



Parental Rights and Student Gender Transitions at School: Legal Developments

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How public schools should treat transgender students has [generated](#) substantial [debate](#), raising legal questions in contexts such as bathroom access, athletics participation, and pronoun usage. One particular area of [legal disagreement](#) concerns whether public schools must notify parents when a minor student seeks to transition their gender at school. This question may involve various considerations, including the rights of parents to control the upbringing of their children and freely exercise their religious beliefs, how those rights should apply in the public-school context, and potentially countervailing considerations about a student’s autonomy, privacy, and the risk of parental abuse.

States and school districts have different rules regarding whether parents must be notified when students experience gender dysphoria and/or pursue gender transition. For instance, some states have passed [laws](#) requiring schools to [affirmatively](#) disclose to parents when a minor requests a change in pronouns used to identify the student. By contrast, a number of public schools in other states have implemented [policies](#) prohibiting disclosure of a student’s gender identity to parents without the student’s consent. Some parents have [sued](#) school districts that have implemented these latter policies, arguing that denying parents access to critical information about their children violates their constitutional rights. A recent Supreme Court decision on the matter, issued pursuant to its “[emergency docket](#),” will likely inform how courts examine these questions going forward.

In *Mirabelli v. Bonta*, the Supreme Court partially reinstated a district court’s [injunction](#) against California’s policies that prohibit public schools from informing parents about their children’s gender transition at school absent the child’s consent. In a per curiam [decision](#), the Court concluded that the parents were likely to succeed on the merits of their constitutional claims and that denial of those constitutional rights during the litigation process would cause irreparable harm.

In addition to the constitutional claims addressed in the *Mirabelli* decision, an existing federal statute imposes requirements on schools regarding the disclosure of student records. The [Family Educational Rights and Privacy Act](#) (FERPA) requires covered schools to allow parents to access their children’s records unless an exception applies. The U.S. Department of Education (ED) enforces FERPA. ED [determined](#) in early 2026 that California’s Department of Education (CDE) is out of compliance with FERPA because of its policies shielding information about a student’s gender identity from parents.

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This Sidebar explores these recent legal developments, beginning with a brief background on the legal principles that the Supreme Court applied in *Mirabelli*, the procedural history of the case, and a discussion of the Supreme Court’s decision. The Sidebar then turns to FERPA, examining its overlapping relevance and the implications for parents, students, and schools that Congress may consider if it chooses to legislate further in this context.

***Mirabelli*: Relevant Constitutional Provisions and Precedent**

The Court’s per curiam decision in *Mirabelli* relied on precedent interpreting two constitutional provisions: the Free Exercise Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment. One subclass of parent plaintiffs who challenged the California policies claimed that because they had religious objections to gender transitioning, they were entitled to exemptions from the policies under the Free Exercise Clause. A subclass of plaintiffs also challenged California’s policies as violating their substantive due process right to control the education and upbringing of their children.

Free Exercise Clause

The [Free Exercise Clause](#) of the First Amendment forbids the government from “prohibiting the free exercise” of religion. [According to the Supreme Court](#), government action implicates the Free Exercise Clause when it penalizes religious practice or coerces someone—either directly or indirectly—into acting contrary to their religious beliefs. [Some burdens](#) on religious exercise may nevertheless be [constitutionally permitted](#). For one thing, [the government is](#) “generally free to place incidental burdens on religious exercise” so long as its policy that does so is neutral and generally applicable. If a government policy is neither neutral nor generally applicable, modern Free Exercise Clause jurisprudence instructs courts to apply [strict scrutiny](#), meaning the government must prove its action “advances compelling interests and is narrowly tailored to achieve those interests.”

