority group." Plaintiff appealed the decision of the Sixth Circuit to the Supreme Court of the United States.

In its analysis, the Supreme Court highlighted that Title VII makes no distinction between minority and majority groups. The Supreme Court unanimously agreed that creating a higher evidentiary standard and therefore requiring a higher burden of proof for individuals who are members of a majority group when trying to establish their prima facie case of discrimination is improper. The Court went on to vacate and remand the case to determine if Plaintiff established a prima facie case of discrimination and satisfied the remaining factors under the McDonald Douglass framework.

PRACTICAL ADVICE:

By eliminating the "background circumstances" requirement, the bar has been significantly lowered for majority-group employees to bring discrimination claims against their employers, which almost certainly will result in an increase in reverse discrimination claims. Accordingly, School Districts should take steps to ensure that anti-discrimination practices are applied consistently and neutrally to all employees, regardless of whether an employee falls in a minority or majority group.

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