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Massachusetts Legal Advisory

Mirabelli v. Bonta and the Constitutionality of Gender Identity Policies in Public Schools

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This guidance does not constitute legal advice and is for informational purposes only. If you need advice specific to your school district, contact an attorney.

I. Introduction

On March 2nd, 2026, the U.S. Supreme Court issued an emergency order in the case of *Mirabelli v. Bonta*[1] which will have significant legal implications for public schools in Massachusetts and across the country. The decision dealt with policies out of California that required schools to conceal a student's gender identity from his or her parents unless the student consented to disclosure. *Mirabelli's* holding makes it very likely that such policies are unconstitutional, and Massachusetts schools should take action to avoid liability.

II. Background

The case began in the United States District Court for the Southern District of California in 2023 when two teachers sued, seeking an exemption from their school district's gender identity policies. These policies allegedly required them to conceal information about students' gender identities from their parents unless the student consented and required them to use a student's preferred name and pronouns regardless of their parents' wishes. A group of parents also joined the lawsuit and added State officials as defendants. The parents alleged that school officials' uncritical affirmation of their children's gender identities without informing them worsened their children's gender dysphoria and required the parents to obtain psychiatric care for them. The plaintiffs claimed that the gender policies violated their rights under the Free Exercise Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment.

[1] No. 25A810 (March 2, 2026) (slip op.), *available at* https://www.supremecourt.gov/opinions/25pdf/25a810_b97d.pdf

The District Court held for the plaintiffs on all claims and entered a permanent injunction in their favor. The injunction prevented the schools from misleading the parents about their children's gender presentation at school and their social transitioning efforts and required the schools to follow parents' directions regarding their children's names and pronouns.

However, the Ninth Circuit Court of Appeals subsequently stayed the injunction pending appeal, finding that it was both procedurally defective and likely incorrect on the merits. The plaintiffs then filed an emergency application with the Supreme Court to lift the stay.

III. Holding

The U.S. Supreme Court granted the parents' application to lift the stay, finding that the Ninth Circuit had erred in its analysis. First, it found that the District Court's decision to issue an injunction was not procedurally defective. More importantly, the court also held that the parents were likely to succeed on the merits of their claims under both the First and Fourteenth Amendments.

The Court, relying on its recent decision in *Mahmoud v. Taylor,*[2] concluded that the gender identity policies conflicted with the parents' religious views on sex and gender and substantially interfered with their rights to direct the religious upbringing of their children. As such, the policies were subject to strict scrutiny and would not likely survive, since the State had no compelling interest in cutting parents out of decisions about their own children's welfare. The Court stated that "[t]he State's interest in safety could be served by a policy that allows religious exemptions while precluding gender-identity disclosure to parents who would engage in abuse."

The Court also held that the parents were likely to succeed on their due process claims. It reaffirmed precedents holding that parents have a fundamental right to direct the upbringing and education of their children, including the right to determine their mental healthcare. The gender identity policies likely violated these rights by giving schools priority over parents when it came to dealing with students' gender dysphoria.

IV. Implications for Massachusetts Public Schools

Mirabelli has significant implications for Massachusetts schools. While it is not a final judgment on the merits, the Supreme Court's decision to lift the Ninth Circuit's

[2] 606 U.S. 522 (2025).

stay strongly indicates that gender identity policies like those in *Mirabelli* are unconstitutional. Many Massachusetts school districts have such policies, which require school employees to hide students' gender identities from parents when a student does not give permission to disclose them.[3] Many more districts have informal protocols developed by school employees that impose the same requirement even when there is no written policy on the issue. These often take the form of student "gender support plans" or other documents. These policies and protocols are now highly likely to result in liability if an affected parent chooses to sue their child's school district for implementing them.

It is also important to note that Justice Barret in her concurrence to the majority opinion indicated that the Ninth Circuit had "significantly misunderstood" *Mahmoud v. Taylor* by applying it too narrowly to exclude the parents' claims in *Mirabelli*. This indicates that *Mahmoud* is not a narrow decision that applies only to curricular opt-outs, as the Sixth and Ninth Circuits have held, but that it created a general rule that applies far more broadly. *Mahmoud* prohibits all unjustified government burdens on parents' rights to direct the religious upbringing of their children. Therefore, school districts should take parents' religious exemption requests extremely seriously.[4]

To avoid liability in light of *Mirabelli,* school districts should strongly consider repealing any policy or protocol that explicitly or implicitly 1) denies parents the right to determine the name and pronouns that their child will be called at school or 2) requires school personnel to conceal a student's gender identity from their parents when the student does not consent to disclosure. Schools should also adopt policies that actively involve parents in decisions regarding their children's gender identification. Our model policy on Student Names, Sex, and Means of Address deals with this issue directly by requiring that school personnel refer to all students by their legal name and with the pronouns that match their biological sex, unless their parents give affirmative, informed consent for another name or pronouns to be used. We encourage school boards to review this policy, which is linked below.[5] Finally, schools should rescind any informal "gender support plans" or other documents which were developed for students without parental consent. By taking proactive measures to include parents in decisions about students' mental health and wellbeing, districts can ensure the best outcomes for students, respect parental rights, and avoid legal risk.

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[3] See, e.g., this non-comprehensive list of Massachusetts schools with such policies: https://defendinged.org /investigations/list-of-school-district-transgender-gender-nonconforming-student-policies/.
[4] See MERC's advisory on *Mahmod v. Taylor* here: https://malibertylegal.org/wp-content/uploads/2025/07/7-22-2025-MLLC-Mahmoud-Legal-Advisory.pdf.
[5] https://massedresource.org/student-records-name-sex-and-means-of-address/.

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If you have any questions regarding this Advisory, our model policies, or any other legal issues impacting your school district, please do not hesitate to reach out at https://malibertylegal.org/contact/.