In its 2025 decision in *Mahmoud v. Taylor*, the Court articulated an exception to these general Free Exercise Clause principles, holding that regardless of whether a policy is neutral or generally applicable, [strict scrutiny applies](#) when a government action substantially interferes with the religious development of a child or poses “a very real threat of undermining” the religious beliefs a parent wishes to instill in their child. In *Mahmoud*, parents of public-school children brought a Free Exercise Clause challenge against a school board’s implementation of curriculum that featured “[LGBTQ+-inclusive](#)” books and a policy disallowing opt-outs from that curriculum. The Court, applying strict scrutiny, [concluded that](#) the use of the books in classroom instruction, without the option to opt-out, substantially interfered with the religious development of the children, and that the school district was unable to demonstrate that its policy of not allowing opt-outs from the curriculum was narrowly tailored to serve a compelling interest.

Due Process Clause

Two Supreme Court cases from the 1920s recognized a parent’s due process right to control their child’s education. In *Meyer v. Nebraska*, decided in 1923, the Court [reversed](#) the conviction of a parochial school teacher who had violated a state law by instructing students in the German language. The Court [ruled](#) that the law impeded “the power of parents to control the education” of their children in violation of the Due Process Clause. Two years later, in *Pierce v. Society of Sisters*, the Court [examined](#) an Oregon state law requiring children between 8 and 16 to attend public schools. The Court similarly [ruled](#) that the law interfered with parents’ right “to direct the upbringing and education of children under their control,” including by choosing to send those children to private schools.

The Court subsequently applied these principles in the mental health context in 1979. In *Parham v. J.R.*, the Court [considered](#) a due process challenge to Georgia’s civil commitment procedures that allowed parents to commit minors to state mental hospitals without an adversarial hearing. The Court upheld the

procedures, [reasoning](#) that parents “retain a substantial, if not dominant, role” in such decisions, that the “traditional presumption that the parents act in the best interests of their child should apply,” and that [parents](#) have “plenary authority” to seek such treatment. Given the nature of a child’s rights, the Court did acknowledge that parental discretion is not absolute and that inquiry by a “[neutral factfinder](#),” such as a staff physician, should be required to determine whether admission requirements were satisfied. However, the Court [rejected](#) requiring a “formalized . . . hearing” due to the potential “significant intrusion in the parent-child relationship” and [concluded](#) that Georgia’s “neutral and detached” process for voluntary commitments satisfied due process requirements.

***Mirabelli*: Procedural History**

In *Mirabelli v. Bonta*, parents and teachers challenged California policies that prohibit public schools from informing parents about their children’s gender transition at school absent the child’s consent. At issue was a CDE [guidance document](#) addressing the responsibilities of the state’s public schools regarding transgender students. The document [contended](#) that transgender students have a right, rooted in state and federal law, to keep their transgender status private. Thus, according to the document, “[w]ith rare exceptions, schools are required to respect the limitations that a student places on the disclosure of their transgender status, [including](#) not sharing that information with the student’s parents.”

Parents and teachers brought distinctive challenges against California’s policies in federal district court. The court [ruled](#) that parents have a right to access information about their child’s gender based on the Due Process Clause of the Fourteenth Amendment and the Free Exercise Clause of the First Amendment. The court also [ruled](#) that teachers have a right to provide accurate information to parents under both the Free Speech Clause and, to the extent the teacher can demonstrate a burden on his or her religious exercise, under the Free Exercise Clause. The court issued a permanent injunction [barring](#) California from enforcing or implementing any state law that requires or permits any employee to either mislead a parent about their child’s gender identity or to use pronouns or names that do not match their child’s legal name if a parent objects. The U.S. Court of Appeals for the Ninth Circuit [stayed](#) that injunction pending appeal, concluding in part that the state had shown that the district court’s decision likely was in error.

***Mirabelli*: Supreme Court Decision**

In a per curiam [decision](#), the Supreme Court vacated the Ninth Circuit’s stay as to the parents while litigation continues, ruling that they were likely to succeed on the merits of their free exercise and due process claims and that denial of those constitutional rights during the litigation process would cause irreparable harm. As to the Free Exercise Clause claim, the Court held that California’s policies were likely to trigger strict scrutiny because they [substantially interfered](#) with the “right of parents to guide the religious development of their children” under the principles set forth in *Mahmoud v. Taylor*. The Court stated that the intrusion on the parents’ free exercise rights—the “unconsented facilitation of a child’s gender transition”—was even greater than the burden at issue in *Mahmoud*. The Court [also reasoned](#) that the policies would likely not survive strict scrutiny because California’s proffered compelling interest in student safety and privacy “cut out the primary protectors of the children’s best interests: their parents.” The policies would also likely fail the narrow tailoring requirement, [according to the Court](#), because they could have included religious exemptions while at the same time continuing to preclude gender-identity disclosure to parents who engage in abuse.

The Court also ruled that the parents were likely to succeed on their due process claim. The Court cited its prior decisions in *Meyer v. Nebraska*, *Pierce v. Society of Sisters*, and *Parham v. J.R.* and [explained](#) that according to “long-established precedent,” it is parents, rather than the state, who are entrusted with authority for raising and educating children. Further, the Court emphasized that this right includes being [involved in](#) decisions concerning a child’s mental health. In the Court’s view, California’s policies [conceal](#)

from parents that their child displays evidence of gender dysphoria and “facilitate a degree of gender transitioning during school hours.” This, the Court **concluded**, likely violated a parent’s constitutional right to control the raising and education of their own child.

Dissenting Opinion

Justice Kagan, joined by Justice Jackson, wrote a **dissenting** opinion (Justice Sotomayor did not join the dissent but indicated she would have **denied** the request to stay the injunction). Justice Kagan’s dissent **criticized** the majority opinion for granting relief through its emergency docket without more developed briefing. In Justice Kagan’s view, the majority did so “by means of a terse, tonally dismissive ruling designed to **conclusively** resolve the dispute,” which (in her view) would be **treated** as a merits judgment in the courts below. Moreover, Justice Kagan observed that the **parental right** recognized in the majority opinion was rooted in the doctrine of substantive due process, of which the Justices in the majority had previously been **skeptical**. Most recently, in its 2022 decision in *Dobbs v. Jackson Women’s Health Organization*, the Court overruled its prior decisions that had determined the Constitution confers a right to abortion based in substantive due process. Justice Alito’s majority opinion in *Dobbs* **described** substantive due process as “a treacherous field,” while Justice Thomas’s concurrence **said** the doctrine lacked any constitutional basis. Justice Kagan also expressed concern with the majority’s willingness to extend its recent decision in *Mahmoud v. Taylor*, **suggesting that** the “ink on that decision is barely dry, and courts have just begun to consider its meaning and reach,” and therefore it was premature to grant relief without more developed analysis on the Free Exercise Clause issue.

Concurring Opinion

Justice Barrett, joined by the Chief Justice and Justice Kavanaugh, responded to the dissent in a **concurring** opinion. Citing *Meyer*, *Pierce*, and *Parham*, Justice Barrett wrote that the substantive due process doctrine has long recognized a parent’s right to raise their child and participate in significant mental health decisions for them. According to the concurrence, the plaintiffs were likely to succeed **under** a “straightforward application” of these cases because California “quite obviously excludes parents from highly important decisions about their child’s mental health.” As to the majority’s application of parental rights cases after *Dobbs*, the concurrence asserted that *Dobbs* simply **determined** that the substantive due process doctrine does not protect the right to an abortion, not that the doctrine itself or other rights it protects are suspect. Responding to the dissent’s criticism that the majority’s grant of relief **reflects** an “impatience’ to reach the merits,” the concurrence said the majority’s opinion simply indicates the “risk of irreparable harm to the parents.” The concurrence explained that the parents would not be entitled to interim relief **absent** the serious harm of a possible years-long exclusion from participating in decisions about their children’s mental health. Justice Barrett **also suggested** that in analyzing the Free Exercise Clause claim, the Ninth Circuit “significantly misunderstood *Mahmoud v. Taylor*,” and therefore “general course correction will allow the case to progress efficiently.”

FERPA: Applicability and Recent ED Action

Beyond the constitutional claims raised in *Mirabelli*, a related federal statute addresses parental access to student records. **FERPA**, which applies to educational institutions that receive financial assistance from ED, regulates how covered schools handle student education records. Among other things, as a condition of receiving funding from ED, FERPA requires schools to allow parents to “**inspect and review**” their children’s education records unless an exception applies. Schools must provide access within 45 days of a request.

On March 28, 2025, ED issued a **Dear Colleague Letter** (DCL) to state and local education agencies (SEAs and LEAs), informing them of their obligations under FERPA and identifying “priority concerns.”

According to the DCL, many LEAs (with approval from, or under the direction of, SEAs) might have policies that **conflict** with FERPA's requirements regarding parental inspection and review of student records. For example, the DCL observed, some schools create "gender plans" for students but **claim** those plans are not "education records" that parents may access under FERPA, as they are not part of an "official student record." According to the **DCL**, FERPA allows for no such distinction. With certain statutory **exceptions**, the DCL stated that all information related to a student and maintained by an educational institution is an education record which parents have a right to inspect and review.

On January 28, 2026, ED **announced** that, following an **investigation**, it had found CDE out of compliance with FERPA "for policies that pressure school officials to conceal information about students' 'gender identity.'" ED's **announcement** described CDE as maintaining "gender support plans" that were kept in separate filing systems in order to hide the records from parents. **According to ED**, "CDE's guidance asserts that such plans are not part of a student's record accessible to parents, which directly violates parent's rights under FERPA to inspect all education records related to their minor children." The announcement indicated that ED had offered CDE the opportunity to voluntarily resolve the matter by taking certain actions. On February 11, 2026, CDE **issued** an update to schools in the state, explaining that student support plans with information on a student's gender identity are subject to parental access and review consistent with FERPA. It is unclear at this point whether the announcement resolves the issue for ED. The agency has also made a similar **determination** as to the policies of several school districts in Kansas regarding parental notification in cases of gender transitions.

Congressional Considerations

Congress may consider its options for addressing parental access to student records and information in light of the Supreme Court ruling in *Mirabelli* and ED's recent actions related to FERPA. Subject to constitutional constraints, Congress has discretion to amend FERPA and alter the obligations that follow from that statute and accompanying regulations. Congress could amend FERPA's provisions concerning parental access to records, including by defining with more specificity what records must be made available, altering the time limit within which access must be granted, or directing ED to promulgate new regulations consistent with congressional directions. Congress could also spell out additional parental rights regarding access to information at school. Alternatively, Congress could consider establishing certain rights of children or limiting parental access to student records, although it may be constrained by the constitutional boundaries reflected in *Mirabelli*.

In addition, FERPA currently does not **contain** a private right of action authorizing suits against recipient schools for violations of the law. Instead, the statute is primarily **enforced** administratively by ED against recipient schools. In cases of noncompliance, ED is authorized to withhold payments or terminate eligibility to receive funding. Congress could amend the statute to explicitly authorize private lawsuits, including establishing appropriate remedies for violations of the law. For instance, a bill **introduced** in the 119th Congress would create a private right of action and authorize courts to issue declaratory relief, injunctions, and award attorney's fees where violations are found. That said, Congress's ability to authorize private enforcement of FERPA may be limited in part by the Constitution's Article III standing requirements, including the requirement that a plaintiff suffer a **concrete** injury-in-fact. The Supreme Court has **ruled** that Article III "requires a concrete injury even in the context of a statutory violation," and **that** "courts should assess whether the alleged injury to the plaintiff has a 'close relationship' to a harm 'traditionally' recognized" by American courts. Certain **tangible** harms, such as physical or monetary harm, easily qualify as concrete injuries, but intangible harms may require more searching deliberations as to whether the harm **is sufficiently similar** to traditionally recognized harms like intrusion upon seclusion, forced disclosure of private information, reputational harms, or harms specified by the Constitution.

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